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Pre-Trial Procedure in Indiana

PROCEDURE

PRE-TRIAL PROCEDURE IN INDIANA

The Indiana Supreme Court in 1940 adopted in substance the federal rule providing for pre-trial conference procedure.[1] The 1940 rule was retained verbatim in the 1943 revision of the Supreme Court Rules.[2]

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19. Nashville, Chattanooga and St. Louis R.R. v. U.S., 113 U.S. 261 (1885).
20. U.S. v. Radio Corp. of America, 46 F.Supp,. 654 (D.Del., 1942).
21. Cushman and Dennison Mfg. Co. v. Grammes, 234 Fed. 952 (E.D.Pa., 1916). Even if a decree is entered without support of facts, it is not void, U.S. v. Swift and Co., 286 U.S. 106 (1932); consent cannot give juridiction, but it may bind the parties and waive previous errors if, when the court acts, jurisdiction has been obtained, Pacific Railroad v. Ketchum, 101 U.S. 289 (1879).

1. Fed. R. Civ. P., 16.
2. Rules of the Indiana Supreme Court, Rule 1-4:
"In any action except criminal cases, the court may in its discretion and shall upon motion of any party, direct the attorneys for the parties to appear before it for a conference to consider:
   (a) The simplification and closing of the issues;
   (b) The necessity or desirability of amendments to the pleadings;
   (c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof or the introduction of unnecessary evidence;
   (d) The limitation of the number of expert witnesses;
   (e) Such other matters as may expedite the determination of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered which limit the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered shall control the subsequent course of the action, unless modified thereafter to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided, and may either confine the calendar to jury actions or non-jury actions or extend it to all actions."

In comparing the Indiana and Federal Rules, it should be noted that the following portions of the Indiana Rule are omitted in the Federal Rule: " . . . and shall upon the motion of any party, . . . " (first paragraph), " . . . and closing of the issues;" (clause (a)), " . . . or the introduction of unnecessary evidence;"

The pre-trial conference is of recent origin in the United States.[3] "Its underlying philosophy is that litigants, their attorneys, and the trial court should, in an informal manner, approach each other and seek by fair and open methods the grounds upon which they differ."[4] While first used in the larger American cities to relieve the congested condition of trial calendars,[5] another avowed purpose of the procedure is to take the trials of cases out of the "realm of surprise and maneuvering."[6]

Under the Indiana rule the trial courts have power to make pre-trial procedure mandatory[7] in all civil actions

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(clause (c)). The Indiana Rule, however, omits clause 5 of the Federal Rule whhich provides for reference of the issues to a master for findings to be used as evidence in the case of jury trials.

3. In the United States the procedure originated in 1932 in the Circuit Court of Wayne County in Detroit, Michigan. In 1935 similar procedure based on a study of the Detroit system was adopted in the Superior Court for Suffolk County in the City of Boston. The Common Pleas Court of Cleveland, Ohio adopted the procedure in 1939. By 1941 the procedure was operating in the courts of some 14 states. Simes, "A Survey of the Administration of Justice in New England" (1943) 23 B.U.L.Rev. 28. Chicago is the latest large city to adopt the procedure. Fisher, "Judicial Mediation: How It Works Through Pre-Trial Conference" (1943) 10 U. Chi. L. Rev. 453. The history and theory of the procedure are traced in Dobie, "Use of Pre-trial Practice in Rural Districts," 1 F.R.D. 371 (1940), and Sunderland, "The Theory and Practice of Pre-Trial Procedure" (1937) 36 Mich. L. Rev. 215.
4. Crawford, "Problems of the Pre-Trial Conference" (1946) 31 Corn. L. Q. 285, 289; Brown v. Christman, 126 F(2d) 625 (App. D.C. 1942); LeConin v. Automobile Ins. Co. of Hartford et al., 41 F. Supp. 1021 (E.D. N.Y. 1941). Where in a personal injury suit both parties introduced much photographic evidence to show the extent to which a train protruded into a safety zone while rounding a curve the court said: "Doubtless the show was highly entertaining to the jury, but entertainment of the jury is no function of a trial. And why all this fuss to prove a fact susceptible of easy, exact and indisputable demonstration by actual measurement? The court might well have required that the parties stipulate as to the extent of the invasion of the zone by the turning train. Here would have been an excellent opportunity for settling an indisputable fact in a pre-trial conference such as sec. 269. 65 Stats. contemplates." Hadrian et al. v. Milwaukee Electric Ry. and Transport Co., 241 Wis. 122, 1 N.W. (2d) 755 (1942).
5. Pre-trial procedure was adopted by the Wayne Co., Mich. Circuit Court to alleviate a calendar delay of four years in law cases. At the time of adoption by the Suffolk County Court of Boston the trials of jury cases were approximately five years in arrears. Simes, "A Survey of the Administration of Justice in New England" (1943) 10 B. U. L. Rev. 28. See Fanciullo v. B.G.&S. Theatre Corp., 297 Mass. 44, 8 N.E. (2d) 174 (1947) (passim).
6. Laws, "Pre-Trial Procedure," 1 F.R.D. 397 (1940).
7. While the rule itself provides no penalty for its violation, it has been suggested, 1 Gavit, "Indiana Pleading and Practice" (1941)

This order is binding on the parties[16] and court unless modified at trial to prevent manifest injustice.[17]

PROCEDURE

THE RULE-MAKING POWER

Petitioner sought a writ of prohibition to enforce the provisions of a statute[1] providing that when a trial judge failed to determine an issue of law or fact within ninety days after taking same under advisement, any party was entitled to apply for withdrawal of the issue from the judge and for appointment of a special judge to take jurisdiction of the case. The trial judge refused petitioner's application. Held: Writ denied. Statute is an unconstitutional legislative interference with the judicial function.[2] *State ex rel Kostas v. Johnson,* 69 N.E.(2d) 592 (Ind. 1946).

In 1923, when the statutory provision involved in the principal case was enacted, there was general acquiescence in the power of the legislature to prescribe rules of practice and procedure,[3] although a strong inclination to the contrary had been indicated by the Indiana Supreme Court.[4] However, the legislative power was always subject to constitutional limitations to prevent interference with action of the courts

16. Where it was stipulated by pre-trial order that a contract was made in Florida but at the trial there was evidence from which it could be inferred that the contract was made in Texas, the court held that the stipulation was binding since the order was not modified, Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Olvera, 119 F. (2d) 584 (C.C.A. 9th, 1941). Accord, Gurman v. Stowe-Woodward, Inc., 302 Mass. 442, 19 N.E.(2d) 717 (1939); E. Dunkel, Inc. v. Barletta Co., 302 Mass. 7, 18 N.E.(2d) 377 (1937).

17. It has been held that in order to prevent manifest injustice the trial judge in the exercise of his judicial discretion may: permit amendments or corrections of mistakes in the pleadings, McDowall v. Orr Felt & Blanket Co., 146 F.(2d) 136 (C.C.A. 6th, 1945); discharge stipulations entered into under a misapprehension, Gurman v. Stowe-Woodward, Inc., 302 Mass. 442, 19 N.E.(2d) 717 1939); or improvidently made, Capano v. Melchinno, 297 Mass. 1, 7 N.E.(2d) 593 (1937).

1. Ind. Acts 1923, c. 83, § 1, Ind. Stat. Ann. (Burns, Repl. 1946) §2-2102.

2. Ind. Const. Art. 3, § 1 and Art. 7, § 1.

3. Smythe v. Boswell, 117 Ind. 365, 20 N.E. 263 (1888); Fletcher v. Holmes, 25 Ind. 458 (1865).

4. Gray v. McLaughlin, 191 Ind. 190, 131 N.E. 518 (1921); Solimeto v. State, 188 Ind. 170, 122 N.E. 578 (1919); Parkison v. Thompson, 164 Ind. 609, 73 N.E. 109 (1905).