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Pre-Trial Procedure

Marcellus S. Whaley

HANDBOOK OF SOUTH CAROLINA TRIAL AND APPELLATE PRACTICE

A handbook on both South Carolina trial and appellate procedure is much needed. This one will not be too extensive but the writer will attempt to cover all the main aspects of the various steps that are so necessary in attaining Justice in any cause or proceeding. Nothing is more needed in South Carolina than the remodeling of our rules of procedure. We now waste time, cause unnecessary delays, and subject our courts to justifiable criticism.

PRE-TRIAL PROCEDURE

Discovery:

Discovery, at most an unsatisfactory pre-trial procedure at common law, has been abolished in South Carolina and nothing worthwhile substituted by the Code Sections.[1] See Sec. 26-501. One can now examine only an adversary before trial. Sec. 26-510 may compel discovery of books, papers and documents material to one's case. See Circuit Court Rules 43-46 and Sec. 26-6. Even discovery can only be for good cause shown in South Carolina; also, only as to facts to prove one's own case, and is so conditioned that it is largely impractical and therefore little used. *S. C. People's Bank v. Helms* (1927), 140 S. C. 107, 111-113, 138 S. E. 622. See also *Peagler v. A. C. L. Ry. Co.* (1958), ___ S. C. ___, 101 S. E. 2d 821.

In *King v. Smith* (1929), 148 S. C. 419, 146 S. E. 237, one is told: "The main purpose of our Court procedure is to see, first, that litigants have a fair and impartial trial; the next is to give those demanding it as speedy a trial as possible."

With those two objectives in view there can be no doubt that South Carolina is sorely in need of today's Pre-Trial Conference method. See the writer's article in South Carolina Law Quarterly, March 1949, p. 221.

After that article was made as a committee report to the South Carolina Bar Association no action has been taken with reference to the matter either by judicial or legislative authority. Other states are gradually and progressively walking away from us and are gradually adopting this practical method. Jurisdictions that already have it now have no doubt as to its good effect.

1. Unless otherwise stated, all code sections will refer to the 1952 Code.

Here are some of the advantages of the pre-trial conference procedure from the leading federal decisions. It relieves the congestion of trial dockets, and minimizes expenses and delays, narrows the issues after they are joined; simplifies issues, clarifies pleadings where necessary to avoid unnecessary proof at the trial; secures the just, speedy and inexpensive determination of every action; compels parties to agree to all facts concerning which there can be no dispute; acquaints the parties and the court with the real issues of fact and law in a case so that they may be intelligently informed as to what questions will be for determination at the trial. It also decides upon the legal sufficiency of a defense; limits the proof; provides the latest summary of the state of the case before trial and controls the issues sought to be raised by the parties on the scope of the pleadings; grants summary judgment or dismissal where the parties fail to obey the order of the court; advances the cause and simplifies the procedure before the cause is presented to the jury; ascertains what material facts are actually and in good faith controverted; checks correspondence and determines wherever possible the admissibility thereof; limits the preparation of expensive illustrations and exhibits so as to not impose the burden of such costs upon the losing party.

Even as early as 1949, Judge Parker, as chairman of the committee on Ways and Means of Economy in the Operation of the Federal Courts, encouraged the use of pre-trial procedure by judges not using it and a more extended use of Federal Rule 16 by those now using it. The committee reports that "ten years of experience in the federal courts has demonstrated beyond peradventure that pre-trial procedure results not only in greater efficiency in the judicial processes but in great economy in time and money for the courts, the litigants and the public."

Sec. 26-601, *et seq.* allows the use of interrogatories, but the method of taking a deposition before commissioners is so cumbersome, that such method is rarely, if ever, used in South Carolina, hence we don't run into the "interrogatory danger," but should they be used by consent with reference to other methods (Secs. 26-701 to 26-703 or 26-704 to 26-709) one has to be careful.

In connection with pre-trial hearings, Judge H. H. Watkins, U. S. District Judge for the Western District of South Caro-

lina, told the writer that at the Coplan trial in New York the pre-trial conference took six weeks but probably saved six months or more in the later trial, during which time the jury would have been sitting idly by. He said various and important points of evidence were argued, especially that as to wire-tapping. Defendant's attorney argued that, were it not for the wire-tapping, the F.B.I. would not have kept on the defendant's trail, and that there was no other sufficient evidence. That point was argued for three days. However, the Judge finally ordered the case to trial.

Physical Examination of Plaintiff:

South Carolina does not provide for a physical examination of a plaintiff in behalf of a defendant. As said in *Easler v. Railway Co.* (1900), 60 S. C. 117, 38 S. E. 258, at page 121:

> . . . The remedy provided by the Code for taking testimony before trial of the parties to the action in behalf of the adverse party is exclusive, and supersedes all remedies existing at the time of its adoption as hereinbefore stated. There is no statutory provision in this State, empowering the Court to order the physical examination of such a party. . . .