BOOK REVIEWS


The adoption of the Federal Rules of Civil Procedure in September, 1938, stimulated widespread educational activity on the part of the bar. Articles, lectures, seminars, and studies have filled the two and a half years since the promulgation of the rules, offering ample opportunities for the required re-education in federal procedure. The mere fact that one of the purposes of the rules was to simplify the pleadings and practice in federal courts did not dispose of the necessity for detailed and exhaustive explanations, for the bar tends not only to be suspicious of simplification, but finds it difficult to appreciate a new order. It will be recalled that at the outset doubts were expressed even as to the validity and adequacy of the forms suggested by the draftsmen of the rules, and in many quarters it was felt that the trend toward simplified procedure—which, incidentally, is almost one hundred years old—would soon subside, and that the common law requirements would be read into the naive language of the rules.

Fortunately, however, the federal courts have been alert to the danger of slipping back into nostalgic molds, and have demonstrated their insistence upon making procedure the servant of substance, and discouraging attempts to secure technical interpretations of the rules. In the Northern District of Illinois, for example, the federal judges have exhibited an unmistakable determination to be guided by the spirit as well as the letter of the rules, in spite of the fact that one or two purely formal requirements (such as the five-day notice on motions required by Rule 6(d)), have been ignored in the interest of expediting the court's work, and in view of the exigencies of metropolitan practice. Altogether, the bar now has begun to accept the fact that the rules must be taken seriously, and that they have ushered in a new order for the federal courts. Lawyers are day by day learning to appreciate the many opportunities for the more effective and efficient practice of law provided by the rules, particularly in the use of the increased rights of discovery and pre-trial hearings.

In such an atmosphere the lawyer instinctively seeks a new book of forms. No matter how many articles he may read on the various provisions of the new rules, and regardless of how many lectures he attends on this subject, the average practitioner longs for a model to follow when he decides to try one of the "new-fangled" forms. In Federal Procedural Forms he will find a convenient and satisfying answer to most of his problems. Mr. Holtzoff, as Special Assistant to the Attorney General (here assisted by Allen Cozier, a Special Attorney in the Department of Justice), has been among the foremost students of the rules, and has prepared periodic digests of the court decisions construing and applying the rules for use by the various branches of the government. This valuable background and study has been used to advantage in Federal Procedural Forms.

This volume contains 1,020 forms, and deals not only with civil actions, but also with criminal and bankruptcy cases, as well as proceedings before the Board of Tax Appeals, the Interstate Commerce Commission, the Securities and Exchange Commission, the National Labor Relations Board, and the Secretary of Agriculture.
Throughout the book the following arrangement is followed: the suggested form is first set out; then author's notes, cross references and statutory references, followed by the rule or rules applicable to the particular form, together with comments of the advisory committee; and finally, annotations of general application to the form, rules and applicable statute. The annotations are particularly helpful. The practicing lawyer, in charting his course amid strange surroundings, will be grateful, indeed, for the suggestions and caveats to be found in the decided cases. In addition to the forms, the volume also contains the rules of the Supreme Court adopted February 13, 1939, the Rules of Civil Procedure and the General Orders in Bankruptcy adopted by the Supreme Court January 16, 1939. There is a complete 65-page index.

The authors do not pretend to have included every conceivable form required by the practitioner. In disclaiming such a purpose they have pointed out that: "Rather, it has been our aim to present those necessary for all ordinary purposes, together with such material as will enable the pleader to adapt them to his particular needs." Any attempt to criticize the selection by the authors naturally is purely a matter of personal preference. Certain situations have been exceedingly well-covered. The very important section on depositions and discovery offers 95 forms and should be unusually helpful. The section on bankruptcy, covering 143 pages, will satisfy the needs of most practitioners and includes the general orders promulgated some two years ago. The introduction to certain of the chapters, particularly the recent administrative agencies, should prove helpful in acquainting the neophyte with his environment.

On the other hand, the book omits some forms which would have made it even more helpful. The section on trusts seems regrettably meager. Mandamus, reformation of written instruments, and writ of prohibition, are apparently slighted. The beginner will not find a model satisfaction piece, or appearance form. Of course, the omission of these items and numerous others, can be defended on the grounds that they are readily available in the stationery stores and are not modified in any respect by the new rules. But the same may be said for some of the forms included in the volume, and if it were possible to have everything, these are among the ones that should have been provided. Perhaps Part One, dealing with civil actions, could have been more complete, if Parts Two, Three and Four, dealing with criminal law, special remedies and administrative agencies, respectively, had been omitted. Although the practitioner may find many occasions to thank the authors for including the chapters dealing with administrative agencies, there is some question as to whether the comparatively superficial treatment of those fields justifies the omissions in the division dealing with civil actions. For example, a practitioner with a federal tax problem will get little help from the section devoted to the Board of Tax Appeals. As a practical matter, before he would be in a position to use even the first form in this chapter, he would have needed a number of others not included, such as the protest he must file with the Revenue Agent in Charge as soon as he is advised of the examining agent's recommendation.

But in criticizing this volume we must keep in mind the salutary hope expressed many years ago by Samuel Johnson. In the preface to his dictionary the learned Doctor cautioned his readers to remember that "in this work, when it shall be found that much is omitted, let it not be forgotten that much likewise is performed." Indubitably, very much is performed in Federal Procedural Forms.

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