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## ***How to Prove a Prima Facie Case*, by Samuel Deutsch and Simon Balicer (1929)**

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Historically, rules of immunity arose because of the increased willingness of non-residents to come to court and aid in the administration of justice when they were certain to be immune from the service of process in other actions.

There are two well defined lines of decisions recognized in this class of cases. One follows the New York rule holding that immunity applies only in the civil cases, and does not extend to a criminal case when a suitor or a witness is brought into the jurisdiction of the court while under arrest or other compulsion of law. *Netograph Mfg. Co. v. Scrugham*, 197 N. Y. 377, 90 N. E. 962, 27 L. R. A. (n. s) 33 (1910) *Moore v. Green*, 93 N. C. 394 (1885) *Ryan v. Ebecke*, 102 Conn. 12, 128 Atl. 14 (1925) *Reid v. Ham*, 54 Minn. 305, 56 N. W 35 (1893). The contrary view supports what is known as the Federal Rule holding that there is no distinction between immunity allowed persons present in a foreign jurisdiction in connection with a civil action and those in attendance upon criminal proceedings, and that in both cases such person is immune from service. *Bramwell v. Owen*, 276 Fed. 36 (1921) *Feister v. Hulick*, 228 Fed. 821 (1916) *Stewart v. Ramsay*, 242 U. S. 125, 61 L. Ed. 192 (1916) *Jacobson v. Hosmer*, 76 Mich. 234, 42 N. W 1110 (1889) *Murray v. Wilcox*, 122 Ia. 188, 97 N. W 1089, 64 L. R. A. 534 (1904).

While the specific point has not previously arisen in this state, in the case of *State ex rel Gunn v. Superior Court*, 111 Wash. 187, 189 Pac. 1016 (1920), the question arose whether or not a non-resident litigant, who comes into this state solely to defend a civil suit can be served with process in a new suit while temporarily within this state, the court holding the defendant privileged from service. This dicta, which makes attendance upon the court the only prerequisite for immunity and which draws no distinction between criminal and civil actions, has been negated in the principal case by the adoption of the New York rule. E. A.

## BOOK REVIEWS

HOW TO PROVE A PRIMA FACIE CASE. By Samuel Deutsch and Simon Balicer, New York: Prentice-Hall, Inc., 1929, pp. xxi, 604.

This well-printed and cloth-bound book of 604 pages is a decided novelty. To quote from the introduction: "Until law-schools begin to teach trial work as practiced in the courts, as a separate course, by means of daily moot courts or otherwise, the publication of such books as this will not be amiss. \* \* \* The purpose of this book is to indicate the elements which are necessary to prove a prima facie case, and to demonstrate the practical application of rules of evidence by means of questions and answers."

The book contains much matter that is valuable in a text for students, and many references to and quotations from decisions bearing on the particular subject at the time under discussion, and these decisions are well chosen and of much worth to one engaged in running down the law. The main purpose, however, appears to be to present forms for questions and answers in the various actions, and of these there are furnished eighty-eight sets. Form 87, typical of the others, is as follows:

### "COLLISION BETWEEN TWO STREET CARS"

- Q. Are you the plaintiff in this action? A. Yes.  
 Q. On December 23, 1927, were you a passenger on a Lewis Avenue Street car? A. Yes.  
 Q. Did you meet with an accident while riding in this car? A. Yes.  
 Q. Where did the accident happen? A. On Lewis Avenue and Concord Street, Columbus, Ohio.  
 Q. State what happened at the time? A. The car, in which I was a passenger, struck another car, in front of us. There was a loud crash and I was thrown from my seat to the floor, striking my head on the opposite seat.

Prove injuries and special damage. See Forms Nos. 59, 70, 74, 77, 78, and 85."

Many years ago this reviewer, experimenting in the moot-court field, found on sale in the East and procured printed sets of questions for the attorneys and answers to be made by the witnesses in the trial of cases in moot court, covering the general range of ordinary litigation. The use of these forms of questions and answers was soon abandoned, however, as it was found that there was no opportunity for the attorney to use his own ingenuity or knowledge of essentials either in the presentation of the substantive or the procedural law, nor was there any room for the witness to be original in answering the questions. In short, it proved a lifeless, colorless scheme, of no value whatever in illustrating actual court practice. So here, well done as this book seems to be, it fails utterly to induce or stimulate familiarity with rules of law or practice. To the reviewer it seems akin to recommending the use of a form for drawing a will or an affidavit for an attachment. If we admit that until procedural courses are taught by means of moot-courts, conducted as are regular trial courts, "the publication of such books as this will not be amiss," we are, in substance, agreeing that it is better to adopt these forms for questions and answers, in making a prima facie case, than to rely solely on well grounded knowledge of the elements essential to be proved. This seems doubtful. Facility in the framing of questions to bring out the required proof is quickly acquired, but the literal following of these or other forms for questions would serve to retard rather than develop ready familiarity with principles of law or rules of trial practice.

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## BOOKS RECEIVED

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