Simplification of Judicial Procedure in Federal Courts

Edson R. Sunderland
University of Michigan Law School

Available at: https://repository.law.umich.edu/articles/1361

Follow this and additional works at: https://repository.law.umich.edu/articles

Part of the Civil Procedure Commons, and the Courts Commons

Recommended Citation
Simplification of Judicial Procedure in Federal Courts.—In 1914 the Judiciary Committee of the House of Representatives unanimously reported favorably upon a bill (H. R. 133) authorizing the Supreme Court of the United States to prescribe by rule the forms, kind and character of the entire pleading, practice and procedure to be used in all actions and proceedings at law in the federal courts, with a view to their simplification, which rules should, when promulgated, take precedence of any law in conflict therewith. On January 2, 1917, a similar bill (S. 4551) was favorably reported from the Senate Judiciary Committee by a distinguished graduate of this Law School, Senator Sutherland. The concurrence of the Judiciary Committees of the two houses of Congress gives promise of an early enactment of this legislation.

While many other activities of Congress have attracted more attention than this effort to promote uniformity in federal court procedure, it is doubtful whether any will have more far-reaching beneficent consequences. The purpose of the so-called “Uniformity Act” of 1872 (R. S. 914), was to save the bar from the double burden of two systems of procedure in law cases, one State and the other federal. Such an eventuality was one which the profession might well hope to escape. But in practice it was found that real uniformity was impossible. The loophole provided by the language “as near as may be” was more and more resorted to by the federal courts.
to avoid conformity with local rules of practice which did not seem just
and reasonable, with the result that an immense number of precedents for
non-conformity have been established, destroying to a large extent the very
uniformity in procedure which it was the purpose of the Act to establish.

On the surface, the proposed regulation of federal procedure by the Su-
preme Court aims only to recognize the actual divergence between State and
federal practice and to improve the latter in a systematic fashion. This
would be a great gain in itself, for the present hybrid practice in the federal
courts is intrinsically unsatisfactory and creates confusion as between the
various federal districts.

But the real effect of a uniform system of federal practice would almost
certainly be far greater than this. The States have been groping about
more or less blindly for seventy years trying to reform procedure. The
early promise of the Field Code has not been fulfilled. The "Code" is in
large measure a failure. Statutory modifications of the common law sys-
tem have been tried again and again with indifferent success. They all
failed in the most vital place,—they were fixed and mandatory legislative
enactments imposed upon the courts, instead of rules by which the courts
guided their own efforts to do justice to litigants. In a few conspicuous in-
stances, such as New Jersey in 1912, Colorado in 1913, and Virginia in 1916,
the States themselves have taken up the court-rule system of procedure,
but progress has been exceedingly slow.

If, now, the Congress of the United States approves the court-rule plan,
and it is put into effect with the wisdom and ability which we have the
right to expect from the United States Supreme Court, the movement for
reform along this line, so successfully pursued in England and Canada, will
gain enormous force and prestige, and it will very likely become the dom-
inant system among our States. But more than that may confidently be
expected. An effective system of court rules will be put into operation in
the federal courts sitting in each State, and that system will undoubtedly
tend to become the model for the systems which may be looked for in the
several States. The merit of the federal Supreme Court rules ought to be
enough to commend them generally, but the great additional advantage to
accrue from identity of procedure in the State and federal courts will exert
a still more powerful influence.

Procedure thus seems to enjoy a unique position in the United States.
It is the only subject of legislation over which the federal authorities have
full coordinate jurisdiction with the States, and it offers the only oppor-
tunity for a federal system to serve as a model for State adoption. So that
procedure, which has lagged so long and suffered so many vicissitudes, bids
fair to become one of the pioneers of uniformity. E. R. S.