Lawyers Ask Quick Reform

A number of legal institutes on the rules of civil procedure were held in various sections of the state between April 16 and May 18. Most of the lawyers favored use of the Federal Rules, where applicable, as a basis for the new Texas rules, and the meetings were almost unanimous in favor of abolishing the general demurrer, retaining the special issues statute, and adopting pre-trial procedure.

"The attitude of the Wichita County Bar Association was, I believe, typical of that of the lawyers throughout the state," Roy W. McDonald of S. M. U., advisory committee member who conducted the institute in Wichita Falls, points out. "They manifested a desire to reform our procedure at once, and not to take a timid attitude toward the problems. If reforms are needed, they are needed just as much on September 1, 1941, as they will be a year or two later. If the new rules of the Supreme Court do not make the desired reforms, it certainly will not be the fault of lawyers such as were present at this meeting and emphatically expressed their approval of far-reaching changes."

Other institutes were conducted by Preston Shirley of The University of Texas in Temple April 20 and Austin April 22, and by Judge James P. Alexander of the Waco Court of Civil Appeals in San Angelo April 29, Lubbock May 1 and 2, and Amarillo May 3. Mr. McDonald and Judge Alexander also were among the speakers at the three-day legal institute in Dallas April 18, 19, and 20. A local clinic of the Cameron County Bar Association in Brownsville April 16 discussed questions prepared by Judge Robert W. Stayton for a previous meeting in Corpus Christi, and eight members of the Plainview Bar assembled for a special meeting February 22 to discuss the rules of procedure.

Temple

Attendance was large at the Central Texas lawyers' institute in the Municipal Auditorium at Temple. After a thorough discussion, the following recommendations were made:

1. That the Supreme Court retain present Texas requirement that the facts constituting a cause of action or defense be pleaded.
2. That the general demurrer as it is now used be abolished and that every defect, omission, or fault in a pleading either of form or of substance, which is not specifically pointed out by motion or exception in writing and brought to the attention of the judge in the trial court before the instruction or charge to the jury or, in a nonjury case, before the rendition of judgment, shall be deemed to have been waived by the party seeking reversal on such account.
3. That some system of pre-trial procedure be adopted.
4. That special issue practice be retained.
5. That converse issues may be submitted disjunctively in one issue, or where two issues are submitted, the court may instruct the jury that an affirmative answer to one would preclude the necessity of answering the other.
6. That the "committee adopt some sort of rule that will enable service to be had in all district courts thirty days before Monday in a particular month and that the process have attached to it a copy of the petition instead of an attempted statement by the district clerk."
7. That a party complaining on appeal of the failure of the court to submit an issue which was a part of his case should be required to tender such issue as a predicate for appeal, but that the complaining party on appeal would be required only to object to the failure of the court to submit an issue which is a part of his opponent's case.
8. That it be within the discretion of the court to submit explanations and definitions as a part of the charge, regardless of whether such explanation under the present authorities might be considered as a general charge.
9. That an objection to the failure of the court to define the term is a sufficient predicate for complaint on appeal and that there is no necessity of tendering a definition.

The meeting rejected a motion to the effect that on appeal there should be no presumption of any finding on the omitted necessary issue by the trial court. This was assumed to mean that a majority of those present were in favor of a presumption on appeal of a finding on a necessary issue to support the judgment, Mr. Shirley said.

Austin

Probably no other branch of law needs reforming as much as does civil procedure, Judge Ralph W. Yarborough told lawyers attending the Austin institute. Pointing out that more than four and a half years are required from the time of filing a case in trial court until it goes through the State Supreme Court, he described the present procedure as a "burdensome and unsatisfactory way of settling disputes."

Sponsored by Travis County Bar Association, the institute was conducted by Mr. Shirley in the Fifty-third District Court room. The following recommendations were made:

1. That the present system of fact pleading be retained.
2. That notice of all pleadings, including the pleas of privilege, be served on opposing counsel and that service by mail as in the Federal Rules be sufficient. This does not include service of citation necessary to commence a proceeding.
3. That a party pleading a general demurrer be required to state specifically the reasons or grounds for the same.
4. That pre-trial procedure substantially as provided by Federal Rule 16 be adopted.
5. That where a ground of recovery or defense consists of more than one issue and where some of the issues are submitted but one or more are not submitted, and where there is no objection to the failure to submit said omitted issue, then the issue not submitted will be presumed to have been found in support of the judgment rendered, if there is evidence to sustain such finding; but where no issue is submitted or requested on a ground of recovery or defense, that ground will not be presumed as found in support of the judgment but will be waived.
6. That in the event an issue is supported by testimony and no testimony to the contrary is offered, the issue raised by such testimony will be presumed as found in support of the testimony unless the failure to submit an issue thereon is objected to.
7. That it shall not be the duty of the party objecting to the failure of the court to define a term, or to the giving of a defective definition of a term, to submit a correct definition in order to be able to complain on appeal of the action of the trial court.

Approximately seventy-five lawyers at the Wichita Falls institute, below, asked that civil procedure in Texas be reformed at once. They unanimously recommended that only minor amendments necessary to remedy defects that arise be made after September 1, 1941. At the left is Roy W. McDonald of Dallas, who conducted the institute.