Washington Law Review

Volume 13 | Number 1

1-1-1938

Proposed Rule Requiring Appellant in All Briefs Filed in the Supreme Court to Make on the First Page of the Brief a "Statement of Questions Involved"

Alfred J. Schweppe

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With a view to facilitating the most adequate and detailed consideration, in the State Supreme Court, of each case from the standpoint of the litigants, their counsel, and the public, the Judicial Council has under consideration a proposal to recommend to the State Supreme Court a rule of appellate practice requiring the appellant at the very commencement of his brief to make a "statement of questions involved."

This practice has been found in the State of Pennsylvania to give most excellent results. It has been referred to in numerous cases.[1] In order to show how this practice actually works, there are set forth in the footnote[2] typical "statements of questions involved," taken from actual briefs recently filed in the Supreme Court of Pennsylvania.

The practice is incorporated in Rule 43 and Rule 50 of the Supreme Court of Pennsylvania, which as applied to our own practice, would read substantially as follows:

> "Rule 43. In all appeals the brief of appellant shall consist of the following matters, headed by the title thereof in distinctive type, or in type distinctively displayed, in the following order:
>
> (1) Statement of the questions involved.
> (2) Statement of the case.
> (3) Assignments of errors.
> (4) Argument for appellant.

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[1]Rooney v. Maszco, 315 Pa. 113, 172 Atl. 151; Duncan v. Duncan, 265 Pa. 471, 109 Atl. 222; Borough of Southmont v. Upper Yoder Township, 284 Pa. 287, 131 Atl. 281; and see Fourth Decennial Digest and Third Decennial Digest (American Digest System), title "Appeal and Error," § 589, for collection of many cases applying Pennsylvania Supreme Court Rule 50.

[2]Each "Statement of Questions Involved" included in this footnote is taken from actual briefs filed in the Supreme Court of Pennsylvania. It will be noted that the rule is interpreted to permit a "Counter-Statement of Questions Involved" by the appellee or respondent if he deems it essential.

STATEMENT OF THE QUESTIONS INVOLVED

From Caskie vs. Philadelphia Rapid Transit Company, 184 Atl. 17 (Money had and received):

(1) Where defendant without right collects plaintiff's fees for legal

When the case is one involving the exercise of the Supreme Court's original jurisdiction, plaintiff's brief shall consist of (1) statement of the questions involved (2) statement of the case and (3) argument of counsel."

'Rule 50. The statement of the questions involved must set forth each question separately, in the briefest and most general terms, without names, dates, amounts or particulars of any kind, and whenever possible each question must be followed immediately by an answer stating simply whether it was affirmed, negatived, qualified or not answered by the court below. If a qualified answer was given to the question, appellant shall indicate, most briefly, the nature of the qualification; or if the question was not answered and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court below. The questions and answers in their entirety should not ordinarily exceed twenty lines, must never exceed one page, and must always be printed in type at least as large as point 10, on the first page of the brief, without any other matter appearing thereon. This rule is to be considered in the highest degree mandatory, admitting of no exception; ordinarily no point will be considered

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services to another, has plaintiff a cause of action against defendant for money had and received?

Answered by the court below in the negative.

(2) Where defendant, knowing it had no right to do so, collects from a third person a payment on account of plaintiff's legal services to such third person, by means of fraudulent misrepresentation that it was entitled to receive payment for such services, is defendant entitled, in equity and good conscience, to withhold from plaintiff the sum so collected?

Answered by the court below in the affirmative.

(3) In such case is a pending prior action by plaintiff against his debtor in New York a bar to a suit in Pennsylvania against defendant to recover the fund so paid to defendant?

Answered by the court below in the affirmative.

STATEMENT OF QUESTIONS INVOLVED
From Ray vs. Lehigh Valley Railroad Company, 184 Atl. 445
(Personal injury):

(1) Is the owner of an automobile driven by himself toward a railroad grade crossing with which he is familiar, guilty of contributory negligence, if he fails to see or hear the approach of a train which must have been in plain view or hearing within a distance of 4650 feet when he was twenty (20) feet away from the nearest rail of the track on which he was struck and killed.

Answered in the negative.

(2) Is a defendant railroad guilty of negligence when photographs and maps—admittedly correct—show that for distances varying five (5) feet from the nearest rail of the track on which the plaintiff's deceased husband was struck, to one hundred sixty-five (165) feet, the driver would have a view varying from 6500 feet to 482 feet from the direction from which the train came which struck him.

Answered in the affirmative.

which is not thus set forth in or necessarily suggested by the statement of questions involved."

The effect of this rule is discussed in Rooney vs. Maszco, 315 Pa. 113, 172 Atl. 151, as follows:

> "* * * The refusal of the court below to grant a continuance upon defendant's pleading of surprise is assigned for error, but it is not included in appellant's statement of questions involved. Therefore, under Rule 50 of our court, it need not be considered. Appellant's statement of the questions involved limits the scope of the appeal. Keck v. Vandyke, 282 Pa. 532, 141 A. 446; Commonwealth v. Cauffiel, 298 Pa. 319, 148 A. 311; and Commonwealth ex rel Raker v. Snyder, 294 Pa. 555, 144 A. 748. * * *"

In support of this rule, the following reasons, among others, suggest themselves:

(1) It would enable each judge, on the very first page of the brief, to see in intelligible and specific form, the questions presented on the appeal. This would greatly facilitate the reading of briefs in advance of the argument, and would permit the very rapid refreshing of the judge's memory on the morning of the day the case is to be argued.

(2) It would enable each judge, immediately after he has read the briefs prior to the oral argument, to note opposite each question involved, his tentative view on the subject, so that

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STATEMENT OF QUESTIONS INVOLVED
From Garis vs. Lehigh & New England Railroad Company, 188 Atl. 76 (Personal injury):

I. The driver and a passenger in an automobile approached single track grade crossing after dark. At the point plaintiffs stopped, looked and listened they admit there is a clear view and they saw along the straight track over 113 feet. The automobile started forward and was struck by a train approaching upgrade. Were the occupants guilty of contributory negligence as a matter of law?

The court answered, "No."

II. Is a charge which fails to explain present worth and how it is computed erroneous?

The lower court answered, "No."

III. Should photographs be excluded because they were taken two years after an accident if minor changes are explained to the jury and the changes marked on a map?

The lower court answered, "Yes."

IV. Were the verdicts supported by competent evidence and not excessive?

The lower court answered, "Yes."

V. Is a verdict against the weight of the evidence which is supported solely by the testimony of two plaintiffs and contrary to the incontrovertible physical facts and the testimony of nine other witnesses?

The lower court answered, "No."

COUNTER-STATEMENT OF QUESTIONS INVOLVED
From Garis vs. Lehigh & New England Railroad Company, *supra*:

I. The driver and passenger in an auto, in the night time, stopped, looked and listened at a railroad crossing which was located in the middle of an "S" curve. They were struck just upon leaving the crossing by an unguarded, unlighted boxcar being backed over the crossing.

he would have this tentative conclusion before him both in following the oral argument and in the later conference of the court.

(3) It would permit each judge to follow the oral argument much better than he can now, because he would have the questions to be presented before him on the first page of the brief, which he may have open before him. It would permit him, during the oral argument, to direct counsel's argument to the specific questions involved in which he is most interested.

(4) When the court has consultation after the oral argument, the case, instead of merely being discussed from the standpoint of general impressions based upon briefs read earlier in the week, and upon such oral argument as has been made, could be discussed question for question, each judge giving his tentative view on each of the questions presented on the appeal. This process would make the tentative judgment of the court, arrived at during a conference, much more specific and concrete, and much more helpful to the writer of the opinion than is perhaps now the case. From the standpoint of the public and the litigant, each case would receive far more detailed consideration at conference than is possible under the present practice.

(5) A further result that would ensue from such a practice is that after counsel had performed the duty of carefully stating at the beginning of the brief each of the questions presented on appeal, the resulting printed argument or written argument would be much more pointed and probably considerably more

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Should the case have gone to the jury wherein the evidence was highly conflicting in every particular?

The lower court answered, "Yes."

II. Did the court charge fully in its main charge, after defendant's special request upon the subject of present worth and capitalization of earning power?

The lower court answered, "Yes."

III. Were photographs properly excluded when made two years after injury, long after obstructions to vision have been removed, and when made solely to re-enact the collision upon defendant's theory of the case?

The lower court answered, "Yes."

IV. Where the plaintiffs do not complain of grossly inadequate verdicts, should the defendant be heard to object to them?

The lower court answered, "No."

V. Where there is a decided conflict of testimony in a grade crossing case where plaintiffs were not struck instantaneously upon entering a crossing, but just upon leaving it, should the case go to the jury?

The lower court answered, "Yes."

STATEMENT OF QUESTIONS INVOLVED

From Kaczorowski v. Kalkosinski, 184 Atl. 663 (Personal injury):

1. Where a married woman was killed through the negligence of her husband, who died in the same disaster, may her father as her sole surviving parent recover damages from the husband's estate?

(Negatived.)

2. Where a defendant contends that the averment of negligence in the plaintiff's statement is not sufficiently specific, may such contention be raised by a statutory demurrer, and may summary judgment be entered thereon for the defendant?

(Not answered by the court below.)

brief than is now sometimes the case, and would from that standpoint tend to enhance the sharpness of the consideration by the judges, which would in turn redound to the benefit of the litigants and the bar. The large file of briefs submitted to the Judicial Council by the Clerk of the Supreme Court of Pennsylvania, where the proposed practice prevails and is considered highly beneficial, shows that on the average the briefs filed in that court are only about half as thick as the briefs filed in the Supreme Court of the State of Washington. It is believed that this result follows, at least in part, from the fact that counsel

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STATEMENT OF QUESTIONS INVOLVED
From In Re Jacobs, 183 Atl. 49 (Objections to Trustee's Account)

1. Whether the trustee should be surcharged with respect to partial mortgage investments, which it made in violation of the terms of the deed of trust? (Negatived.)
2. Whether the trustee should be surcharged in the amount paid in the unauthorized purchase of certain bonds? (Negatived.)
3. Whether there was sufficient evidence to warrant the court below in holding that the trustee had justified the challenged investments? (Affirmed.)
4. Whether the trustee should be surcharged in connection with its failure or neglect?

(a) to pay or compel the payment of real estate taxes and water rent for a period of four years on a property covered by a ground rent held in the trust or

(b) to foreclose on said ground rent at an earlier date? (Negatived.)

5. Whether certain letters or copies of letters were properly before the court for consideration? (Affirmed.)

STATEMENT OF QUESTIONS INVOLVED
From Andrzejewski vs. Prudential Insurance Company of America, 184 Atl. 51 (Action on Life Insurance Policy):

First: Where a new trial is granted for a reason that is untenable under the law, is this such an abuse of discretion as will justify the reversal of the case? This action was taken by the court below.

Second: Where a verdict was returned for the defendant although the plaintiff had not made out a *prima facie* case at the trial, should a new trial be granted on the application of the plaintiff? Affirmed by the court below. Court held that plaintiff did make out *prima facie* case.

Third: Should a new trial be granted on the application of the plaintiff, on a verdict for the defendant, for a reason which is not tenable under the law? This action was taken by the court below.

Fourth: Where the plaintiff did not make out a case, but the court submitted it to the jury, which returned a verdict for the defendant, is the granting of a new trial on the application of the plaintiff, such an abuse of discretion as will justify the Appellate Court in reversing, reinstating the verdict and directing judgment to be entered thereon? Court below held that plaintiff made out *prima facie* case.

Fifth: Where the defendant failed to make out a case, the court submitted the same to the jury, a verdict was returned for the defendant, and a new trial applied for by the plaintiff, should a new trial be granted for a single reason based upon an erroneous view of the law, and an unwarranted assumption of fact? This action was taken by the court below.

COUNTER-STATEMENT OF QUESTIONS INVOLVED
From Andrzejewski v. Prudential Insurance Company of America, *supra*:

First: Whether or not this court will review the discretion of the lower court in granting a new trial where there is no certificate from

has, at the very beginning of the preparation of the brief, first stated in intelligible and specific form the questions to be presented. Having thoroughly analyzed the questions for the purpose of making a proper statement thereof at the beginning of the brief, the resultant argument will probably be much more specific and considerably shorter than is the case where the brief is written according to a routine whereunder the questions are evolved as the argument proceeds.

(6) Under the present practice in our own Supreme Court, assignments of error are often so general as not to advise the court of the specific question involved, with result that a judge is frequently obliged to read through most of the brief before

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the lower court that the reasons stated by the court were the sole and only reasons considered by it as the basis of award of a new trial.

Second: Whether or not there was a palpable abuse of discretion by the lower court in making absolute a rule for a new trial.

STATEMENT OF QUESTIONS INVOLVED

From Commonwealth of Pennsylvania v. Neptune Club, 184 Atl. 542 (*Quo warranto* to oust corporation):

1. Where a corporation of the first class fails and neglects to exercise its corporate rights, privileges and franchises for a period of twenty-six years, will an abandonment, surrender and forfeiture thereof be presumed therefrom, entitling the Commonwealth to a judgment of ouster in an action of *quo warranto* at the suit of the Attorney General?

(Negatived by the court below.)

2. Where such rights, privileges and franchises have been abandoned, surrendered and forfeited through non-user over a period of twenty-six years, may they be revived, resumed and retaken by former members of said corporation without the consent of the Commonwealth?

(Affirmed by the court below.)

3. Is the Commonwealth chargeable with laches in failing to institute its action of *quo warranto* until after such former members attempt to revive, resume and retake such corporate rights, privileges and franchises?

(Affirmed by the court below.)

COUNTER-STATEMENT OF QUESTIONS INVOLVED

From Commonwealth of Pennsylvania v. Neptune Club, *supra*:

1. In an action of *quo warranto* at the instance of the Attorney General for ouster of a corporation of the first class which has been dormant for a number of years, although its members, during the period of the dormancy, have, from time to time, held corporate meetings, and where the corporation subsequently resumes full activity, is a judgment for the corporation properly entered?

(Affirmed by the court below.)

2. Where the corporate rights, privileges and franchises have been dormant but not abandoned, may the members of the corporation elect officers and galvanize the corporation into full activity?

(Affirmed by the court below.)

STATEMENT OF QUESTIONS INVOLVED

From Adams v. Metropolitan Life Insurance Co., 182 Atl. 112 (Action on insurance policy):

(1) Where an applicant for life insurance, in answer to questions, certifies in her application that she is in good health and that her only attendance by a physician within five years was for removal of hemorrhoids, when in fact she was attended by a physician five times within a week, and sixty times in the year of her application, and

ascertaining what the case is about. From the standpoint of the litigant, the judge's consideration of the case will be much sharper and clearer if at the very beginning of the brief he knows what are the questions involved on the appeal and can read the entire resulting argument with those specific questions in mind.

The Judicial Council desires the bar of the state to consider and discuss this practice very thoroughly, and to send in written comments thereon, so that the Council may be fully advised as to the attitude of the bar on this proposed amendment to the practice.

ALFRED J. SCHWEPPE, Seattle,
Executive Secretary, Judicial Council

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frequently in preceding years for a serious disease, the nature of which may have not been known to her, but which manifested itself by recurring and distressing symptoms, did her answers constitute fraudulent misrepresentation?

The court below answered, "No."

(2) Where the facts above stated appear from plaintiff's own pleadings, the doctor's records and undisputed evidence, is the insurance company entitled to binding instructions in its favor in a suit by the beneficiary of the policy?

The court below answered, "No."