

RULE-MAKING POWER*Advisory Committee's Work Is Commended*

A special committee on the rule-making power of the Supreme Court has been appointed from year to year and has functioned actively since the Houston meeting of the Association in 1935. At that time the Association adopted the following recommendation of the report of the committee on administration and remedial reform:

"That a special committee of this Association be appointed by the incoming President to confer with the members of the Supreme Court and Judicial Council, with a view of giving this matter careful study and consideration, and report at the next meeting of the Association."

It is interesting to note that in that report reference was made to the report of the committee on jurisprudence and law reform of this Association in 1923 which contains a very able discussion of the subject. The first recommendation of the committee that year presented, by Associate Justice Thomas B. Greenwood, chairman of the committee, was as follows:

"That rules prepared by the Supreme Court, with the aid of a commission of lawyers appointed on the recommendation of the Judges of the Supreme Court, be substituted for all statutes on procedure, civil and criminal."

The special committee appointed at the Houston meeting in 1935 made an exhaustive study of the methods employed in different states under which the rule-making power was vested in the Supreme Court. Adoption of the report and recommendation of that committee at the Dallas convention in 1936 committed the Association to supporting legislation designed to vest the rule-making power in the Supreme Court of Texas; and throughout the following years the committee worked unceasingly for the adoption of appropriate legislation on this subject. The Texas

Civil Judicial Council drafted and recommended the passage of a bill by the Legislature, and without this recommendation it is doubtful whether the present Act would ever have been adopted. The adoption by the Legislature of the so-called rule-making statute (Vernon's Texas Statutes, Art. 1731-a) marks the fruition of many years of effort on the part of this Association and its committees.

On January 12, 1940, the Supreme Court appointed an advisory committee of twenty-one members to aid in the revision of the rules of civil procedure. That committee has worked untiringly, and reports of the progress of its work have been made in the JOURNAL. Legal institutes have been held throughout the state, at which one or

more of the members of the Supreme Court's advisory committee have been present and at which the principal changes contemplated or under consideration have been discussed and the views of the practicing attorneys throughout the State have been heard. It is gratifying to note that the members of the advisory committee share the views of most of the practicing attorneys of the state, that the framework of our present procedural system should be preserved, that the needed reforms can be worked out within that framework, and that no revolutionary or radical changes will be found necessary. We commend the Supreme Court and its members for their coöperation in this constructive work and the members of the advisory committee for the effective work they have done.

The special committee on rule-making power has been concerned only with the passage of appropriate legislation and with the general plan under which the rules are to be put into effect. It is not the function of this committee to consider the detail of these rules; and since the old



JAMES L. SHEPHERD JR.
Houston

Association had a standing committee on remedial procedure which will doubtless be continued by the Board of Directors of the State Bar, whose function it would be to consider and recommend changes in civil procedure, we recommend that the special committee on the rule-making power be discontinued with this year.

Respectfully submitted,

James L. Shepherd Jr., *Chairman*
Olan Van Zandt, *Vice Chairman*
L. A. Clark Roy W. McDonald
John W. Culp H. O. Metcalfe
J. Lee Dittert Ben H. Powell
Forrester Hancock Elizabeth Suiter
George F. Howard J. N. Saye
R. R. Holloway W. St. John Garwood
D. A. Simmons

