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Unit-2 pleading

TOPIC:- PLEADINGS-CONSTRUCTION

In two recent Indiana cases the question of the construction of the pleading has been involved. In an action by a Massachusetts corporation against a Missouri corporation upon a note signed in St. Louis payable in Massachusetts, the defendant filed a plea in abatement questioning the jurisdiction of the court; although, property of the defendant had been attached under Burns' Ann. St. 1926, Section 981. From a judgment abating the action the plaintiff appealed. Held, that the trial court had jurisdiction and that a plea in abatement is a dilatory plea, construed without any intendments in its favor.

1. In another recent case, an action for an injunction, the several defendants filed joint and several demurrers. The trial court sustained the demurrers as to all the defendants, and the plaintiff, having refused to plead further, appealed. Held, in

reversing the judgment as to all the defendants except one; the trial court said that such words as "dangerous, hazardous, perilous, and unsafe" are conclusions of fact, and may be considered in determining the sufficiency of a complaint as against a demurrer for want of facts; while, such words as "wrongfully, unlawfully, arbitrarily, void, illegal, etc.," are legal conclusions and cannot be considered in determining the sufficiency of the complaint as against a demurrer.

2. The common law rule was that pleadings were to be construed against the pleader.

3. However, a more liberal rule is to be preferred, one that will give effect to all the material allegations whenever reasonably possible.

4. Thus the liberal rule of construction which our code of civil procedure attempts to establish seems to be highly desirable. The statute says, "In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed with a view to substantial justice between the parties; but when the allegations of a pleading are so indefinite that the precise nature of the charge or defense is not apparent, the court may require the pleadings to be made definite and certain by amendment".

5. This rule of liberal construction of the pleadings has not always been applied.

6. Thus what would seem to be the correct rule in Indiana is that pleadings are construed against the pleader only when that is necessary to do substantial justice between the parties, but that at all other times a liberal construction should be given the pleadings.

7. It can be seen that there has been some limitation placed upon the statute as construed by the courts, for they have not applied it as literally and liberally as they might have done. Whether or not a more liberal construction of the statute would have been more desirable is a debatable question and one which is unnecessary to attempt to answer here. Thus in the Dodgem Case supra, the court was following the rule as laid down by the cases when it stated that the plea in abatement must be strictly construed with no intendments in its favor.

8. This was the common law rule; but in view of the statute upon construction it is very luid to logically sustain this position, since a plea in abatement is a pleading to abate the action, and the statute says that in the construction of a pleading its allegations must be liberally construed. However, no Indiana case has been found where the court has suggested that the statute upon liberal construction should be applied to a plea in abatement. In ruling upon a demurrer for want of facts the test has been that "a demurrer admits the truth of all facts well pleaded, but it does not admit conclusions of law, nor all

conclusions which may be drawn from such facts by the pleader."

9. This seems to have been the test that the court had in mind in the Regester Case, supra, when it made the distinction between conclusions of law which were not considered in determining the sufficiency of the complaint to state a cause of action and the conclusions of fact which were admitted as true as facts well pleaded. Another statute says "Hereafter, in any pleadings where the sufficiency of the same can, may be or is called in question all conclusions stated therein shall be considered and held to be the allegations of all the facts required to sustain said conclusions when the same is necessary to the sufficiency of such pleadings".

10. Upon reading the statute literally, it is very difficult to see any logical reason for making the distinction between the rule as applied to conclusions of fact and conclusions of law.