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MORE than any other individual, Professor Edson R. Sunderland has had a tremendous impact upon the Michigan law of procedure. The procedural reforms which he urged and molded into the Michigan law of procedure have been in use for nearly half a century, and to this day are the framework for our procedural laws.

The writer's awareness of Professor Sunderland's influence on Michigan procedural laws has been intensified through years of labor and study in that same field. Professor Sunderland's impact on the writer began at the inception of our professional training. In our first semester at the University of Michigan Law School we were imbued with the form and structure of common law pleading under the tutelage of Professor Sunderland. The archaic forms of the law which constituted the subject matter of common law pleadings were made to come to life with a direct, simple and graphic approach in a course of study that could easily have been dry and difficult.

The fledgling student was taught to understand the common law forms as the historic vehicles for the processing of litigation as well as the aims and purposes which they served and their relation to modern-day needs and requirements. What the novice did not and could not understand was, however, that his teacher was molding these views not merely in the minds of his students, but as a part of the framework of the procedural rules for the entire Bar and Bench of the state. Those of us who have succeeded him in carrying on this work have for the most part followed the basic patterns and signposts which he created.

In no field of law is a change more embracing than in the field of procedure. A revision in any one field of law generally has little effect on other fields. A change in procedure, however, must in a sense affect all fields of the law. All laws are dependent upon the courts for their effectuation. To secure court adjudication in any area of the law requires compliance with the rules of procedure. Hence, the impact of procedural changes cuts across all other fields of the law and in that sense it has a dominant influence in the administration and effectuation of justice. Professor Sun-

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derland's major role in procedural improvement stamps his achievements with outstanding significance in the entire field of law improvement within this state.

Of all the areas of the law which need constant changing, the procedural field is perhaps foremost. Substantive rules of law need comparatively little change when they are basically consonant with fundamental rules of justice. Procedural rules on the other hand are not an end in themselves. They are only the means to an end. They are the means for arriving at the goal of justice. Whatever means are best suited for that purpose should be employed. Modern methods and conditions are ever changing and with those changes, the suitability of particular procedures may diminish. To adjust to those changes requires continuing changes in the laws of procedure.

Professor Sunderland recognized early in his career the fundamental defect that procedural reform was being unnecessarily hampered by the profession's basic adherence to the principle of stare decisis. Many years ago he wrote:

> "The common law judges did not, however, distinguish between rules of law and rules of procedure. Convinced of the necessity of following precedent in one field they pursued the same course in the other, and the result was the utter stagnation of procedure. Rules became perpetually binding merely because they were once announced, and the elasticity vanished from common law practice."[1]

Professor Sunderland recognized more clearly than anyone else that in the field of procedure "novelty, inventiveness and boldness are so much needed."[2] He urged the concept that in the field of procedure simplicity and directness were needed to assure the attainment of justice in litigation. He preached the formulation of new rules of procedure to meet the needs of modern methods and modern courts. He sought to cut through the barriers of precedent and hypertechnicalities that stood in the way of the swift and efficient administration of justice. Almost a half century ago he said:

> "If the old actions are to go why not provide an entirely modern substitute? Why stop short in the process of simplification? . . . Logically the whole question is one of convenience

1 Sunderland, "The Machinery of Procedural Reform," 22 MICH. L. REV. 293 at 296 (1924).

2 Id. at 295.

in judicial administration. If many forms of action are better adapted for general use they should be employed; but if fewer forms result in a simpler and more effective procedure, then fewer should be used. . . .

"The purpose of pleading has ceased to be the exemplification of the subtilties of pleader's logic and has become the intelligible disclosure of the real nature of the respective claims of the parties. If this sensible and reasonable test is to be substituted for the old test of the common law, the old forms of declaration ought to give place to the others more in harmony with the new standard of sufficiency. The cumbersome, discursive, redundant and involved precedents which our local practice books have scrupulously preserved for professional use, and which conservative lawyers could hardly refuse to follow, ought to be supplanted by other more modern, direct and business-like forms which disclose on their face a greater regard for efficiency than for conventionality."[3]

Recognizing as he did, the dire need for procedural improvement, he undertook the labors to bring them about. At one point he informs us: "Reforms are not brought about spontaneously. Some agency must propose, formulate and validate them."[4] For the State of Michigan, in large measure, he was the "agency." While the enactment of rules of procedure are the primary province of the state supreme court, it takes considerable time and study to propose specific improvements in the procedural laws. On this point Professor Sunderland points out:

"While the members of a state supreme court are ordinarily too busy to devote much time to the study of procedural problems and the drafting of new rules, the same is equally true of those members of the bar who, by reason of their broad experience, are best qualified to see defects in the current practice and to pass upon proposals for improvement. The appointment of a commission of lawyers does not alone solve the problem. Someone must be able, for considerable periods, to devote his time continuously to the work."[5]

[3] Sunderland, "The Michigan Judicature Act of 1915," 14 MICH. L. REV. 273 at 385-386, 553 (1915).

[4] Sunderland, "The Machinery of Procedural Reform," 22 MICH. L. REV. 293 at 294 (1924).

[5] Sunderland, "The New Michigan Court Rules," 29 MICH. L. REV. 586 at 588 (1931).

That "someone" was Professor Sunderland. His vigorous efforts in the field of proposing and drafting new rules of procedure for the State of Michigan are evidenced as early as 1915 when the Michigan Judicature Act was enacted by the legislature, and the 1916 Michigan Court Rules were adopted by the state supreme court. He was a member of the Committee of the Michigan State Bar which drafted the 1916 rules, which were in substance adopted by the Michigan Supreme Court. They were the first general revisions since the adoption of the Rules of 1897.

In 1927, he was appointed by the Governor to a five-man statutory commission for extensive revision of the rules of practice and procedure.[6] As secretary of that commission, he carried the major role in draftsmanship and recommendations for rule changes. This major revision resulted in the 1931 Michigan Court Rules which instituted the most concerted changes in the history of Michigan procedure. Despite subsequent revisions, the major portion of these changes are still a part of the basic rules of Michigan procedure.

To understand Professor Sunderland's contribution to Michigan rules of procedure, one must be acquainted with the history of Michigan's procedural laws. From its inception as a territorial government, Michigan adopted the common law forms of pleading. It followed the common law procedures except as changed by statutes enacted by the legislature or rules adopted by the state supreme court. As early as the Michigan Constitution of 1850, provision was made (art. VI, §5) that "the supreme court shall, by general rules, establish, modify, and amend the practice in such court and in the circuit courts and simplify the same." Despite this granting of constitutional power, the Michigan Supreme Court had for many years shown reticence in revision of procedural laws through exercise of its rule-making powers. In default of vigorous action by that court, procedural laws were enacted by the legislature. Professor Sunderland describes the situation thus:

> "Meanwhile the legislature of Michigan, observing that the court rule system was functioning very weakly, took up the burden of regulating procedure, and in spite of the constitutional delegation of power to the supreme court, the legislative enactment of rules of practice has proceeded with almost as much vigor as though no such provision existed in the con-

[6] Mich. Pub. Acts (1927), Act No. 377.

stitution, and the supreme court has never officially questioned the validity and binding effect of rules of procedure enacted by the legislature."[7]

Such changes of procedure as were made by court rules were generally adopted at the insistence of committees of the State Bar Association. As previously indicated, Professor Sunderland took a leading part as a member of those committees in the major revisions which took place in 1915 and 1931. One of his important contributions in this field was the urging of vigorous action by the Michigan Supreme Court in its constitutionally designated field of enactment of procedural laws.

He devoted a large measure of his time and effort not merely in the draftsmanship of the rules, but in researching material to support the need for the changes proposed and the means best suited for arriving at them. The 1916 Court Rules were largely supplemental to the Judicature Act which was passed by the legislature at about the same time. By the new legislative enactments and the new rules most of the common law pleading forms were eliminated in the interests of simplifications of procedure. At the same time separate rules for law and chancery suits were eliminated and substituted with a single set of circuit court rules which governed both law and chancery cases.

In promulgating the 1931 Rules, the changes proposed for procedural improvement were the most sweeping in the history of the state. Professor Sunderland not only labored in the framing of these rules and the preparation of the necessary data in justification thereof, but actively took part in urging support for these changes at many meetings of local bar associations and at a special meeting of the State Bar Association called for the express purpose of considering these rule changes. Professor Sunderland reports that some 68 amendments were presented to the supreme court after the first published draft of the proposed rules in order to meet the criticisms and suggestions which came from members of the bar throughout the state.[8]

By the 1931 Rules, the basic form of pleading in law actions was made to conform with that of chancery actions by providing for elimination of common law forms of declaration, pleas of gen-

[7] Sunderland, "The Machinery of Procedural Reform," 22 MICH. L. REV. 293 at 302 (1924).

[8] Sunderland, "The New Michigan Court Rules," 29 MICH. L. REV. 586 (1931).

eral issue and general denials. Instead there was substituted the requirement for pleading specific factual statements and admissions or denials, which are not mere general denials, but explain where feasible the basis for such denial. Drastic changes were also made in the procedure for summary disposition of litigation through summary judgments and by motion to dismiss based on various special defenses such as lack of jurisdiction, lack of legal capacity to sue, pendency of other action, res adjudicata, statute of limitations, release and statute of frauds. At the same time, provision was made for additional discovery and admission procedures as well as simplification of non-jury trials in law actions.

The greatest changes under the 1931 Rules were made in the field of appellate procedure with provision for simplification by a single method of appeal in place of some fourteen different general methods and about thirty additional special methods provided for by common law and statute. While important amendments in appellate and other procedures were made in 1933, 1945, and 1956, and lesser changes in other years, the changes imposed by the 1931 Court Rules form, for the most part, the basic procedural rules at the present time.

There is no doubt that the rules drafted by Professor Sunderland will for many years to come remain a part of the basic framework of the procedural laws of this state. In time, it is true, that his draftsmanship will be replaced by other rules made to fit the ever-changing needs of the times. Yet, long after the rules which he drafted will have ceased to serve their purpose, the principles which he molded into the Michigan law of procedure will remain alive and buoyant. Our supreme court today, more than ever, shows readiness to meet its constitutional responsibilities in the field of procedural revision. Through his influence, the principles of wholesome acceptance of the need for continuing revision of procedural laws and abandonment of the limitations of stare decisis will remain a heritage of those who labor in the field of judicial administration. So, too, will the acceptance of the need for simplification and modernization to arrive at a speedy and efficient administration of justice. While those principles remain imbedded in Michigan's procedural laws, the impact of Professor Sunderland's contribution will still be felt. In view of the eternal verities of those principles, it is hardly likely that his impact will ever be lost.