Buffalo Law Review

Volume 7 | Number 1 Article 17

10-1-1957

Civil Procedure—Prima Facie Case—Scintilla of Evidence

William Gardner

CIVIL PROCEDURE

Pleadings—Sufficiency Of Notice

Morgenstern v. Cohon[1] presented a problem of judicial interpretation of pleadings as to legal sufficiency. As a general rule, litigants are required to plead ultimate facts in support of legal conclusions rather than mere legal conclusions alone.[2] The main reason for the rule is to give the opposing party advance notice of the precise questions that they must meet at trial.[3] The question of whether or not particular pleadings meet the standard of the rule is a very narrow discretionary one. It is up to the courts to determine, from the precise wording of the pleadings, whether they allege legal conclusions only, or contain statements of ultimate fact in support thereof.

Case authority is of little benefit in a discretionary issue of this kind. Although the Civil Practice Act, section 241, requires that a complaint contain a plain and concise statement, without repetition, of the material facts, it is to be read in conjunction with section 275 of the Civil Practice Act which states that, "Pleadings must be liberally construed with a view to substantial justice between the parties."

In this case, claimant had stated that the petitioner agreed to sell his vote as stockholder, for consideration which inured to his sole benefit. The Court of Appeals determined that petitioner's affirmative defense to this pleading clearly contained sufficient factual allegation upon which to base conclusions of illegality. The sale of the vote was the essential fact, in support of the conclusion that the contract was void as opposed to statute.[4]

The Court has here demonstrated the modern trend in pleading that received its initial impetus with the New York Field Code of 1848 and continues in the great majority of American state jurisdictions as well as Federal courts. This trend is to liberate court litigants from the archaic and intricate common law pleading and allow them to plead by notice and proofs at trial. The procedure saves much time and expense for all parties concerned.

Prima Facie Case—Scintilla Of Evidence

The basic elements essential to a negligence action in New York are (1)

1. Morgenstern v. Cohon, 2 N.Y.2d 302, 160 N.Y.S.2d 633 (1957).
2. N.Y. CIV. PRAC. ACT §241.
3. Crane v. Powell, 139 N.Y. 379, 388, 34 N.E. 911 (1893); Milbank v. Jones, 127 N.Y. 370, 376, 28 N.E. 31, 32 (1891).
4. N.Y. STOCK CORP. LAW §47 provides:
   A stockholder shall not sell his vote to any person for any sum of money or anything of value.

the existence of a duty owed by defendant to the plaintiff, (2) a breach of that duty with (3) a resultant injury to the plaintiff, and (4) absence of contributory negligence.[5] Failure to establish these elements will lead to the withdrawal of the case from the jury either by dismissal of the complaint[6] or by directed verdict or judgment notwithstanding the verdict,[7] as appropriate.

In addition, the establishment of a jury question requires either a conflict in the evidence or uncontested evidence from which fair-minded men might draw more than one inference,[8] a mere scintilla of evidence being insufficient for this purpose.[9] The test applied where a motion for directed verdict was involved was whether the trier of facts could by any rational process find a verdict for the party moved against on the basis of the evidence presented.[10]

In *Rowland v. Parks*,[11] these elements of law were involved in relation to the problem of the establishment of a prima facie case. In keeping with traditional law on the subject, it was held that the case presented by the plaintiff showed a mere scintilla of evidence and therefore did not merit submission to the jury.[12]

Summary Judgment—Fact Question Precludes Use

A motion for summary judgment must be denied whenever the court determines that there are triable issues of fact presented in the pleadings.[13] On this basis, the Court of Appeals reversed the lower court decision in *O'Dowd v. American Surety Company of New York*.[14] They held that since an insurer's contractual liability depended upon the facts surrounding the accident for which liability compensation is claimed,[15] those facts must be alleged and established at trial.

5. Kimbar v. Estis, 1 N.Y.2d 399, 153 N.Y.S.2d 197 (1956); 6 BUFFALO L. REV. 228 (1956-57).
6. *Ibid.*
7. N.Y. CIV. PRAC. ACT §457(a).
8. Veihelmann v. Manufacturers Safe Deposit Co., 303 N.Y. 526, 104 N.E.2d 888 (1952).
9. FIFTEENTH ANNUAL REPORT OF THE JUDICIAL COUNCIL OF THE STATE OF NEW YORK: 1949, p. 250, states that:

> Insufficient evidence as presently understood, does not mean absolutely no evidence but evidence which is so slight as to be in the eyes of the law no evidence; or, differently stated, evidence which amounts to no more than a mere scintilla.

10. Blum v. Fresh Grown Preserve Corp., 292 N.Y. 241, 54 N.E.2d 809 (1944); Wearever Upholstery & Furniture Corp. v. The Home Ins. Co., 286 App. Div. 93, 141 N.Y.S.2d 107 (1st Dep't 1955).
11. 2 N.Y.2d 64, 156 N.Y.S.2d 834 (1956).
12. Previous notes concerning the requirements for a prima facie case are found at 5 BUFFALO L. REV. 63 (1955-56) and 6 BUFFALO L. REV. 146 (1956-57).
13. N. Y. R. CIV. PRAC. 113.
14. O'Dowd v. American Surety Co. of New York, 3 N.Y.2d 347, 165 N.Y.S.2d 458 (1957).
15. Stonbrough v. Preferred Accident Insurance Co., 292 N.Y. 154, 155, 54 N.E.2d 342, 343 (1944).