

1-1-1957

## Civil Procedure—Liberal Construction of Pleadings

Glenn Morton

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Civil Procedure Commons](#)

---

### Recommended Citation

Glenn Morton, *Civil Procedure—Liberal Construction of Pleadings*, 6 Buff. L. Rev. 145 (1957).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol6/iss2/8>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

of the rules of the Board, governing the various professions, as sufficient in itself to warrant the revocation of a license. In order to impose such a sanction upon a license holder for the violation of a rule, the Board must show that the conduct which the particular rule seeks to prevent is truly unprofessional; that is, that such conduct is recognized as unprofessional by those practicing the same profession in the same area.

## CIVIL PROCEDURE

### Liberal Construction of Pleadings

Claimant sought to recover damages for malpractice against defendant-patent attorneys alleging that defendants had fraudulently given him incorrect legal advice, had failed to give him full and accurate information and had neglected to make all claims available as to his invention.<sup>1</sup> The Court held, reversing the Appellate Division,<sup>2</sup> that defendant's motion to dismiss the complaint for legal insufficiency on the grounds that it was inartistically drawn and indefinite in places was properly denied in that the complaint sufficiently charged negligence, breach of implied contract, constructive fraud and damages.

Whereas a complaint challenged for legal insufficiency must be considered in light of Civil Practice Act section 241 which requires that a complaint contain a plain and concise statement of the material facts,<sup>3</sup> section 241 must be read in conjunction with Civil Practice Act section 275. Section 275 provides that a complaint should be construed with a view to substantial justice between the parties.<sup>4</sup> The complaint should be taken as a whole, and viewed as such should be deemed to allege whatever the material facts impute.<sup>5</sup> The primary consideration is whether the complaint sufficiently alleges a cause of action.<sup>6</sup> Whether or not plaintiff will be able to prove his allegations is immaterial at this stage of the pleadings.<sup>7</sup>

---

If plaintiff is entitled to recover in any aspect on the material facts stated in

---

1. *Dulberg v. Mock*, 1 N. Y. 2d 54, 133 N. E. 2d 695 (1956).

2. 286 App. Div. 1008, 145 N. Y. S. 2d 533 (1st Dep't 1956). The denial of defendants' motion was reversed because of the generality and indefiniteness of the complaint in view of the fact that it was plaintiff's third attempt to state a cause of action.

3. N. Y. CIV. PRAC. ACT §241. Every pleading shall contain a plain and concise statement of the material facts, without unnecessary repetition, on which the party pleading relies but not the evidence by which they are to be proved.

4. N. Y. CIV. PRAC. ACT §275. Pleadings must be liberally construed with a view to substantial justice between the parties.

5. *Calvo v. Davies*, 73 N. Y. 211, 29 Am. Rep. 130 (1878); *Howard Stores Corp. v. Pope*, 1 N. Y. 2d 110, 134 N. E. 2d 63 (1956).

6. *Moss v. Cohen*, 158 N. Y. 240, 53 N. E. 8 (1899).

7. *Werle v. Rumsey*, 278 N. Y. 186, 15 N. E. 2d 572 (1938).

the complaint, a motion to dismiss the complaint should be denied.<sup>8</sup> The remedy available for the defendant at this time should be in the form of a motion for a bill of particulars or a motion to make the complaint more definite and certain.<sup>9</sup>

The policy behind the instant case is illustrative of the modern deviation from the old system of strict pleading and its corresponding harshness. The new trend is toward a more liberal system of pleading similar to the notice type of pleading found in the federal courts, and is an attempt by the courts to alleviate the evils of an overcrowded court calendar and an already complex legal procedure as well as to insure that a just claim will be heard.

### Prima Facie Case

*Andersen v. Bee Line*<sup>10</sup> was a wrongful death action arising out of a collision between defendant's bus and a car driven by plaintiff's decedent. Plaintiff introduced oral testimony of a disinterested witness which inferentially established defendant's negligence, while defendant presented photographs showing the vehicles after the collision in a position which tended to contravert the oral evidence. The jury returned a verdict for plaintiff which the Appellate Division reversed on the ground that, as a matter of law, plaintiff had not established a prima facie case.<sup>11</sup>

In a wrongful death action a plaintiff is not held to as high a degree of proof of the cause of action as where an injured plaintiff can himself describe the occurrence.<sup>12</sup> It is also established that a court, in deciding a motion to dismiss, must consider the facts adduced at the trial in the aspect most favorable to the plaintiff, who is entitled to the benefit of every favorable inference which can be reasonably drawn from those facts.<sup>13</sup>

In line with these rules the Court, in reversing (4-3) the Appellate Division, pointed out that a jury could reasonably draw the inference that the bus continued in the unlawful course indicated by plaintiff's witness to the point where it struck

8. *Condon v. Associated Hospital Service*, 287 N. Y. 411, 40 N. E. 2d 230 (1940); see also *Dyer v. Broadway Central Bank*, 252 N. Y. 430, 169 N. E. 635 (1930).

9. *Barrett Mfg. Co. v. Sergeant*, 149 App. Div. 1, 133 N. Y. Supp. 526 (1st Dep't 1912); N. Y. R. Civ. PRAC. 115. Any party may require any other party to give a bill of particulars of his claim or a copy of the items of the account alleged in the pleading . . . ; N. Y. R. Civ. PRAC. 102. If any matter contained in the pleading be so indefinite, uncertain or obscure that the precise meaning or application thereof is not apparent, the court may order the other party to serve such amended pleading as the case may require . . .

10. 1 N. Y. 2d 169, 134 N. E. 2d 457 (1956).

11. *Andersen v. Bee Line*, 283 App. Div. 714, 127 N. Y. S. 2d 344 (2d Dep't 1954).

12. *Noseworthy v. City of New York*, 298 N. Y. 76, 80 N. E. 2d 744 (1948).

13. *Sagorsky & Son v. Malyon*, 307 N. Y. 584, 123 N. E. 2d 79 (1954).