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Lord Coke once observed:

> The court is aptly resembled to a clock which hath within it many wheels and many motions; all as well the lesser as the greater must move; but after their proper manner, place and motion; if the motion of the lesser be hindered, it will hinder the motion of the greater.

Perhaps there is nothing more important to the movement of the machinery of justice than the procedural rules by which litigation is conducted. The rods and pinions of court action are dependent upon them. In turn, the very rights of clients are in large measure dependent upon the lawyer's thorough knowledge of their existence and application. It is a sad reflection upon our profession when we consider that the loss of a lawsuit may sometimes be attributed in a substantial degree to the failure of the lawyer to know, understand, and comply with rules of procedure.

The lawyer is presumed to be an expert in the field of law. A comprehensive understanding of legal procedure is as essential to him as the compass is to the sea captain. A mariner could not leave the shore without a practical working knowledge of the rules of navigation. How possibly may the lawyer assume to initiate a proceeding in court and guide it through to a successful conclusion without a sure grasp of the rules of the road? After all, a fixed procedural method is absolutely essential to the administration of justice by our courts.

This does not mean that an attorney must know the rules by heart or that he can even quote verbatim a single rule in the book. But the fact remains that the rule book is always available on his desk, and it is such an astoundingly simple matter for him

* Commissioner, Kentucky Court of Appeals, author of Clay, Kentucky Civil Rules (1954).

to examine and re-examine any part thereof that pertains to proposed legal action on his part. When the lawyer is confronted with a problem involving some legal principle, he invariably goes to the Digest, the case book, or other authorities to find the answer. Why does he not go to the rule book to find the clear-cut and simple answers to his procedural problems?

Perhaps the reason is that some lawyers do not comprehend that they are constantly confronted with procedural problems. They sometimes seem to assume that once in court, the settled processes of law and a sympathetic judge will take care of their cases for them. This is an unwarranted assumption and is a reflection upon the very competence of the attorney. Every member of our profession holds himself out to the public as being an expert in legal matters. On that basis he may charge for his services. Any lawyer practicing in our courts who does not maintain a sound working knowledge of the machinery of justice does not properly belong in our profession.

While every attorney cannot be absolutely top flight, due to limitations of ability, each member of our profession can be and should be an expert on procedure. It requires little more than the ability to read, and not much reading at that. While we may understand "Why Johnny can't read", it is incomprehensible that a lawyer should lack this capability.

If we could be convinced that procedural rules are essential and important, perhaps we might be persuaded to read and reread those few which are pertinent to the particular course of proceeding affecting our cases at any given point.

The Philosophy of Procedural Rules

Perhaps there is no more piteous cry in the field of law than the lament "My opponent is relying upon a mere technicality". This means that my opponent has raised (to my embarrassment) an objection to the flagrant violation of a procedural rule. The expression "*mere* technicality" suggests that there is some special form of technicality which should be ignored by the court under particular circumstances. It further suggests that a *non-mere* technicality should have binding force and effect. As we go up and down the scale we find certain so-called "technicalities" are more non-mere than others. This brings us to an unnecessary and

profitless problem: When must a lawyer comply with procedural rules and when may he ignore them with impunity? The answer is not found in branding a rule some species of technicality. As the Court of Appeals recently said, "all rules of legal procedure are technical. They are peculiar to the science and practice of law. They prescribe the specialized method by which the judicial process may be invoked and exercised."[1]

It is true that under the common law and the codes there were a number of confusing and perhaps unnecessary technical procedural requirements. As was once said about the English Constitution, scrutinizing the ancient procedural rules was "like looking at the nests of birds or the curious and intricate work of beavers and insects." In the course of the development of law, particularly in recent years, we have recognized that many formal requirements of procedure were unnecessary and unfair.

In the light of this experience, our Kentucky Rules of Civil Procedure, like the Federal Rules, were adopted for the very purpose of doing away with unnecessary formal requirements at one time indigenous to the common law or the Civil Code which could be classified as "mere technicalties". By a very labored process some of the best legal minds in America over a long period of years have attempted to winnow out those rules or requirements which might properly fall in that class. The result is that what we have in our Rules of Civil Procedure is a complete set of non-mere technicalities. If a procedural requirement was not thought absolutely necessary to the proper administration of justice, it would not be in the Rules.

If non-observance of any rule by a few may be justified, then all lawyers in fairness should be excused from compliance, and such a "mere" rule would disappear in a limbo of disuse. Applying this same philosophy to each rule would destroy the procedural scheme entirely, and it would be impossible for courts to operate. It has been said that:

> Judicial procedure fixes the conditions, the time and manner as to which one may seek the use of the courts; it prevents surprise, oppression, and a subsequent attack on the same issue; it makes the humblest man the equal of the strongest, and it confines the oppressive hand of the

[1] United Mine Workers of America, Dist. No. 23 v. Morris, 307 S.W. 2d 763, 765 (Ky. 1957).

> government to the orderly method open as well to the humblest citizen. . . . Since justice can only be administered scientifically, not popularly, it must be done by fixed correlated rules, . . .[2]

It is true that under certain circumstances the violation of a procedural rule may be excused or may be waived by the opposing party. In addition, Rule 61 gives the courts a substantial latitude in relieving a party from the dire consequences of an act or omission contrary to the rules, where the requirement of strict compliance would result in manifest injustice. However, it is an unbecoming plea that any procedural rule is a "technicality" which should not be enforced. As we have said before, such rules *are* technical. But the lawyer is supposed to be a technician, and it is his job to have knowledge of such rules as affect his particular proceeding, and to comply therewith.

With the foregoing in mind let us examine a few of the procedural problems that have developed in our five years of operation under the Kentucky Rules of Civil Procedure.

Stating a Claim—Do We Still Have a Cause of Action?

One of the most confusing requirements under the New York and Kentucky Civil Codes was the requirement that a plaintiff in his petition must "state facts which constitute a cause of action". This led to endless feather-edge distinctions between evidentiary facts, ultimate facts, and legal conclusions.[3] It led to truly technical and formal requirements in the statement of a cause of action. With the adoption of the Kentucky Civil Rules, the requirements of pleading make no reference to either "facts" or "cause of action". Under Rule 8.01 a person asserting a right of recovery against another is required only to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief". Nothing could be more non-technical.

Just because a rule is couched in non-technical terms, however, does not authorize distortion of its meaning to a point where it loses its true significance. Unfortunately, under the original Federal Rule employing the same terms, and unfortunately under this Kentucky Rule, some have taken the view that it abolished

[2] Sheldon, "The Philosophy of Rules of Court," 13 A.B.A.J. No. 3, pt. 2, 3-4 (1927).

[3] See Clay, Kentucky Civil Rules 91-92 (1954).

the necessity of good pleading. Because the words "cause of action" had been deleted, it was on occasion assumed that the pleading need only give notice of the *existence* of a claim, and not its *nature* or the *legal theory* upon which it was based. This unfair and improper result led to a movement under the Federal Rules to reinstate the words "facts" and "cause of action" in the rule.[4] The opponents of this proposal vigorously assailed the attempt to go back to the formalities of Code pleading.

Those who opposed reincarnation of the Code phraseology offered a counter-amendment to the Rule which would make it quite clear that it still required the statement of an essential cause of action. The proposed clarifying language to be added to Federal Rule 8(a)(2) (the same as our Rule 8.01(2) was this:

> A statement of a claim shall not be deemed sufficient to show that the pleader is entitled to relief unless its allegations of fact, if established, would support a judgment in favor of the pleader. Mere assertion of a claim or of a bare legal conclusion shall not be sufficient.

This constitutes simply a statement of the proper construction of the Rule, which the writer believes was the construction intended by those who originally drafted it. Such is apparent from the 1955 report of the Advisory Committee on the Federal Rules of Civil Procedure. We may paraphrase a part of that report: The intent and effect of the Rule is to permit a claim to be stated in general terms and it is designed to discourage battles over mere form of statement. The Rule adequately sets forth the characteristics of good pleading and requires a disclosure of adequate information by the pleader as the basis of his claim for relief, as distinguished from a bare averment that he wants relief and is entitled to it.

The Kentucky Court of Appeals has from the outset so construed the Rule as requiring a fair statement of the nature of the plaintiff's claim. In *Johnson* v. *Coleman*[5] it was pointed out that the simplification and liberality in the Rules was "not so great as to obliterate the necessity of stating the elements of a cause of action or defense. . . ." In *Pryor* v. *York's Executor*,[6] it was said:

[4] For an interesting discussion of this suggested change, see "Claim or Cause of Action," 13 F.R.D. 253 (1953).

[5] 288 S.W. 2d 348, 349 (Ky. 1956).

[6] 305 S.W. 2d 775, 777 (Ky. 1957). For a comment on this case see 47 Ky. L.J. 141 (1958).

> The plaintiff's pleadings in this case disclose a set of circumstances which may possibly have given rise to an implied contract authorizing a recovery upon quantum meruit. However, to meet the requirements of the rule regarding notice to the adversary, a pleading must do more than merely expose a right of recovery or a right to rely upon a certain defense. The pleadings must show clearly that action is being taken on that right of recovery, or that the right to a defense is being asserted as such.

Though the language appears in a dissenting opinion and the case involved a different pleading rule, the writer believes that the classic statement of Judge Sims in *Lee* v. *Stamper*[7] represents a fair view of the pleading requirements of Rule 8.01. That statement was:

> True, the Rules of Civil Procedure attempt to get away from the strict requirements of the Civil Code, but to my mind this does not mean the Civil Rules have eliminated all requirements of pleading a cause of action, or that a monkey may now prepare a complaint as well as a man.

It is an abuse of this Rule to rely upon its simple requirements as an excuse by the lawyer for failure to prepare his case prior to invoking the services of a court. As a matter of fact, the Rule forces the lawyer, and properly so, to determine the essential ultimate facts and the legal theory upon which his claim is based. As said by Judge Yankwich:[8]

> When a case comes into a lawyer's office, as every practicing lawyer knows, what you get from your client is an undigested mass of facts. A lot of it is pertinent and a lot is not pertinent. The lawyer's first and big job is to analyze and break down that mass of facts and find out what is pertinent and relevant, relevant to whatever principles may control that case. He has to start that job of defining and refining the issues before he himself can ever come to a conclusion as to what the case involves, or whether his client has any rights or he can present it to the court.

It may then be said that Rule 8.01 is of real use to the lawyer in guiding him into an analysis of his case and the legal basis of his claim before he commences his lawsuit. To the younger lawyer especially may this observation prove of value: A great many

[7] 300 S.W. 2d 251, 255 (Ky. 1957).
[8] "Claim or Cause of Action" 13 F.R.D. 253, 269 (1953).

difficulties caused our circuit judges and our Court of Appeals, and many unfortunate results, stem from the fact that the lawyer does not fully comprehend the legal aspects of his case, even when he goes into trial. Proper compliance with Rule 8.01 requires him to understand, and to present in writing, the factual and legal essence of his claim.

Summary Judgment

Perhaps no procedural device in our Rules of Civil Procedure has contributed more to the expedition of cases than Rule 56, providing for summary judgment. This Rule has had widespread use and has sometimes come in for abuse.

Soon after adoption of the Rules, the possibilities of the Rule were recognized by lawyers and judges. Enthusiasm in invoking the Rule sometimes led lawyers to move for summary judgment in cases where such relief was clearly not justified.

A summary judgment, which is a final adjudication, is authorized only if the case presents no genuine issue of a material fact and the moving party has shown himself entitled to judgment as a matter of law. On the motion matters outside the record, such as affidavits, may be considered. Because of the simplicity of the procedure, it often seemed like a good idea to try the case on this motion, thereby avoiding the delay and difficulty of a jury trial. The popularity of the motion sometimes caused lawyers, and even a circuit judge or two, to overlook the fact that summary judgment procedure is *not a substitute for the trial of an action on its merits.* It is an abuse of the Rule to invoke it to short-circuit a trial if there are issues of material fact in controversy.

Summary judgment procedure does not authorize a trial court to adjudicate any issues of fact. In *Rowland* v. *Miller's Admr.*,[9] the opinion states:

> The courts have repeatedly admonished that the rule should be cautiously invoked; that it does not authorize the adjucation of factual issues but only authorizes the court by a pretrial sifting to penetrate the allegations of fact and to look to an evidential source or material extraneous to the pleadings solely to discover and determine whether there is an issue of fact to be tried.

[9] 307 S.W. 2d 3, 6 (Ky. 1956).

The question is not who should win on a trial, but whether there is any reason for a trial.

The motion for summary judgment has been successfully invoked in two automobile negligence cases.[10] However, because the facts which constitute negligence are so varied, and differing inferences may be drawn from those facts, this procedure is not well suited to negligence actions.[11]

On the other hand, this procedural device should be utilized fully when the only real issue in the case is one of law rather than fact.[12]

It may be observed that the formal allegations of a pleading are not sufficient to withstand a motion for summary judgment if they are attacked by affidavits or other proof presented by the moving party. As was said in *Gevedon* v. *Grigsby*,[13] a prime purpose of summary judgment procedure is to "pierce the pleadings". Consequently, the defending party on such a motion should make sure that he shows, perhaps by counter-affidavit, that a material fact does exist.[14] However, a cautionary word seems appropriate here. The hearing on the motion is not a trial of the issues of fact. The court cannot decide those issues on affidavits. Therefore, it is not necessary or appropriate for either party to present in any detail the actual evidence that would be produced at a trial. Matters outside the record which may be considered on this motion must be directed to the question of whether or not an issue of material fact exists and not to the question of which party would be successful on that issue.

May the trial court grant a summary judgment to the party opposing a motion for summary judgment even though such party has not made such a motion? The Court of Appeals has decided that such a procedure is proper.[15] However, the trial judge must be very careful that in granting a summary judgment to a party who has not made a motion to that effect he does not put such party in a prejudicial position. It is possible that the party oppos-

[10] Bell v. Harmon, 284 S.W. 2d 812 (Ky. 1955); Payne v. B-Line Cab Co., 282 S.W. 2d 342 (Ky. 1955).

[11] Puckett v. Elsner, 303 S.W. 2d 250 (Ky. 1957).

[12] See Rhorer v. Rhorer's Ex'r., 272 S.W. 2d 801 (Ky. 1954); Gumm v. Combs, 302 S.W. 2d 616 (Ky. 1957); Gevedon v. Grigsby, 303 S.W. 2d 282 (Ky. 1957).

[13] Gevedon v. Grigsby, 303 S.W. 2d 282, 284 (Ky. 1957).

[14] See Clay, Kentucky Civil Rules (Supp. 1957, at 72-73).

[15] Collins v. Duff, 283 S.W. 2d 179 (Ky. 1955).

ing a motion has not presented his best case for summary judgment and he might be at a disadvantage on an appeal from the summary judgment in his favor.

In the event both parties move for a summary judgment, does this constitute an agreement to permit the trial court to decide the case as a matter of law without a trial? This question has been presented to the Court of Appeals and has been decided in the negative.[16] It must be remembered that the summary judgment is proper only if there is no genuine issue as to a material fact (and the moving party is entitled to judgment as a matter of law). If such genuine issue is developed, even though both parties have moved for summary judgment, it is the duty of the trial court to assign the case for trial.

The appealability of an order denying a summary judgment originally presented a nice question under the Rules, and it has been settled by the Court of Appeals. In *Bell* v. *Harmon*[17] it was held that such an order is not only not appealable in itself, being clearly interlocutory, but it is not even *reviewable* on an appeal from the final judgment, provided that the denial of the motion was based on the ground that an issue of a material fact was presented. If the motion is denied on the ground that as a matter of law the moving party is not entitled to judgment, then such order, while not independently appealable, may be reviewed on an appeal from the final judgment.[18]

It is apparent that the summary judgment procedure is a valuable method of disposing of cases where the real controversy concerns a question of law. Rule 56 should be well understood by all lawyers and should be utilized to the fullest extent. It may be observed that this is one Rule that may be invoked unsuccessfully without injurious effect, and even if the motion is denied, it may serve a salutary purpose in pointing up the true issues of the controversy.

Appeals to the Court of Appeals

A lawyer may possibly slither through the preparation, pleading, and trial of his lawsuit "by ear", with a lackadaisical compliance with those Civil Rules which affect his case. If he loses

[16] Watts v. Carrs Fork Coal Co., 275 S.W. 2d 431 (Ky. 1955).
[17] 284 S.W. 2d 812 (Ky. 1955).
[18] Gumm v. Combs, 302 S.W. 2d 616 (Ky. 1957).

he is confronted with the problem of appealing to the Court of Appeals. If he has poorly practiced his case, he can afford to do so no longer. The right of appeal is a special privilege granted by the legislature, and the Court of Appeals in the Civil Rules and in its own Rules has prescribed the precise conditions under which a party may further be heard. It is fantastic to think that any lawyer would undertake to appeal a case without making a special effort to learn and comply with the rules which are so vital to his cause. Yet this happens entirely too often and with disastrous results. The Court of Appeals is not in the business of bailing out clients from the adverse effects of the carelessness of their counsel.

Appellate procedure must be exact in the interests of the orderly administration of justice. It is not a hit or miss proposition. For the ordinary case there are only three Rules, with appropriate subdivisions, governing the procedure, being Rules 73, 74 and 75. The Rules are simple, clear and direct. There is no excuse for their non-observance.

The underlying condition of an appeal is that it can only be from a final judgment. This has always been so. It has been prescribed by statute[19] for a great many years. It has been recognized in many decisions.[20]

Interlocutory orders are not appealable. For example, an order granting a new trial is not appealable. This has been settled for so long that it is difficult to understand why attorneys continue their fruitless attempts to appeal from such orders. It simply cannot be done.[21]

It is true that alleged error in granting a new trial may properly be reviewed on an appeal from the final judgment entered in the action.[22] Obviously that judgment is under attack on the ground that it should not have been entered because the new trial from which it emerged should not have been granted in the first place. We can say with assurance that an attempted appeal from an order granting a new trial will probably be dismissed forthwith by the Court of Appeals.

[19] Ky. Rev. Stat. sec. 21.060 (1958).

[20] Payton v. Payton, 293 S.W. 2d 883 (Ky. 1956); Massey v. Fischer, 243 S.W. 2d 889 (Ky. 1951); Hubbard v. Hubbard, 303 Ky. 411, 197 S.W. 2d 923 (1946); Farmers Bank and Trust Co. v. Stanley, 190 Ky. 762, 228 S.W. 691 (1921).

[21] Cornett v. Wilder, 307 S.W. 2d 752 (Ky. 1957).

[22] Clay, *op. cit. supra* note 14, at 79.

Another type of interlocutory order which is not appealable is the one which determines a single claim in a multiple claims suit. For example, if A sues B and C and the court grants summary judgment to C, this order, though final as between A and C, is not a final judgment in the action. We have a Rule which spells this out most clearly. The Rule is 54.02. It positively states in substance that when more than one claim for relief is presented in an action, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any claim and is subject to revision prior to the entry of a judgment adjudicating all claims.

This same Rule prescribes a procedural device by which the "hallmark of finality" may be impressed upon an interlocutory order, thereby making it final and appealable. However, if you will, the requirements are technical, and only by compliance therewith may an interlocutory judgment be made appealable.[23]

The next possible pitfall of a lawyer is the requirement that a sufficient jurisdictional amount be shown in his record to give the appellate court jurisdiction.[24] Since we are concerned with a matter of jurisdiction, any attorney must recognize the necessity of knowing and complying with the provisions of these three statutes. If the amount in controversy is less than $200, exclusive of interest and costs, no appeal to the Court of Appeals may be taken. If the amount is between $200 and $2500, an appeal may be taken only by compliance with the "technical" requirement of the original KRS 21.080.[25]

The jurisdictional amount in controversy must be shown by the judgment as construed with the pleadings. If the judgment when so construed does not show the amount, and it is ascertainable, the appeal cannot be entertained and the lawyer cannot get to first base. This is a jurisdictional matter of vital importance.

In the event neither the pleadings nor the judgment show the amount in controversy, KRS 21.070 authorizes and directs the trial court, upon request of either party, to state the actual value

[23] Clay, "The Significance of Civil Rule 54.02, 21 Ky. S.B.J. 195 (1957).
[24] This problem is governed by Ky. Rev. Stat. secs. 21.060-.080 (1958).
[25] This statute was amended in 1958 to provide that the Court of Appeals should promulgate rules governing procedure for appeals in these cases. Pending adoption of the new rules authorized, which are now under consideration, that court by order dated September 19, 1958 retained in effect the requirement of the original statute that such appeals could be taken only by filing *a motion for appeal* with the record.

for purposes of appeal. Apparently this addition to the judgment is *not* limited to the 10 day period within which a party may move to amend a judgment under Rule 59.05. Consequently there is no excuse for a party to come to the Court of Appeals without his jurisdictional amount, if it is ascertainable.

In unusual circumstances where the thing in controversy cannot be translated into a monetary valuation, the court may take jurisdiction.[26]

A dismissal of an appeal for failure to show the jurisdictional amount is a sad thing indeed.

Perhaps little need be said concerning the necessity of filing the notice of appeal within thirty days (or a limited extension of this period) from the date of the entry of the final judgment appealed from, as prescribed in Rule 73.02. This is, in a sense, a peculiarly arbitrary and technical rule. It is absolutely essential, however, that we have an exact method of taking an appeal and a fixed limitation of the time within which it may be taken. The Rule is fair, and compliance therewith is simple. To overlook it may be fatal. The requirements of this Rule are likewise jurisdictional.[27]

We will now turn to a minor problem which again demonstrates that failure to read and comply with a rule governing procedure on appeal may result in disastrous consequences. Rule 75.05 provides that the record on appeal shall be abbreviated so as to include only those matters essential to the decision on the questions presented. This Rule is designed to shorten the record and save the litigants unnecessary costs in taking an appeal. Shorter records are to be encouraged.

However, there is one condition imposed upon the appellant when he designates less than the complete record.[28] When this is done Rule 75.04 has the simple requirement that the appellant shall serve with his designation "a concise statement of the points on which he intends to rely on the appeal". Nothing could be plainer or easier to comply with. Unfortunately this Rule has been, and continues to be violated.

The obvious result is that the appellant brings no issue to the

[26] McLean v. Thurman, 273 S.W. 2d 825 (Ky. 1954); Clay, *op. cit. supra* note 14, at 89.

[27] Electric Plant Board v. Stephens, 273 S.W. 2d 817 (Ky. 1954).

[28] The complete record does not include non-essential orders, summons, subpoenaes, notices, and similar papers.

Court of Appeals to be heard, and that court is not engaged in the business of discovering issues not properly presented. In *Wallace* v. *Walters & Keene Motor Company*[29] it was pointed out that when only part of the record is brought up, the statement of points is necessary to enable the opposing party to designate additional parts of the record he deems necessary to meet the issues on the appeal. The failure of the appellant to comply with the Rule resulted in the dismissal of the appeal. Again we may remind ourselves that each rule has a significant purpose and cannot be ignored.

We finally reach the matter of filing the record on appeal in the Court of Appeals within the time prescribed by Rule 73.08. This Rule is also in a sense arbitrary and technical in requiring that the matter be attended to within a fixed number of days. There could be no misconstruction of the Rule. It can be violated only by carelessness upon the part of the attorney.

It is true that sometimes the record cannot be prepared within the original 60 day time limit allowed. The Rule itself makes liberal provision for this contingency. It affords the appellant opportunity to obtain all necessary extensions of time, either by application to the circuit court or application to the Court of Appeals. Sufficient time to file the record may always be obtained, the only condition being that the application for extension is made before the original or extended time limit runs out.

Many litigants have lost their opportunity to present the merits of their appeal by failure to comply with this Rule. These cases do not generally get into the books because the appeals are dismissed by order without opinion. Lawyers, always ingenious, have fought vigorously to close the barn door after their horse has already gone to the glue factory. They raise the question: "What difference does it make if we are only a few days late?" The answer is: If one appellant may violate this Rule, it would be utterly unfair to require compliance by any other appellant, and if this be so, there is no point in having any rule at all. Yet, such a rule is necessary for the orderly administration of justice, protecting the appellee from extended delay in realizing upon his judgment and permitting the Court of Appeals to program the hearing of cases.

[29] 280 S.W. 2d 493 (Ky. 1955).

Another retrospective argument has been made that it is not the duty of the lawyer but the duty of the clerk under Rule 75.07(4) to see that the record is timely filed in the Court of Appeals. This argument was properly rejected in *Belk-Simpson Company* v. *Hill.*[30]

It is a peculiar and unprofitable habit of the lawyer to neglect to spend ten minutes to ascertain the proper procedure he should follow at a particular phase of his proceeding and then spend hours and even days of his time (and a substantial portion of the court's time) in defending his neglect. As a general rule this does not pay dividends.

What we have just said pretty well strikes the keynote of this article. As we have earlier discussed, the civil procedural rules are minimum in number and contain the fewest possible requirements by which justice may be properly and efficiently administered in the courts. The Rules are not a hodge-podge of miscellaneous formal or harrassing requirements. Each rule embodies many years of the finest legal thought and many years of tested utility. Each one is essential to the proper working of the pattern of which it is a part.

Again it may be repeated that the Rules are technical. The lawyer, however, is supposed to be, and must be a trained technician. He must have a sound working knowledge of the tools of his trade. Some of his best tools are the Rules of Civil Procedure. As in any carpenter's shop, their proper use, not their abuse, is called for.

[30] 288 S.W. 2d 369 (Ky. 1956); *see* Rules of the Court of Appeals, rule 1.070 (1957).