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Rules for Civil Procedure in the United States District Courts: Trial Procedure

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B. TRIAL PROCEDURE

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I have been asked to say something about those of the New Federal Rules of Civil Procedure which relate to trial practice. Mr. Cole discussed Rules 1 to 25. It is Rules 26 to 71, inclusive, that come under my assignment.

Time will not permit a discussion of these rules in detail.

These rules are of practical interest to the Bar at this time for two reasons: First, because they go in effect today in the United States District Courts; and second, the Supreme Court of Indiana is considering whether these rules should be adopted as rules of procedure in the courts of our State.

Rules 26 to 37, inclusive, relate to depositions and discovery. These are based to some extent on provisions in the Judicial Code of the United States, partly on the equity rules which heretofore governed cases in equity, and to some extent upon provisions found in State statutes. A new provision for

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discovery in the Federal courts is found in Rule 35 where United States District Courts are given authority to order physical or mental examinations of person by physicians. While this has been practice in the State courts of Indiana, it has not been in the United States District Courts.

The right of trial by jury as declared by the seventh amendment to the Constitution or as given by a statute of the United States is preserved. Jury trials will have to be demanded in writing and the demand served upon the other parties. If demand is made for a jury trial the parties may stipulate that the case should be tried by the court. The demand for trial by jury may specify the issues to be tried by the jury. The other party may demand that other, or all issues, be tried by jury. Provision is made for trial of issues with an advisory jury.

Dismissal of actions is closely regulated in the new rules. There will not be the freedom to discuss actions in the United States District Courts in Indiana without prejudice, as there has been. The rules governing dismissals should be carefully consulted before a party undertakes to move for a dismissal.

Rule 43 relates to evidence. It provides that all evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence heretofore applied in equity, or under the rules of evidence applied in the courts of general jurisdiction of the State in which the United States court is held. The statute or rule which favors the reception of evidence is made to govern.

A new feature is found in Rule 46, which provides that formal exception to rulings or orders of the court are unnecessary and that it will be sufficient if a party makes known to the court the action which he desires taken or his objection to the action of the court and his grounds therefor at the time the ruling or order of the court is made. The rule also provides that if a ruling or order is made without opportunity of a party to make an objection at the time, then the absence of an objection does not thereafter prejudice him.

Another new feature is found in Rule 49. There the court

is given authority to require a jury to return only a special verdict in the form of a special written finding upon each issue of fact.

Another new feature is found in Rule 50. There it is provided that if a motion for a directed verdict at the close of all the evidence is denied or for any reason not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. The moving party may within ten days after the reception of a verdict move to have the verdict and any judgment thereon set aside and to have judgment in accordance with his motion for directed verdict.

Rule 51 governing instructions to juries is much the same as the practice now is in Federal courts, except that it expressly provides that opportunity shall be given to make objections to instructions out of the hearing of the jury.

A new provision is made in Rule 52 in that the court is required to make special findings of facts and to state separately its conclusions of law in all actions tried upon the facts without a jury. Provision is made for amendment of findings and for amendment of judgments.

A new provision relating to summary judgment is found in Rule 56. There it is provided that a party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the pleading in answer thereto has been served, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. The remainder of that rule makes provision for carrying out the right thus given.

I have not even attempted to mention each of the rules that fall within my assignment, because time will not permit to refer to all of them. Nor have I attempted to show wherein these new rules are like or unlike Indiana rules for civil procedure. Dean Gavit's recent articles in the Indiana Law Journal on these new rules show wherein they are like, also wherein they are unlike procedure of law in Indiana, and I recommend that every lawyer consult Dean Gavit's articles for that purpose.

I regard the new rules a definite improvement for procedure in the Federal courts. They are aimed at securing just, speedy and inexpensive determination of every action of a civil nature. They have a limited application in some proceedings which are not strictly civil actions within the ordinary meaning of that term. Rule 81 should be consulted in this regard.

Personally, I would regard it fortunate if the Supreme Court of Indiana would adopt these rules as near as may be practical for rules of civil procedure in the State courts. When this court exercises its rule-making power, I believe the governing principle should be to make the rules of civil procedure for State courts as near like the new Federal rules as is practicable. It would be unfortunate if there would be new rules in the State courts that would be materially different from the present procedure in State courts and also materially different from the new Federal rules. I believe that it would be in the public interest to have rules of civil procedure in State courts as nearly uniform with the new Federal rules as local conditions permit. Under those circumstances there would be less confusion than otherwise and there ought to be more efficiency.

[Note. A third article on the Federal Rules, entitled "Appellate Procedure," by Burke G. Slaymaker, of Indianapolis, will appear in an early issue of the Journal.—Editor.]