Denver Law Review

Volume 16 | Issue 7 Article 2

January 1939

A Typical Example of Pre-Trial Procedure

Omar E. Garwood

A Typical Example of Pre-Trial Procedure

A TYPICAL EXAMPLE OF PRE-TRIAL PROCEDURE

By OMAR E. GARWOOD, *of the Denver Bar*

A RECENT case involved the purchase price of a shipment of merchandise which the consignee claimed was so defective as to be practically worthless. The consignor claimed an acceptance at reduced price by written memorandum signed by the consignee. Plaintiff was a non-resident and would have been compelled to travel 1,000 miles to attend the trial. Defendant expected to call numerous witnesses to testify to the condition of the goods. At the pre-trial conference in the Judge's chambers the following took place:

The trial judge: "Gentlemen: You understand that this conference is informal and off the record. Neither of you is obliged to consider settlement of this case. The court is here to aid you in every way possible; the hope is entertained that we may be able to arrive at a stipulation which will avoid the necessity of calling witnesses or taking testimony. I now ask each of you gentlemen to state your respective contentions." After hearing each side and informally discussing the contentions made, the court, with consent of both counsel, dictated the following stipulation:

"It is hereby stipulated by counsel and ordered, that the facts of the case are agreed to be as found by the Secretary of Agriculture in the record submitted on this appeal.

"That evidence by witnesses if produced by the defendant would prove, if material, that on Tuesday, July 27, 1937, the peaches in question had greatly deteriorated and were in such condition that they could only be used for canning; that the question whether such evidence is competent and material is submitted for decision, and that the parties have five days from this date to submit briefs. The court shall decide the matter upon this record."

Briefs were filed and the court made findings of fact, and conclusions of law, and entered final judgment.

This pre-trial conference lasted forty minutes. Trial of the case probably would have taken two days. The stipulation dictated by the judge eliminated the necessity of introducing any testimony, and by this means every point was established for both sides which could have been established by the long, drawn-out process of examination and cross-examination. Any lawyer witnessing this proceeding would have been convinced that the trend is decidedly toward pre-trial procedure in all *nisi prius* courts. In the Federal Courts a very

large percentage of cases have already been disposed of by this method.

Detroit is the pioneer city in pre-trial procedure. Its calendar of law cases was nearly four years behind and something had to be done to afford litigants an opportunity to get their cases disposed of. A conciliation or settlement docket was first set up, and this finally led to the pre-trial docket. It has been so successful that law cases are tried with less than a year of waiting. An average of twelve percent of all cases are disposed of at pre-trial hearings.

Attorneys have nothing to lose by consenting to pre-trial hearings, and potentially they have much to gain. Narrowing of the issues, admission of copies of documents, accelerated settlements, elimination of witnesses, dispensing with juries, omission of stenographic records, clearing the trial docket and a tremendous saving of time and expense are elements that strongly appeal to clients and lawyers alike. Much depends on the attitude and adroitness of the pre-trial judge who sits as an impartial third person eliminating evidence and points of law by friendly agreement or stipulation until counsel are surprised to find that there is so little left for real controversy.

Los Angeles superior court judges have been holding pre-trial hearings since 1937 with very gratifying results; there is a growing tendency in all jurisdictions in the same direction.

Pre-trial hearings seem to be much more effective and satisfactory than proceedings before referees. The reason is said to be largely psychological. When attorneys are confronted in chambers with an impartial judge who proceeds to convince them that he wishes only to work out substantial justice, the feeling of suspicion and antagonism tends to disappear and a leaning toward conciliation takes its place. The question is sometimes asked whether all cases are to be subjected to pre-trial disposition; by no means; there will always be a sizeable percentage of cases which must be litigated as heretofore. It is said that justice delayed is justice denied. Pre-trial procedure lessens the cost and quickens the final disposition of litigation. Perhaps it is paving the way to realization of the forgotten constitutional guaranty of a speedy trial.