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## A Bit of History

North Dakota State Bar Association

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# BAR BRIEFS

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### A BIT OF HISTORY

At the time the American colonies declared their independence, pleading and procedure under the common law, wherever it prevailed, had become artificial and involved and archaic. About that time Bentham and others began the agitation for procedural reform. The ultimate result in this country was a wide adoption of the code system under which change is subject to the will of the legislature, while the system adopted in England leaves the judicial processes under the control of the courts.

A provision in the constitution of New York, adopted in 1846, authorized the appointment of commissioners "to revise, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of record of the state." A code of procedure framed by these commissioners, consisting of three hundred ninety-one sections, was adopted in 1848. Within the next twenty-five years five hundred fifty-one changes had been made in it, and at the end of fifty years it had been so revised and supplemented that it consisted of nearly four thousand sections. While it was a marked improvement over the old order it has had a tendency to fossilize as the common law before it had fossilized.

Though the movement for reform in procedure had its beginning in England, and a parliamentary commission to inquire into the need for reform had been appointed as early as 1828, it did not come to fruition there until 1873, when the most important of the Judicature Acts took effect. The English legislators therefore had the benefit of the earlier experience of the American code states under their codes of procedure. The new act swept away common law pleading and put in its place a code of principles and rules of practice proclaimed by rules of court rather than by legislative action. To the system so established is ascribed the effective administration of justice by the English courts. The present advocates of a simplification of our procedure urge as an advantage of the rule-making power over the code system, its adaptability to changing demands, and that they are making progress with their view will appear elsewhere in this issue.