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Torts—Sufficiency of a Pleading

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Sufficiency of a Pleading

While the common law construed pleadings strictly against the pleader,⁴² code pleading introduced the converse principle.⁴³ A pleading must contain a plain and concise statement of the material facts.⁴⁴ Those facts are material which are necessary to constitute a cause of action.⁴⁵

a. *Stating a cause of action in slander*: Slander has been defined as "the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business, or means of livelihood."⁴⁶ By the Rules of Civil Practice, the pleader in a libel or slander action is relieved from alleging extrinsic facts showing the particular application of the words to the plaintiff.⁴⁷

In *Rager v. McCloskey*,⁴⁸ plaintiff alleged that defendant, in a telephone conversation with one of plaintiff's employees, falsely accused plaintiff of having "committed a fraud" in obtaining a certain divorce decree, and stated further that he could get plaintiff "into quite a mess and even disbarred." The court held these statements constitute slander per se as they concerned plaintiff in his professional capacity as an attorney and could reasonably be construed so as to injure him in that capacity.⁴⁹ Because this was a case of slander per se, the pleading of special damages was not required.⁵⁰

b. *Stating a cause of action in trespass*: A trespass may consist, not only in making an unauthorized entry upon private property, but in refusing to leave after permission to remain has been withdrawn.⁵¹ Thus a cause of action was stated against a deputy sheriff who entered plaintiff's office apparently to serve process, but who remained after being repeatedly told to leave the premises.⁵²

A cause of action was also stated against the sheriff, the deputy's superior. The court pointed out that by the common law, "a sheriff is liable in trespass for the acts of his deputy committed in the attempt to execute process, although without his direction or recognition."⁵³

42. PRASHKER, NEW YORK PRACTICE § 128 (1951).

43. C. P. A. § 275. "Construction of pleadings—Pleadings must be liberally construed with a view to substantial justice between the parties."

44. C. P. A. § 241.

45. PRASHKER, NEW YORK PRACTICE, §§ 112-114.

46. 33 Am. Jur., Libel and Slander § 3 (1941).

47. RULE OF CIVIL PRACTICE 96.

48. 305 N. Y. 75, 111 N. E. 214 (1953).

49. *White v. Barry*, 288 N. Y. 37, 41 N. E. 2d 448 (1942); *Kleeberg v. Sipser*, 265 N. Y. 87, 191 N. E. 845 (1934).

50. *Sanderson v. Caldwell*, 45 N. Y. 398, 405 (1871).

51. *People ex rel. Paul v. Warden of City Prison of the City of New York*, 190 Misc. 528, 529, 74 N. Y. S. 2d 438, 439 (Sup. Ct. 1947); *Brabazon v. Joannes Bros. Co.*, 231 Wis. 426, 286 N. W. 21, 26, (1939); See RESTATEMENT, TORTS § 158.

52. *Ragers v. McCloskey*, *supra* note 48.

53. *People ex rel Kellogg v. Schuyler*, 4 N. Y. 173, 181 (1850).