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Pre-Trial: A Symposium - Foreword

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It was encouraging to learn that the Western Reserve Law Review had decided to publish a comprehensive symposium on the important and timely subject of pre-trial procedure.

Although much has been said and written about it, there still seems to be a lack of complete understanding as to its purpose and function.

Fundamentally it is not new. For many years some industrious trial judges have attempted to define and simplify the issues in each case in order to expedite its final disposition. They did this not for the purpose of forcing a settlement, as unfortunately seems to be a rather general impression, but because they were appalled by the delay and waste of time in offering proof of facts which eventually were disclosed to be either immaterial or uncontradicted.

A trial is a truth-determining process, and naturally it is most conducive to that objective to discover the facts that are in issue and those that are not. Fortunately the days of the lawyer who shouts, "We deny everything and demand strict proof" are gone. Both the judge and the jury soon begin to lose confidence in counsel when it becomes apparent that in reality there is no dispute about facts he refused to concede.

It is not surprising that a settlement sometimes results when a trial judge sits down with counsel and the litigants face to face, and they learn the actual differences—frequently much smaller than expected—between them. The procedure is so obviously sound as to appeal to any reasonable person who gives it adequate consideration and is genuinely interested in seeing justice accomplished.

An important incident to this progress in expediting litigation in Ohio is the recent statutory accomplishment whereby a jury may be waived in either a civil or a criminal case and the trial be had before a bench of three judges. Especially when it follows a pre-trial conference, this procedure has been of great assistance in eliminating delay and in securing the prompt disposition of cases.

The following symposium should prove of real value to the Bench and Bar.