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Sufficiency of Complaint Under Federal Rules--Revolution of Objectives in Procedure

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now interposed with regard to married persons only one of whom has income and/or deductions. Since the spouses of such persons have no income or deductions and a joint return cannot be filed, it appears they are in the class referred to as *all other individuals.* Naturally, the effect is discriminatory. One cannot fail to observe that a "head of a family" who is including generally in his return only his own income and deductions is entitled to a $2500 maximum deduction, while the average married man with a wife or children dependent on him, whose wife has no income or deductions, being unable to file a joint return, is allowed only a maximum of $1250. This may well be due to faulty phrasing and was not so intended by the legislature. It would seem to call for reconsideration and correction at the earliest possible opportunity rather than to wait for judicial interpretation.

It is interesting to note that the New York State Income Tax Law which parallels the federal law in the respects discussed, has adopted verbatim the medical expense deductions, albeit providing for maximums of $1500 and $750 respectively.

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SUFFICIENCY OF COMPLAINT UNDER FEDERAL RULES—REVOLUTION OF OBJECTIVES IN PROCEDURE

In framing a system of pleadings, objectives must first be settled.[1] Efficacy hangs upon how closely these are adapted to the requirements of the economic and social system for which they are created.[2] The code system has proved inadequate because the courts failed to adapt it to the changing needs of litigation. Tracing the scale that measures sufficiency under the Federal Rules, three ideas stand out as dominant: Liberality, Simplicity, and Notice.

As for Liberality, poor statement should not preclude a remedy, since justice ought not be limited to lawyers or to those with facilities and dexterity in legalistics. Liberality depends upon the policy of the judges who apply the laws; express command in the rules is scanty.[3] The mandate that all pleadings should be construed as to do substantial justice is fundamental;[4] its spirit has been often repeated.

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[1] FEDERAL RULES OF CIVIL PROCEDURE, Rule 1: ". . . They shall be construed to secure the just, speedy and inexpensive determination of every action." *See* Yankwich, *Jurisdiction and Procedure of the Federal Courts* (1940) 1 F. R. D. 453, 463.

[2] *See* Yankwich, *op. cit. supra* note 1, at 490.

[3] *Ibid.*

[4] FEDERAL RULES OF CIVIL PROCEDURE, Rule 8f: "All pleadings shall be so construed as to do substantial justice." *Cf.* N. Y. CIV. PRAC. ACT § 275. Re-

No more striking embodiment of the spirit of liberality in applying the Federal Rules can be found than in *Dioguardi v. Durning,* decided January 3, 1944 by the Second Circuit of the United States Circuit Court of Appeal. In a crudely drawn complaint, a plaintiff Italian importer alleged wrongful conversion of two cases of medicinal tonics, and a sale of the balance of his goods at an auction which transgressed its statutory authority. Federal provision permits disposal of abandoned merchandise unclaimed for more than one year.[5] The articles in issue were sold to a bidder who paid no more than the plaintiff offered, upon which facts his cause rested. The complaint was held sufficient despite the defendant's motion to dismiss for failure to state any claim upon which relief could be granted. The court deemed that the Internal Revenue Collector was personally responsible for proper performance of his bailment.[6] Meritorious causes ought no longer be doomed on account of meager statement of facts. A cause should survive when it shows need, even though it be obscured in a layman's clumsy construction or a foreigner's blundering English.[7]

Liberality involves the principle that an unartful plaintiff should not be penalized for his ineptness and obscurity. Yet, overelaboration must be discouraged. Simplicity in the laws, our second objective, helps. Judge Yankwich says that intricate systems are our English heritage which we must now outgrow.[8] Law accumulates and elaborates natively. A viner diligent in tending the garden would prune away the overgrowth. The law is moving toward uniformity in the source of authority. The confusion from rival state and federal rules had crippled orderly justice, causing "orderly chaos".[9] Conformation with state rules on the law side had made a comprehensive system of procedure impossible.[10] The unification of the law rules with

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ferring to the statute, the court in *Maylender v. Fulton County Gas and Electric* Co., 131 Misc. 514, 227 N. Y. Supp. 209 (1928), said, "that only applies to matters of form and has no application to the fundamental requisites of a cause of action." In contrast, the interpretation of the federal provision "is not clear, but it excludes requiring technical exactness, or the making of refined inferences against the pleader and requires an effort fairly to understand what he sets forth." *See* De Loach v. Crowley, 128 F. (2d) 378, 380 (C. C. A. 1942); People's Natural Gas Co. v. Federal Power Commission, 127 F. (2d) 153 (D. C. 1942).

[5] 46 STAT. 726, 19 U. S. C. A. § 1491 (1930).

[6] Conklin v. Newton, 34 F. (2d) 612 (C. C. A. 1929); Giles v. Newton, 21 F. (2d) 484 (D. C. 1929).

[7] *But cf.* Capdieville v. American Commercial, 1 F. R. D. 365 (D. C. 1940).

[8] See note 2 *supra.*

[9] Simmons, *Rules of Civil Procedure* (1943) 3 F. R. D. 73, 74.

[10] In *Granite Trust Building Corp. v. Great Atlantic and Pacific Tea Co.,* 36 F. Supp. 77 (D. C. 1940), authority of a state law was rejected because superseded by the Federal Rules in matters of procedure.

the established equity rules under Rule 2 is another means of excising superfluity.[11]

In matters of substance, *Erie R. v. Tompkins*[12] removed the body of "Federal Common Law" that had been built up from *Swift v. Tyson.*[13] Now the federal courts follow the states' rules wherever such are applicable.[14] Thus uniformity has been achieved in rules of substance,[15] and with it, simplicity. The code itself speaks in that vein. The injunction demands that pleadings be concise and direct.[16] Simplicity is embodied in the provision for the construction of the complaint, which should be a short and clear statement (1) of the grounds of jurisdiction, (2) of the claim showing that the pleader is entitled to relief, and lastly, a setting forth of his demand for the relief to which he is entitled.[17] This formula was continued from former Equity Rules.[18] Defenses should be in short and plain terms which meet the averments,[19] and minimum statement is required in pleading to show jurisdiction. Fraud must be stated with particularity while performance of conditions precedent need only be alleged generally.[20] The mechanics of form have been simplified,[21] to indicate a simplicity and brevity of statement, which the rules now contemplate.

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[11] Under the Federal Rules and N. Y. CIV. PRAC. ACT § 8, the distinction between legal and equitable remedies remains. *See* Williams v. Collier, 32 F. Supp. 321 (D. C. 1940).

[12] Erie R. R. v. Tompkins, 304 U. S. 64, 82 L. ed. 1188 (1938); *see* Clark, *The Tompkins Case and the Federal Rules* (1940) 1 F. R. D. 417.

[13] Swift v. Tyson, 16 Pet. 1, 10 L. ed. 865 (U. S. 1842).

[14] "The decision in *Erie R. Co. v. Tompkins* goes further and settles the question of power. The subject is now to be governed by decisions of the appropriate state court."

[15] *See* Ruhlin v. N. Y. Life Ins. Co., 304 U. S. 202, 82 L. ed. 1290 (1938); Francis v. Humphrey, 25 F. Supp. 1 (D. C. 1938).

[16] What is said in *Mumm v. Decker,* 301 U. S. 168, 81 L. ed. 983 (1937), about the Equity Rules, is true of the Federal Rules; that their purpose "was to simplify equity pleading and practice and with respect to the former to dispense with prolix and redundant averments which had made equity pleading an outstanding example of unnecessary elaboration." *See* Buckley v. Music Corp. of America, 1 F. R. D. 602 (D. C. 1941).

[17] FEDERAL RULES OF CIVIL PROCEDURE, Rule 8(a): "A pleading with sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded."

[18] Equity Rules, 28 U. S. C. A. § 723 (1912).

[19] FEDERAL RULES OF CIVIL PROCEDURE, Rule 8(b): "A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. . . . Denials shall fairly meet the substance of the averments denied."

[20] *Cf.* N. Y. CIV. PRAC. ACT § 92. An abbreviated due performance clause is there provided for, but the statute's construction has been very rigid. In *Clemens v. American Fire Insurance Co.,* 70 App. Div. 435, 75 N. Y. Supp. 484

Judicial interpretations have furthered simplicity,[22] and have allowed a plaintiff to be relieved from pleading many allegations essential to recovery. He need only show that he is entitled to relief. And he need not plead matter more appropriate to the trial, nor even the other parts of the case.[23] Simplicity in the demand for relief is achieved when a party will get his proper relief even if he has not demanded it.[24] Recovery, then, is based not on the pleadings but on the record.[25] Simplicity must be observed though it cost the right to notice and information to prepare a defense.[26] To compensate for the lack of information of the simplified complaint, courts suggest that the parties get their information by the means provided by the Federal Rules, discovery and interrogatories.[27]

After liberality and simplicity, Notice ranks as an objective of the Federal Rules.[28] Some courts regard this information as to the basis of a claim, and the type of litigation, as the dominating conception of the Federal Rules.[29] Notice, however, must defer to simplicity. In *Martz v. Abbott*,[30] mere allegations that plaintiff, a minor, was injured by defendant's auto and that it was a result of negligence, survived

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(1902), the court held that omission of the word "duly" from "duly performed" was a failure to comply with the section. *See* PRASHKER, CASES ON NEW YORK PLEADING AND PRACTICE 369.

[21] FEDERAL RULES OF CIVIL PROCEDURE, Rule 10: (a) Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

[22] Clark, *The Tompkins Case and the Federal Rules* (1940) 1 F. R. D. 417.

[23] "Under the Rules . . . a case consists not in the pleadings but in the evidence for which the pleadings furnish the basis. Cases are generally tried on the proofs rather than on the pleadings." *See* De Loach v. Crowley, 128 F. (2d) 378, 380 (C. C. A. 1942).

[24] FEDERAL RULES OF CIVIL PROCEDURE, Rule 54(c): . . . Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. *See* Keiser v. Walsh, 118 F. (2d) 13 (C. C. A. 1940).

[25] Nester v. Western Union Tel. Co., 25 F. Supp. 478 (1938); *cf.* Miller v. Hyman, 28 F. Supp. 312 (D. C. 1939).

[26] Sierocynski v. E. I. DuPont Nemours, 103 F. (2d) 843 (C. C. A. 1939).

[27] Neumann v. Faultless Clothing, 27 F. Supp. 810 (D. C. 1939).

[28] Montgomery, *Changes in Federal Practice* (1940) 1 F. R. D. 337, 339.

[29] Continental Collieries v. Shober, 130 F. (2d) 631 (C. C. A. 3d, 1942).

[30] Martz v. Abbott, 2 F. R. D. 17 (D. C. 1941).

an attack for failure to give notice, in that there was not sufficient information to prepare for trial. The court held that the simplicity of the Federal Rules must be preserved and that it would be defeated by requiring more notice. The defendant was denied a more definite statement, and was referred instead to the mechanisms of discovery. The functions of notice are to get further information for preparing a case, as well as to get evidence for its trial. General notice of broad outlines should not undertake the supplying of details for defense; it comprehends merely the selection of issues to be settled.[31] Though the pleadings are continued to a limited extent as a medium of notice,[32] the time honored method of framing issues is rejected and disavowed.[33] When framing issues was disclaimed, fact pleading, or, the machinery that produced issues, was also abandoned. The code systems show the difficulties involved in pleading facts.

In deciding "Material facts" a pleader must select the facts that are legally operative, and this presupposes a calculation based on the substantive law of what is required for a "cause of action".[34] A pleader must determine what is the substantive theory of his case before he can select the facts which will bring him relief under that theory.[35] His remedy should not depend upon success at marshalling legally significant facts but rather on its merits. Fact pleading under the codes has not proved a solution to difficulties of common law pleading. Instead, new difficulties have presented themselves. The distinctions of ultimate facts, evidentiary matter, and conclusions of law, have confused justice.[36] Fact pleading has doomed brevity, because omission of material facts is fatal, and a pleader would rather say too much than too little. Under the Federal Rules, issues no longer must necessarily be raised in the method of pleading facts. The theory is simply that the plaintiff state what happened, whereupon the court can apply the law.[37] The "cause of action" concept

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[31] Clark, *Simplified Pleading* (1943) 2 F. R. D. 456, 460.

[32] "The modern philosophy concerning pleadings is that they do little more than indicate generally the type of litigation that is involved. All that is required is a generalized summary of the case that affords fair notice." *See* Securities and Exchange Commission v. Timetrust, Inc., 28 F. Supp. 34 (D. C. 1939).

[33] In interpreting Federal Rule 8, the federal courts make some compromise and still use some formulas of fact pleading under the codes. Following the standards of code pleading, the Federal Rules as to sufficiency are interpreted to require (1) jurisdiction, (2) ownership of a right by plaintiff, (3) violation of right by defendant, and (4) resulting injury. *See* Patten v. Dennis, 134 F. (2d) 137 (C. C. A. 1943).

[34] PRASHKER, *op. cit. supra* note 20, at 339.

[35] Under the Federal Rules the plaintiff's relief does not depend on the theory of action adopted in the complaint. Baird v. Dassau, 1 F. R. D. 275 (D. C. 1940).

[36] "Under this definition the chief purpose of pleading is to frame issues. Upon it have been engrafted by the court the various requirements, the detailed statement of causes of action, the rule against pleading evidentiary facts and the prohibition against conclusions." Yankwich, *op. cit. supra* note 1, at 467.

[37] Moore, *op. cit. supra* note —, at 547.

is no longer used—instead, "claim of relief" takes its place. A plaintiff is relieved of trying to piece out a cause of action based on a substantive theory of his case. He merely states the wrongful act upon which he bases his claim.[38] The Federal Rules are the result of constant efforts during the past twenty-five years.[39] It is to be hoped that the movement will carry over into our state legislature.[40] We shall profit if only one idea be gained, namely, that justice is best served with simplicity.

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[38] White v. Holland Furnace Co., 31 F. Supp. 32 (D. C. 1939).

[39] Armstrong, *loc. cit. supra* note —, at 511; Montgomery, *op. cit. supra* note 28, at 338.

[40] It was suggested before the Nebraska legislature that the rules be incorporated into Nebraska law. *See* Simmons, *Rules of Procedure* (1943) 3 F. R. D. 73.