Pre-Trial (Harry D. Nims, 1950)

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BOOK REVIEWS


This book is in itself a review of the experiences and conclusions of judges throughout the country with the pretrial of cases. It undertakes to portray under what circumstances the pretrial conference originated, how it has developed and been interpreted and received, the uses to which it has been put, and its effect upon the trial of lawsuits. The experiences set forth in this work demonstrate how, by the use of pretrial, the triable issues in a lawsuit may be so defined as to permit expeditious handling of a case before a jury. With the use of pretrial a lawsuit no longer becomes a pitched battle to confuse the jury but permits a pretrial of the case before the judge by opposing counsel. At this conference the issues may be simplified, necessary amendments made, questions of fact agreed upon or admitted, and rulings of law made by the court, so that the case receives what is most important to the litigants—a prompt disposition of the cause before the jury and not infrequently before the judge.

The procedure followed by the courts is not uniform, since not all judges handle pretrial in the same way or avail themselves of its use at the same stage of the proceedings. While different methods of approach are used, all seem to reach the same general result, and in the main the procedures do not differ too greatly. Pretrial conferences are usually informal and are held either upon the initiative of the judge or at the request of counsel. The hearings may or may not be attended by the litigants and ordinarily are confined to facts admitted or agreed upon by the parties. The issues in the case are defined, and nearly always there is an agreement as to the admissibility of certain documents or exhibits which would readily yield to proof at the trial. This results in enabling the jury to understand the issues more clearly, more time is saved in putting on the proof, and counsel receive a clearer insight as to the values of their side of the case, so that settlement often ensues. Some judges encourage a discussion of settlement at the pretrial conference, while others do not. The results of the conference are reduced to writing and usually become an order of the court, sometimes furnishing the basis of the trial before the jury. The conference may also enable the court to formulate instructions for the jury or to limit the case to certain questions which should be submitted to the jury.

[278]
The objections of attorneys to the use of pretrial conferences are to be found "in tradition, in habit, in custom" (p. 196). Its use has quickly overcome this reluctance, since experience has shown the lawyer how time, expense, and effort may be saved through the pretrial conference. Courts, counsel, and litigants have all benefited by the use of pretrial because it permits a speedy disposition of the case, is a practical and workable procedure, and is easily understood by the litigants, so that they feel their case has not been disposed of by the technicalities and mysteries of the law. The promptness with which it permits the disposition of cases in which it has been used has done much to relieve criticism of the law's delays.

One of the chief values of this work, though of course not the only one, is the extent to which the author has set forth the many advantages obtained and the practices and methods used by the courts throughout the country in conducting pretrial conferences.

Rule 16 of the Florida Common Law Rules, which became effective January 1, 1950, makes ample provision for pretrial conference, and if resorted to by the bench and bar it will give to the litigant that which is necessary to keep the lawyer in business—an efficient and prompt dispatch of his lawsuit.

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Writing a history of the South is a difficult task. For generations historians have searched for a central theme which would adequately explain the vast area below the Mason-and-Dixon line. Some have found the answer in slavery, others in the gradual development of Southern Nationalism. The rural nature of Southern society, the dominance of the planter ideal, the homogeneous population, the climate and topography, the colonial economic status, and above all the never-ceasing struggle to keep the South a "white man's country" despite its large percentage of Negroes—all have been advanced as reasons or central themes to explain the Old South. Neither one nor all of these in combination completely account for the peculiar sec-