FOREWORD

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It is probable that no procedural process offers greater opportunities for increasing the efficiency of the administration of justice than that of discovery before trial. Much of the delay in the preparation of a case, most of the lost effort in the course of the trial, and a large part of the uncertainty in the outcome, result from the want of information on the part of litigants and their counsel as to the real nature of the respective claims and the facts upon which they rest.

False and fictitious causes and defenses thrive under a system of concealment and secrecy in the preliminary stages of litigation followed by surprise and confusion at the trial. Under such a system the merits of controversies are imperfectly understood by the parties, are inadequately presented to the courts, and too often fail to exert a controlling influence upon the final judgment.

All this is well recognized by the profession, and yet there is a wide-spread fear of liberalizing discovery. Hostility to "fishing expeditions" before trial is a traditional and powerful taboo. To overcome its subtle influence requires more than logic and learning. Experience alone can effectively meet it.

The primary purpose of this study is to present the results of professional experience in administering discovery as a normal function of pre-trial procedure. Mr. Ragland has devoted two years to the work, the first as

Graduate Fellow, and the second as Research Associate, in the Law School of the University of Michigan. His thesis for the graduate degree in law dealt with the history and theory of discovery, and his researches included practically everything to be found in print upon the subject. With this as a foundation he devoted a second year to a field study of the actual use of discovery in all the jurisdictions of the United States and Canada where it had been effectively developed. The book, therefore, represents an extensive survey of the current practice regarding this important procedural device, in the light of its history and its logical theory. It is being published under the auspices of the Law School of the University of Michigan for the information of the American bench and bar, in order to exhibit the great possibilities of discovery as a means of removing some of the needless hazards of litigation.

Mr. Ragland has made a unique contribution to the literature of the administration of justice. The method employed, which involved interviews with hundreds of lawyers, judges and court officials in many jurisdictions, was difficult and laborious, and produced a vast amount of detailed data which he has analyzed and presented with great skill. He is an accurate observer and reporter, and his conclusions are well founded and conservative. The book is submitted to the judgment of a critical profession with full confidence that it will prove to be of unusual interest and value.

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PREFACE

The purpose of this volume is to present in a convenient and usable form a comparative study of the expedients which are being employed in various American and English jurisdictions for the purpose of facilitating pre-trial practice, to describe the practical operation of the different devices, and to show their effect upon the general administration of justice. An analysis of the statutory and case law has been combined with data which shows the practical operation of the procedure in the everyday work of the lawyer and judge. Field studies were made by the author in different cities of the following fourteen jurisdictions for the purpose of ascertaining the experience of the profession with each type of device which is being used: Indiana, Kansas, Kentucky, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Ontario, Quebec, Texas, and Wisconsin. Interviews were sought with representative judges, lawyers, and where there were such, officials in charge of discovery examinations. Other means employed in obtaining information included the study of trial court records of examinations for discovery, observation of actual examinations and correspondence with lawyers in states other than those in which field investigations were made.

GEORGE RAGLAND, JR.

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October 1, 1932