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## Legislation of the 1937 General Assembly Affecting Legal Procedure

Albert H. Cole  
*Indiana State Bar Association*

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# LEGISLATION OF THE 1937 GENERAL ASSEMBLY AFFECTING LEGAL PROCEDURE

## I

### *The Rule Making Bill*

By ALBERT H. COLE\*

The Board of Managers takes this opportunity to congratulate the Association upon the enactment by the last General Assembly of the Rule Making Bill, which has been sponsored by the Association during each of the sessions of the General Assembly since it first received the approval of the Association at its annual meeting at South Bend in the year 1932. The Board of Managers concluded that the enactment of this law would afford such far reaching opportunities for improvement in the administration of justice in Indiana that the Association's efforts at the 1937 session of the Legislature should be devoted solely to the advocacy of this Bill.

It was introduced in the House as House Bill Number 70, by John W. Kitch, of Plymouth, a member of the House and also a member of the Board of Managers of our Association.

The text of the act is as follows:

"Section 1. Be it enacted by the General Assembly of the State of Indiana: All statutes relating to practice and procedure in any of the courts of this State shall have, and remain in, force and effect only as herein provided. The Supreme Court shall have the power to adopt, amend and rescind rules of court which shall govern and control practice and procedure in all the courts of this State; such rules to be promulgated and to take effect under such rules as the Supreme Court shall adopt, and thereafter all laws in conflict therewith shall be of no further force or effect.

Sec. 2. Other courts of the State shall have the power to establish rules for their own government, supplementary to and not conflicting with the rules prescribed by the Supreme Court, or any statute.

Sec. 3. All laws or parts of laws inconsistent with this act are hereby repealed."

Representatives Joseph A. Andrews, of Lafayette, and Allen C. Lomont, of Fort Wayne, joined with Mr. Kitch in sponsoring the Bill in the House and very materially contributed to its passage. But three votes were cast against it. The Bill was referred in the Senate to the Committee of which Edward C. Hays, of Marion, was chairman. It was reported out and passed without a single dissenting vote. In addition to Senators Hays, Senators Walter Ver-

\*Of the Peru Bar, President of the Indiana State Bar Association.

million, Ralph H. Jernegan and Charles H. Bedwell spoke in favor of the Bill. The support accorded the Bill by the lawyers in the Legislature, including not only members of our Association, but other lawyers as well, was extremely gratifying.

The almost unanimous approval with which the Bill was received by all who gave it consideration bears convincing testimony to the soundness of the fundamental idea that the prompt and efficient administration of justice can be best attained if the rules of procedure and practice in the courts are prescribed by the Judicial, rather than the Legislative Branch of the Government. Lawyers and laymen in the Legislature seemed alike to recognize the fact that the Supreme Court is far better qualified by experience and training to prescribe these rules than is the Legislature, recruited as it necessarily is, from persons in every walk of life, many of whom have had no experience in matters pertaining to procedure in the courts. It was also recognized that the Legislature meets but once in two years, and then for but a brief sixty-one days, and that its attention is necessarily centered largely on urgent fiscal, social and economic problems, leaving little time for a careful study of the means by which the administration of justice can be improved. On the other hand, the Supreme Court is in virtually continuous session and to it, more than to any other body, are the imperfections in our system constantly being made apparent.

A number of other states, including Colorado, Wisconsin, Washington and Montana, have passed laws similar to that recently enacted by our Legislature. Congress, of course, by the Act of March 3, 1911, authorized the Supreme Court of the United States to regulate the practice in suits in equity or admiralty in the District Courts. The system thereby established has been so satisfactory that by the Act of June 19, 1934, the Supreme Court was authorized to prescribe, by general rules, the practice and procedure in civil actions at law in the District Courts.

It will be observed that the law which has been enacted by our Legislature requires no immediate or revolutionary change in our practice. On the contrary it provides that all statutes relating to practice and procedure shall remain in force until changed by rules promulgated by the Supreme Court. It is not thought that our Supreme Court will at this time make any radical changes in our system of procedure. As opportunities for improvement are brought to the attention of the court, however, we may expect that our practice and procedure will be refined and clarified and that the administration of justice will be simplified and expedited.

The new rules regulating practice and procedure in civil actions at law in the federal courts will, no doubt, receive careful consideration at the hands of Indiana lawyers while they are in process of

being formulated, and when the same shall have been finally adopted our Supreme Court, by virtue of the authority granted by the act which was recently passed, will be in a position to make such changes in our own procedure and practice as may be necessary to make the same conform to the federal practice, should such conformity be found advisable.

The profession is indebted for the passage of this Bill, not only to the splendid efforts and cooperation of the lawyers in the Legislature, but also to the efficient work of the Legislative Committee of the Association, under the capable and experienced direction of its chairman, Mr. Joseph G. Wood, of Indianapolis.