

January 1938

An Early Expression on New Rules of Procedure

Wm. B. King

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Wm. B. King, An Early Expression on New Rules of Procedure, 15 Dicta 291 (1938).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

An Early Expression on New Rules of Procedure

AN EARLY EXPRESSION ON "NEW" RULES OF PROCEDURE

By WM. B. KING, of the Denver Bar

NOW that the United States Supreme Court has adopted the new Rules to "govern the procedure in the District Courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity," providing that "there shall be one form of action to be known as 'civil action,' " and requiring that a pleading shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief," and in view of the favorable comment upon such rules by the profession generally, it is interesting to exhume the comments made in connection with certain provisions of the Code of Iowa, in the case of *McFaul vs. Ramsey*, 20 How. 523:

"The common law * * * necessarily requires that the controversy * * * be reduced to one or more integral propositions. * * * The pleadings, in every form of common law action, have been * * * completely reduced to simple, clear and unambiguous forms. * * * This system, matured by the wisdom of ages, founded on principles of truth and sound reason, has been ruthlessly abolished in many of our states, who have rashly substituted in its place the suggestions of sciolists who invent new codes and systems of pleading to order. But this attempt to abolish all species, and establish a single genus, is found to be beyond the power of legislative omnipotence. They cannot compel the human mind not to distinguish between things that differ. The distinction between the different forms of actions for different wrongs, requiring different remedies, lies in the nature of things; it is absolutely inseparable from the correct administration of justice in common law courts.

"The result of these experiments, so far as they have come to our knowledge, has been to destroy the certainty and simplicity of all pleadings, and introduce on the record an endless wrangle in writing, perplexing to the court, delaying and impeding the administration of justice. In the case of *Randon vs. Toby*, 11 How. 517, we had occasion to notice the operation and result of a code similar to that of Iowa. * * * In the case of *Bennett vs. Butterworth*, 11 How. 669, originating under the same code, the court were unable to discover from the pleadings the nature of action or the remedy sought. It

might, with equal probability, be called an action of debt, or detinue, or replevin, or trover, or trespass, or a bill in chancery. * * * In both these cases this court have endeavored to impress the minds of the Judges of the District and Circuit Courts of the United States with the impropriety of permitting those experimental codes of pleading and practice to be inflicted upon them.

“They cannot adopt these novel inventions, which propose to amalgamate law and equity by enacting a hybrid system of pleadings unsuited to the administration of either.”

THE DENVER LEGAL AID SOCIETY

By JACOB V. SCHAEZEL, *Treasurer*

THE Denver Legal Aid Society, at a meeting held on September 27, 1938, decided to change the method of operating the cases coming under its jurisdiction.

Heretofore all legal work has been done by Harry C. Green, the General Counsel in charge, and his assistant. From now on Mr. Green will act as General Counsel for the purpose of interviewing clients and ascertaining whether or not they have cases requiring relief, and doing the necessary emergency work which might be required of him. His chief function, however, will be to refer worthy clients to practicing attorneys who have indicated their willingness to cooperate with the work of the Society.

The members of the executive committee have been endeavoring for some time to find a way to give the younger attorneys an opportunity of getting more practice, and at the same time becoming associated with the work of the bar in general. Under the proposed plan it is hoped that enough of the older lawyers will indicate a willingness to consult with and assist the younger members of the bar who have taken these cases for the poor of Denver.

A letter is now being sent by the Society requesting lawyers to assist in this work, but whether a letter is received or not, the bar in general is invited to participate in this work, and a letter addressed to any of the officers or members of the