

NY CLS CPLR § 3017

Current through 2025 released Chapters 1-207

New York

Consolidated Laws Service >
Civil Practice Law And Rules (Arts. 1 — 100) >
Article 30 Remedies and Pleading (§§ 3001 — 3045)

§ 3017. Demand for relief.

(a) Generally. Except as otherwise provided in subdivision (c) of this section, every complaint, counterclaim, cross-claim, interpleader complaint, and third-party complaint shall contain a demand for the relief to which the pleader deems himself entitled. Relief in the alternative or of several different types may be demanded. Except as provided in section 3215, the court may grant any type of relief within its jurisdiction appropriate to the proof whether or not demanded, imposing such terms as may be just.

(b) Declaratory Judgment. In an action for a declaratory judgment, the demand for relief in the complaint shall specify the rights and other legal relations on which a declaration is requested and state whether further or consequential relief is or could be claimed and the nature and extent of any such relief which is claimed.

(c) Personal Injury or Wrongful Death Actions. In an action to recover damages for personal injuries or wrongful death, the complaint, counterclaim, cross-claim, interpleader complaint, and third-party complaint shall contain a prayer for general relief but shall not state the amount of damages to which the pleader deems himself entitled. If the action is brought in the supreme court, the pleading shall also state whether or not the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction. Provided, however, that a party against whom an action to recover damages for personal injuries or wrongful death is brought, may at any time

request a supplemental demand setting forth the total damages to which the pleader deems himself entitled. A supplemental demand shall be provided by the party bringing the action within fifteen days of the request. In the event the supplemental demand is not served within fifteen days, the court, on motion, may order that it be served. A supplemental demand served pursuant to this subdivision shall be treated in all respects as a demand made pursuant to subdivision (a) of this section.

History

Add, L 1962, ch 308; amd, L 1976, ch 955, § 10, eff Aug 26, 1976; L 1980, ch 686, § 2, eff June 30, 1981; L 1989, ch 442, § 1, eff Aug 15, 1989; L 2003, ch 694, § 1, eff Nov 27, 2003.

Annotations

Notes

Derivation Notes

Earlier Statutes and Rules: CPA §§ 111, 255, 479; RCP 211; CCP §§ 481, 1207, 2148-a; Code Proc §§ 142, 275.

Advisory Committee Notes:

The first sentence of subd (a) of this section is a restatement of CPA § 255(3), broadened to include similar provisions in other former sections such as 193-a and 264 and with provision added to cover interpleader complaints. The remainder is intended to allow the widest discretion as to the type of relief and is partly based upon CPA § 111. It is not intended that the court be allowed to grant more monetary relief than demanded. Relief in case of default is treated in CPLR § 3215, and is excepted from this section.

Subd (b) of this section derives from RCP 211, substantially unchanged. RCP 210, stating that an action to obtain a declaratory judgment shall follow the normal practice provisions, has been omitted; since the new CPLR does not provide otherwise, this result is obvious and need not be

stated. RCP 213, providing for submission of questions of fact to a jury, has been omitted for the same reason.

Notes to Decisions

I. Under CPLR

1. In general

2. Jurisdiction and powers of courts, generally

3.—Equitable relief

4.—Review

5.—Illustrative cases

6. Action not brought in proper form

7.—Article 78 procedure

8. Alternate or inconsistent demands

9. Correction or amendment of pleadings

10.—Refusal to allow amendment

11.—Illustrative cases

12. Dismissal

13. Affording complete relief, generally; effect of pleadings

14.—Damages

15.— —Pleading

16.— —Amount

17.— —Interest

18.— —Choice of relief

19.— —Punitive damages

20.— —Medical malpractice

21.—Matrimonial actions

22.Declaratory judgment

23.—Pleading

24.—Illustrative cases

II.Under Former Civil Practice Laws

25.Prayer for relief; generally

26.—Applications of rule

27.—Conformity to process

28.—Sufficiency of prayer

29.—Consistency between allegations and prayer

30.—Demand for damages

31.—Damages

32.—Effect of prayer for improper relief

33.—Prayer for relief in the alternative

34.Demand in controversy between parties

35.Demand as affecting amount of judgment; generally

36.—Recovery as affected by demand or prayer for relief

37.—Where defendant answers

38.—Consistency with issues under CPA § 479 generally

39.—Recovery on cause of action not pleaded

40.—Legal and equitable grounds of action

41.— —Legal relief in equity

42.—Relief not asked for in terms

43.— —Damages

44.—Dismissal and nonsuit

45.—Summary judgment

46.—Particular actions and proceedings; accounting

47.— —Bail bond; action against sureties

48.— —Conversion

49.— —Divorce

50.— —Fraud

51.— —Fraudulent conveyances

52.— —Landlord and tenant; leases

53.— —Life tenant; receivership

54.— —Mechanic's lien; enforcement, foreclosure

55.— —Mortgage; enforcement, foreclosure

56.— —Negotiable instruments

57.— —Partnership litigation

58.— —Party wall; enforcement of rights in

59.— —Rescission

60.— —Reformation

61.— —Replevin

62.— —Sales

63.— —Specific performance

64.— —Torts generally; negligence

65.— —Trespass

66.— —Trusts and trustees

67.Mistake in remedy demanded; generally

68.—Application of section

69.—Erroneous commencement of special proceeding

70.—Change from statutory to common law cause of action

71.—Remedy justified by evidence

72.—Remedy at law or in equity

73.—Mandamus; certiorari

74.—Ad damnum clause

1. In general

In false imprisonment action against city, elements of intent to confine and absence of consent were adequately pleaded by allegations that plaintiff, while inebriated, was picked up by city police and transported outside city limits to location selected by police, where he was released. *Parvi v Kingston*, 41 N.Y.2d 553, 394 N.Y.S.2d 161, 362 N.E.2d 960, 1977 N.Y. LEXIS 1962 (N.Y. 1977).

No infirmity with procedure arose where beneficiary of insurance policy sought to recover the face value of a certificate from employer on ground of wrongful termination of policy and did recover on ground of breach of duty owed to insured. *McGinnis v Bankers Life Co.*, 39 A.D.2d 393, 334 N.Y.S.2d 270, 1972 N.Y. App. Div. LEXIS 3969 (N.Y. App. Div. 2d Dep't 1972).

Court properly granted hospital's motion to strike ad damnum clause from both principal and derivative causes of action pursuant to CLS CPLR § 3017, since action sounded in malpractice rather than ordinary negligence; legislative purpose and statutory intent prohibiting any mention of damages whenever medical malpractice claim is alleged could be readily circumvented if prohibition were limited to specific claim or cause of action within complaint. *Fox v White Plains Medical Center*, 125 A.D.2d 538, 509 N.Y.S.2d 614, 1986 N.Y. App. Div. LEXIS 62838 (N.Y. App. Div. 2d Dep't 1986).

Supreme Court properly struck ad damnum clause in patient's complaint pursuant to CLS CPLR § 3017(c), on ground that her claim against hospital sounded in medical malpractice rather than common-law negligence, where gravamen of complaint was that hospital negligently failed to raise all side rails of patient's bed after she received sedative, causing her to fall out of bed, because side rail had been lowered to allow patient to exercise bathroom privileges ordered by her physician; patient's claim was premised on alleged improper assessment of her condition, and thus bore substantial relationship to rendition of medical treatment. *Raus v White Plains Hosp.*, 156 A.D.2d 354, 548 N.Y.S.2d 307, 1989 N.Y. App. Div. LEXIS 15384 (N.Y. App. Div. 2d Dep't 1989).

§ 3017. Demand for relief.

A plaintiff may assert against a third-party defendant any claim he might have pleaded against said third-party defendant had he been joined originally as a defendant, and there is no limitation of time within which such a claim may be entertained, and the third-party defendant becomes a party to the action both as to the claim asserted by a third-party plaintiff and as to the cause of action asserted by the plaintiff against the third-party defendant. *Sterling Nat'l Bank & Trust Co. v Merchants Bank of New York*, 48 Misc. 2d 72, 264 N.Y.S.2d 271, 1965 N.Y. Misc. LEXIS 1393 (N.Y. Civ. Ct. 1965).

Since the practice of dentistry does not come within the usual and ordinary meaning of the word "medical", a dentist's malpractice does not come within the protection of CPLR 3017 (subd [c]) which prohibits a plaintiff from stating the amount of damages to which he deems himself entitled in a medical malpractice action; the statute, enacted as part of legislation concerned with protecting insurance availability for physicians and hospitals (L 1976, ch 955) following the crises created by high medical malpractice insurance premiums and by the unavailability of medical malpractice insurance, is clearly intended to protect physicians and hospitals and not dentists. *Donohue v Martin*, 97 Misc. 2d 973, 413 N.Y.S.2d 99, 1979 N.Y. Misc. LEXIS 2025 (N.Y. Sup. Ct. 1979).

CLS CPLR § 3017(a) did not support law guardian's motion to set aside dispositional order terminating father's parental rights; § 3017(a) specifically pertains to demands for relief set forth in complaints, counter-complaints and cross claims, and does not apply to motion practice. In re *Anthony S.*, 178 Misc. 2d 1, 675 N.Y.S.2d 759, 1998 N.Y. Misc. LEXIS 252 (N.Y. Fam. Ct. 1998).

Magistrate judge summarily remanded plaintiff's personal injury action to the state court in which it was filed pursuant to 28 U.S.C.S. § 1446, as the named corporate defendants failed to sufficiently demonstrate that the amount in controversy exceeded \$75,000; the corporations would not be prejudiced because a response to a supplemental demand under N.Y. C.P.L.R. § 3017(c), which asserted damages in excess of \$75,000, was a "paper" that would allow the

corporations to seek removal within 30 days. *Bellocchio v Enodis Corp.*, 499 F. Supp. 2d 254, 2007 U.S. Dist. LEXIS 46607 (E.D.N.Y. 2007).

2. Jurisdiction and powers of courts, generally

The Supreme Court is a court of general original jurisdiction in law and equity, and is authorized in any action to render such judgment as is appropriate to the proofs received in conformity with the allegation of the pleadings, and may draw upon its broad powers established by law or formulated under the principles of equity and utilize any of them to afford complete relief to a party. *Kaminsky v Kahn*, 23 A.D.2d 231, 259 N.Y.S.2d 716, 1965 N.Y. App. Div. LEXIS 4151 (N.Y. App. Div. 1st Dep't 1965).

Although it was within its power to decree the respective interests of the parties in a partition proceeding, the trial court should not have done so even though both parties indicated that the amount due each party was not in issue and despite the fact there was considerable evidence bearing on the issue of how the proceeds should be apportioned, since in the interest of justice a hearing directed specifically to that issue should be held. *Hildebrand v Hildebrand*, 25 A.D.2d 698, 268 N.Y.S.2d 44, 1966 N.Y. App. Div. LEXIS 4700 (N.Y. App. Div. 3d Dep't 1966).

Where the vendor of land in the prosecution of a vendee under a contract of sale executed a deed of the premises to a third party who signed a mortgage to the plaintiff bank, the deed from the vendor to the third party was not entirely a nullity, but conveyed the vendor's lien to the third party, and the mortgagee bank succeeded to this right upon a default in the mortgage payments. Although denying the foreclosure and sale demanded in the bank's complaint, the court was authorized to enter a judgment that the vendee must either pay off the balance of the purchase price or execute a mortgage to the bank for that amount, thereby performing her obligation under the purchase contract. *Buffalo Sav. Bank v Siger, Inc.*, 28 A.D.2d 815, 281 N.Y.S.2d 938, 1967 N.Y. App. Div. LEXIS 3689 (N.Y. App. Div. 4th Dep't 1967), *aff'd*, 21 N.Y.2d 993, 290 N.Y.S.2d 918, 238 N.E.2d 321, 1968 N.Y. LEXIS 1444 (N.Y. 1968).

The trial court was without power to grant a judgment of divorce based on cruel or inhuman treatment, even though the summons stated on its face that it was an action for separation or divorce, where the amended complaint did not contain a cause of action for divorce and did not allege a cause of action based on cruel or inhuman treatment. Further, the court was without power to amend the complaint, pursuant to CPLR § 3017, on the husband's motion to allege a cause of action for divorce based on cruelty where the wife expressly refused to amend her pleading to include a cause of action for divorce. *Ross v Giaccio*, 80 A.D.2d 925, 438 N.Y.S.2d 809, 1981 N.Y. App. Div. LEXIS 10823 (N.Y. App. Div. 2d Dep't), rev'd, 54 N.Y.2d 810, 443 N.Y.S.2d 652, 427 N.E.2d 949, 1981 N.Y. LEXIS 3031 (N.Y. 1981).

Trial court would be empowered pursuant to CLS CPLR § 3017 to grant appropriate relief to judgment creditor in cause of action against director of corporate debtor who allegedly unlawfully transferred corporate assets to himself personally to extent that creditor could prove that director as individual was transferee of any unlawful transfers of corporate assets and such transfers were voidable under CLS Dr & Cr Art 10, even though creditor improperly requested that it be entitled to satisfy its judgment against director's interest in employee benefit plan that was exempt from collection by preemption provisions of federal Employee Retirement Income Security Act (29 USCS § 1001 et seq.); it was of no moment to sufficiency of cause of action that relief requested was improper. *Planned Consumer Marketing, Inc. v Coats & Clark, Inc.*, 127 A.D.2d 355, 513 N.Y.S.2d 417, 1987 N.Y. App. Div. LEXIS 42407 (N.Y. App. Div. 1st Dep't 1987), aff'd, 71 N.Y.2d 442, 527 N.Y.S.2d 185, 522 N.E.2d 30, 1988 N.Y. LEXIS 190 (N.Y. 1988).

Family Court had authority to grant father sole custody of parties' child, even though he had voluntarily withdrawn his petition for such relief, where mother had cross-petitioned for sole custody, and thus issue was properly before court. *Alberry v Alberry*, 251 A.D.2d 1080, 675 N.Y.S.2d 575, 1998 N.Y. App. Div. LEXIS 7193 (N.Y. App. Div. 4th Dep't 1998).

In action to compel current owner of real property to comply with covenants agreed to by prior owner, court properly granted summary judgment awarding city relief not specifically requested

in its complaint, where construction permits issued by city were expressly conditioned on owners' compliance with covenants, and relief requested in summary judgment motion was mandated by law. *City of New York v Delafield 246 Corp.*, 236 A.D.2d 11, 662 N.Y.S.2d 286, 1997 N.Y. App. Div. LEXIS 7823 (N.Y. App. Div. 1st Dep't 1997), app. denied, 91 N.Y.2d 811, 671 N.Y.S.2d 715, 694 N.E.2d 884, 1998 N.Y. LEXIS 994 (N.Y. 1998).

Based on N.Y. C.P.L.R. 3017, a trial court properly fashioned appropriate relief in a matter where property purchasers commenced construction on their residence in a subdivision after design plans for the residence were rejected, although such construction without prior approval constituted a violation of the restrictive covenants; the court balanced the fact that the home was legitimately objectionable and that uniformity in subdivisions was a benefit against the substantial costs to the purchasers if they were required to remove their home. *Buttonwood Ltd. Partnership v Blaine*, 37 A.D.3d 910, 830 N.Y.S.2d 371, 2007 N.Y. App. Div. LEXIS 1446 (N.Y. App. Div. 3d Dep't 2007).

Judgment ordering an owner to remove a structure and pay a \$50,000 civil penalty was not an abuse of discretion in a town's zoning enforcement action because the evidence showed that the owner designed and built the structure for residential use with the express intent to circumvent a town's regulations; the owner's persistent attempts to circumvent the law justified the trial court's decision to order removal of the structure, rather than modification, and, further, N.Y. Town Law § 135 gave rise to civil liability in a defendant for each week that a structure violated zoning regulations. The trial court countenanced the owner's claim that the town's delays in complying with disclosure orders may have contributed to the duration of the owner's violation and, accordingly, significantly reduced the owner's penalty. *Town of Caroga v Herms*, 62 A.D.3d 1121, 878 N.Y.S.2d 834, 2009 N.Y. App. Div. LEXIS 3726 (N.Y. App. Div. 3d Dep't), app. denied, 13 N.Y.3d 708, 890 N.Y.S.2d 445, 918 N.E.2d 960, 2009 N.Y. LEXIS 3930 (N.Y. 2009).

Although N.Y. C.P.L.R. 3017, which has long barred monetary demands from complaints against municipalities and those sounding in medical malpractice, and which was amended in

2003 to extend that ban to all personal injury actions, was not applicable in the Court of Claims, as it did provide the reason why some claims in the Court of Claims were filed without a monetary demand; some practitioners simply did not realize that the statute's applicability to every complaint, counterclaim, cross-claim, interpleader complaint and third-party complaint did not include claims brought pursuant to the Court of Claims Act. *Legall v State of New York*, 803 N.Y.S.2d 386, 10 Misc. 3d 800, 2005 N.Y. Misc. LEXIS 2437 (N.Y. Ct. Cl. 2005).

Even if an insurance company had not demanded in its answer the relief sought, the trial court could still have awarded relief to the company based on its proof at trial, pursuant to N.Y. C.P.L.R. 3017(a). However, to be fair to the objecting parties, who contended that they were being sandbagged by the company, the court reopened the record as to the company's claims. *Continental Cas. Co. v Employers Ins. Co. of Wausau*, 839 N.Y.S.2d 403, 16 Misc. 3d 223, 237 N.Y.L.J. 92, 2007 N.Y. Misc. LEXIS 3336 (N.Y. Sup. Ct. 2007), rev'd, 60 A.D.3d 128, 871 N.Y.S.2d 48, 2008 N.Y. App. Div. LEXIS 9966 (N.Y. App. Div. 1st Dep't 2008).

3. —Equitable relief

Where contract for purchase of 135-acre tract was executory and it was found that parcel contained only about 106 acres, trial court properly granted equitable relief in form of order of rescission; mistake essentially and materially affected the agreement and did not reflect a meeting of the minds. *Barnosky v Petteys*, 49 A.D.2d 134, 373 N.Y.S.2d 674, 1975 N.Y. App. Div. LEXIS 10563 (N.Y. App. Div. 3d Dep't 1975), app. denied, 39 N.Y.2d 708, 1976 N.Y. LEXIS 3375 (N.Y. 1976).

When a son unsuccessfully claimed a father's alleged promise to transfer certain property to the son in exchange for maintaining the property entitled the son to relief under promissory estoppel and constructive trust theories, a trial court providently awarded the son an equitable lien in the amount of the son's expenditures to maintain the property because the evidence showed the son made considerable expenditures to preserve or improve the property over 20 years in

reliance on the father's promise to convey the property to the son. *Rock v Rock*, 100 A.D.3d 614, 953 N.Y.S.2d 165, 2012 N.Y. App. Div. LEXIS 7229 (N.Y. App. Div. 2d Dep't 2012).

4. —Review

On appeal from final judgment in holdover summary proceedings for eviction, Supreme Court, Appellate Term, could make determination that should have been made in court below. *Trustees of Columbia University v Bruncati*, 77 Misc. 2d 547, 356 N.Y.S.2d 158, 1974 N.Y. Misc. LEXIS 1188 (N.Y. App. Term), *aff'd*, 46 A.D.2d 743, 360 N.Y.S.2d 1002, 1974 N.Y. App. Div. LEXIS 6406 (N.Y. App. Div. 1st Dep't 1974).

5. —Illustrative cases

Age discrimination suit brought under CLS Exec § 297, seeking monetary relief only, is for legal wrong triable by jury; thus, it was error for court to strike plaintiff's jury demand on ground of "an always present possibility" that it might grant nonmonetary equitable relief pursuant to CLS CPLR § 3017, since plaintiff had made clear that he did not seek or wish reinstatement or other injunctive relief but wished to be compensated by appropriate monetary award, and there was nothing in facts set forth by him to prevent entry of money judgment only for attainment of full and complete relief. *Murphy v American Home Products Corp.*, 136 A.D.2d 229, 527 N.Y.S.2d 1, 1988 N.Y. App. Div. LEXIS 3730 (N.Y. App. Div. 1st Dep't 1988).

Dental malpractice plaintiff's failure to state in summons specific monetary amount to be recovered was mere irregularity, rather than jurisdictional defect, where summons contained notice stating nature of action and relief sought. *Merwitz v Dental Care Services, P.C.*, 155 A.D.2d 748, 547 N.Y.S.2d 693, 1989 N.Y. App. Div. LEXIS 13851 (N.Y. App. Div. 3d Dep't 1989).

In Article 78 proceeding to compel county to compute and pay real estate property tax refunds, court erred in fashioning broad remedy imposing 120-day time limit within which to pay tax

certiorari judgments in all future cases where (1) petitioners simply sought to compel payment of their refunds, (2) court, sua sponte, converted matter into quasi-class action with intention of adjudicating not only rights of parties to proceeding, but also rights of all parties similarly situated at present and in future, and (3) county was prejudiced thereby because it did not have appropriate notice of court's intention to reach issue. *We're Assocs. Co. v Scaduto*, 206 A.D.2d 245, 619 N.Y.S.2d 727, 1994 N.Y. App. Div. LEXIS 12272 (N.Y. App. Div. 2d Dep't 1994).

Supreme court improvidently exercised its discretion in requiring an owner to return the owner's property to pre-violation condition because the order inequitably deprived the owner of the opportunity to incorporate new storm protection measures into a remediation plan it may have been impossible for the owner to return the property to its pre-violation condition in light of changes to regulations. Accordingly, the remittance of the matter, for a new determination regarding the owner's required remediation of the property was appropriate. *State of New York v Winkle*, 179 A.D.3d 1121, 119 N.Y.S.3d 185, 2020 N.Y. App. Div. LEXIS 644 (N.Y. App. Div. 2d Dep't 2020).

6. Action not brought in proper form

Under the CPLR equity and law actions no longer are to be distinguished at the pleading stage, so that where a complaint is framed in equity and seeks equitable relief, it will not be dismissed if the facts alleged entitle plaintiff only to legal relief, since the CPLR has effectively merged law and equity actions by removing the prior stumbling blocks thereto: shifting from the requirement that a complaint conform to a "theory of the pleadings" to the requirement that a complaint need only give notice of the transactions intended to be proved and the material elements of the cause of action; and removing the possibility of prejudice to a defendant faced with an equitable complaint which turns out to be a legal action and thereby deprives him of a jury trial, by giving him the right to a jury trial under these circumstances. *Lane v Mercury Record Corp.*, 21 A.D.2d 602, 252 N.Y.S.2d 1011, 1964 N.Y. App. Div. LEXIS 3101 (N.Y. App. Div. 1st Dep't 1964), *aff'd*, 18 N.Y.2d 889, 276 N.Y.S.2d 626, 223 N.E.2d 35, 1966 N.Y. LEXIS 1006 (N.Y. 1966).

Although an action for a declaratory judgment does not lie where another remedy affords full relief, an action for such a judgment should not be dismissed because of its improper form, when the same relief is available in a special proceeding. *Board of Education v Allen*, 25 A.D.2d 659, 268 N.Y.S.2d 182, 1966 N.Y. App. Div. LEXIS 4777 (N.Y. App. Div. 2d Dep't 1966).

Where action under the Lien Law based upon diversions of trust assets was not brought in the proper form of class action because additional trust beneficiaries might exist, court would order a remittal followed by continuance to permit such potential beneficiaries to come forward. *Scriven v Maple Knoll Apartments, Inc.*, 46 A.D.2d 210, 361 N.Y.S.2d 730, 1974 N.Y. App. Div. LEXIS 3360 (N.Y. App. Div. 3d Dep't 1974).

Determination that contractor, who had performed work pursuant to contract with board of education and who had been faced with numerous excuses for delay in payment culminating in board's request that comptroller's office return requisition directing payment for such work, sought relief in improper form by attempting to invoke mandamus to compel reinstatement of requisition, and that contractor was relegated to plenary action on contract, did not serve to put contractor out of court where court was confronted by full and complete record which was patently appropriate for summary relief, since proceeding in mandamus could be deemed plenary action on contract and viewed as if it had been commenced as plenary action seeking appropriate relief. *H. Sand & Co. v Goldin*, 59 A.D.2d 213, 398 N.Y.S.2d 891, 1977 N.Y. App. Div. LEXIS 13544 (N.Y. App. Div. 1st Dep't 1977), *aff'd*, 46 N.Y.2d 782, 413 N.Y.S.2d 919, 386 N.E.2d 830, 1978 N.Y. LEXIS 2469 (N.Y. 1978).

In proceeding to require payment of debts owed to judgment debtor, fact that judgment creditor did not specifically mention CLS CPLR § 5227 in notice of petition or petition itself did not thereby require dismissal since relief requested was made clear and court may grant any type of relief appropriate to proof whether or not demanded, as provided by CLS CPLR § 3017. *Bass v Bass*, 140 A.D.2d 251, 528 N.Y.S.2d 558, 1988 N.Y. App. Div. LEXIS 5483 (N.Y. App. Div. 1st Dep't 1988).

A proceeding to declare a local law invalid should not be dismissed simply because it may be improper in form under CPLR 3211(a), but the court may treat it as a plenary action, and if the municipality has proceeded under a want of authority or in excess of authority, judicial intervention is warranted, and an injunction will issue under this section restraining the municipal authorities from acting pursuant to the invalid law. *Barile v City Comptroller of Utica*, 56 Misc. 2d 190, 288 N.Y.S.2d 191, 1968 N.Y. Misc. LEXIS 1673 (N.Y. Sup. Ct. 1968).

7. —Article 78 procedure

Although it may be difficult to ascertain from a petition just what form of relief is requested, the proceeding if in the nature of an Article 78 proceeding may be so treated, since a proceeding is not to be dismissed under the CPLR solely because it is not brought in proper form. *Strippoli v Bickal*, 21 A.D.2d 365, 250 N.Y.S.2d 969, 1964 N.Y. App. Div. LEXIS 3420 (N.Y. App. Div. 4th Dep't 1964), *aff'd*, 16 N.Y.2d 652, 261 N.Y.S.2d 84, 209 N.E.2d 123, 1965 N.Y. LEXIS 1341 (N.Y. 1965).

If an application for an Article 78 proceeding is brought in the wrong form, it will not be dismissed solely for that reason, but the Court will make whatever order is required for its proper prosecution. *Nowak v Wereszynski*, 21 A.D.2d 427, 250 N.Y.S.2d 981, 1964 N.Y. App. Div. LEXIS 3425 (N.Y. App. Div. 4th Dep't 1964).

In view of CPLR 103(c) a special judicial proceeding under Article 78 brought by way of petition to review instead of as an action, need not be summarily dismissed and the court, having obtained jurisdiction over the parties, may make whatever order is required and grant any type of relief within its jurisdiction appropriate to the proof whether or not demanded. *Haroche v Leary*, 64 Misc. 2d 191, 314 N.Y.S.2d 553, 1970 N.Y. Misc. LEXIS 1473 (N.Y. Sup. Ct. 1970), *aff'd*, 38 A.D.2d 972, 331 N.Y.S.2d 1005, 1972 N.Y. App. Div. LEXIS 5077 (N.Y. App. Div. 2d Dep't 1972).

8. Alternate or inconsistent demands

§ 3017. Demand for relief.

A party can, in the same proceeding, rely on a statute or retain benefits thereunder and simultaneously attack its constitutionality pursuant to the alternative relief provisions of CPLR 3017, subd a, and the general rule to the contrary recognized in *Diocese of Rochester v Planning Board of Brighton* (1956) 1 NY2d 508, 154 NYS2d 849, 136 NE2d 827, held to be no longer viable. *Kovarsky v Housing & Development Administration*, 31 N.Y.2d 184, 335 N.Y.S.2d 383, 286 N.E.2d 882, 1972 N.Y. LEXIS 1131 (N.Y. 1972).

The public interest in a prompt resolution of a dispute over the validity of an appointment to fill an alleged vacancy in a county Legislature that was caused by the purported resignation of the elected legislator, and over the validity of the subsequent appointee's official acts, would not alone be sufficient to justify the maintenance of an alternate proceeding to quo warranto, since the public interest in the speedy resolution of the issue was subject to the countervailing public interest in having the Attorney General perform his protective screening function on such challenges pursuant to Exec Law § 63-b. *Morris v Cahill*, 96 A.D.2d 88, 469 N.Y.S.2d 231, 1983 N.Y. App. Div. LEXIS 19878 (N.Y. App. Div. 3d Dep't 1983).

Determination to permit plaintiffs to seek both punitive damages and treble damages against defendant under New York and Massachusetts law was not internally inconsistent in light of clear mandate of CLS CPLR §§ 3014 and 3017 which permit and encourage pleading of claims and remedies in alternative, and state practice that election of remedies, if any, need not be made until all proof has been presented. *Volt System Dev. Corp. v Raytheon Co.*, 155 A.D.2d 309, 547 N.Y.S.2d 280, 1989 N.Y. App. Div. LEXIS 14200 (N.Y. App. Div. 1st Dep't 1989).

In action to recover legal fees, fact that attorney might be ultimately precluded from recovering against each defendant under theories of both breach of contract and quantum meruit did not preclude her from pleading both in alternative. *Haythe & Curley v Harkins*, 214 A.D.2d 361, 625 N.Y.S.2d 154, 1995 N.Y. App. Div. LEXIS 4159 (N.Y. App. Div. 1st Dep't 1995).

Defendants were not entitled to dismissal of action for prima facie tort, even though complaint alleged that defendant doctors were partly motivated by business purpose of obtaining fees from plaintiff doctor's patients, thereby arguably vitiating "disinterested malevolence" requirement for

prima facie tort, since various other allegations in complaint sufficiently supported claim that actions alleged were undertaken with “disinterested malevolence.” *Chime v Sicuranza*, 221 A.D.2d 401, 633 N.Y.S.2d 536, 1995 N.Y. App. Div. LEXIS 11974 (N.Y. App. Div. 2d Dep’t 1995), overruled in part, *Taggart v Costabile*, 131 A.D.3d 243, 14 N.Y.S.3d 388, 2015 N.Y. App. Div. LEXIS 5349 (N.Y. App. Div. 2d Dep’t 2015).

Property purchasers were permitted pursuant to N.Y. C.P.L.R. §§ 3014, 3017 to seek a declaration that a real estate contract had been terminated and the return of their down payment or, in the alternative, to have the closing stayed until the seller had obtained a certificate of occupancy for the commercial property and had cured various violations. *Gold v 29-15 Queens Plaza Realty, LLC*, 43 A.D.3d 866, 841 N.Y.S.2d 668, 2007 N.Y. App. Div. LEXIS 9551 (N.Y. App. Div. 2d Dep’t 2007).

N.Y. C.P.L.R. 3014 and 3017 permit a cause of action to be pled in the alternative. *American Intl. Group, Inc. v Greenberg*, 877 N.Y.S.2d 614, 23 Misc. 3d 278, 2008 N.Y. Misc. LEXIS 7333 (N.Y. Sup. Ct. 2008).

9. Correction or amendment of pleadings

In the absence of prejudice to the defendant, a motion to amend the ad damnum clause, whether made before or after the trial, should generally be granted. Thus, in a trespass action, the trial court did not abuse its discretion in entering judgment for plaintiff in excess of the amount originally set forth in the ad damnum clause of the complaint where, several months before the hearing on damages, plaintiff had informed defendant that she considered the damages to be well in excess of the amount first specified in the complaint, where defendant’s expert had been granted access to plaintiff’s premises to inspect the items of damage claimed, and where defendant had not demonstrated any prejudice resulting from the trial court’s determination. *Loomis v Civetta Corinno Constr. Corp.*, 54 N.Y.2d 18, 444 N.Y.S.2d 571, 429 N.E.2d 90, 1981 N.Y. LEXIS 3063 (N.Y.), reh’g denied, 55 N.Y.2d 801, 447 N.Y.S.2d 436, 432 N.E.2d 138, 1981 N.Y. LEXIS 3320 (N.Y. 1981).

Where bill of particulars alerted defendant to likelihood of demand for increased damages, the motion for increasing the ad damnum clause in personal injury action from \$75,000 to \$250,000 was made approximately one month before date of trial and defendant failed to show any prejudice, Special Term did not abuse discretion in granting motion. *Barner v Shook*, 51 A.D.2d 855, 379 N.Y.S.2d 565, 1976 N.Y. App. Div. LEXIS 11461 (N.Y. App. Div. 4th Dep't 1976).

Plaintiff who established prima facie that her injuries were known to be more serious than was believed at time of joinder of issue in negligence action was entitled to increase ad damnum clause of complaint accordingly and remove action from civil court to Supreme Court, in view of fact that monetary jurisdiction of civil court could preclude adequate recovery by plaintiff. *Gable v Dellasalla*, 53 A.D.2d 659, 384 N.Y.S.2d 873, 1976 N.Y. App. Div. LEXIS 13395 (N.Y. App. Div. 2d Dep't 1976).

In a personal injury action, the plaintiff's motion to increase the ad damnum clause should have been granted where there appeared no showing of prejudice to the defendants. *Person v Noya Cab Corp.*, 83 A.D.2d 607, 441 N.Y.S.2d 813, 1981 N.Y. App. Div. LEXIS 14895 (N.Y. App. Div. 2d Dep't 1981).

Plaintiff who was collaterally estopped from litigating issue of compensatory damages against private party defendant, due to Court of Claims judgment against state based on same incident, should be permitted to amend ad damnum clause of his complaint to include demand for punitive damages. *Pietras v Gol Pak Corp.*, 131 A.D.2d 239, 520 N.Y.S.2d 683, 1987 N.Y. App. Div. LEXIS 49498 (N.Y. App. Div. 4th Dep't 1987).

Plaintiff was not entitled to amend complaint under CLS CPLR § 3025(b) to increase ad damnum clause where she failed to submit either affidavit of merits containing reasons for delay and facts which warranted increase, or affidavit of physician in support of her motion demonstrating nature of injuries and resulting disabilities, and causal relationship between disabilities and original injury. *Briggs v New York City Transit Authority*, 132 A.D.2d 451, 517 N.Y.S.2d 511, 1987 N.Y. App. Div. LEXIS 49016 (N.Y. App. Div. 1st Dep't 1987).

In order for plaintiff in personal injury action to establish entitlement to increase in ad damnum clause of complaint, his motion papers must (1) demonstrate merits of case, reasons for delay, and that increase was warranted by facts which had recently come to plaintiff's attention, and (2) include physician's affidavit or affirmation establishing causal connection between injury and consistent course of treatment for accident-caused injuries. *Coerbell v New York*, 132 A.D.2d 514, 517 N.Y.S.2d 532, 1987 N.Y. App. Div. LEXIS 49046 (N.Y. App. Div. 2d Dep't 1987).

In action against motor vehicle operator, physician and hospital for injuries sustained in accident and subsequent injuries sustained while being treated at hospital, entire ad damnum clause would be stricken since cause of action against physician and hospital sounded in medical malpractice, rather than in negligence. *Rice v Vandenebossche*, 185 A.D.2d 336, 586 N.Y.S.2d 303, 1992 N.Y. App. Div. LEXIS 9385 (N.Y. App. Div. 2d Dep't 1992).

In the injured party's personal injury complaint, the dollar amount had to be stricken from the ad damnum clause pursuant to N.Y. C.P.L.R. 3017(c), as it was not proper for the dollar amount to appear in that clause. *Robinson v Canniff*, 22 A.D.3d 219, 801 N.Y.S.2d 597, 2005 N.Y. App. Div. LEXIS 10542 (N.Y. App. Div. 1st Dep't 2005), dismissed in part sub nom. *Robinson v Friedman Mgt. Corp.*, 2014 N.Y. Misc. LEXIS 3017 (N.Y. Sup. Ct. July 7, 2014).

Although in an action for a declaratory judgment the court is not precluded from granting additional relief, though unspecified, if warranted by the proof at the trial, a defendant is entitled to be informed by the complaint of the nature and extent of any further or consequential relief claimed against him, and a complaint which does not so inform the defendant is insufficient, and this is especially true as to a defendant against whom no declaration is sought and who has been joined solely for the purpose of "additional, further or different relief." *American Hydrocarbon Corp. v Selby*, 47 Misc. 2d 777, 263 N.Y.S.2d 280, 1965 N.Y. Misc. LEXIS 1781 (N.Y. Sup. Ct. 1965).

There is no procedural "no man's land" and all proceedings must either be an action or a special proceeding, and defects may be corrected without dismissal. *Haroche v Leary*, 64 Misc. 2d 191,

314 N.Y.S.2d 553, 1970 N.Y. Misc. LEXIS 1473 (N.Y. Sup. Ct. 1970), *aff'd*, 38 A.D.2d 972, 331 N.Y.S.2d 1005, 1972 N.Y. App. Div. LEXIS 5077 (N.Y. App. Div. 2d Dep't 1972).

10. —Refusal to allow amendment

Where the complaint in an action demands relief against several persons not made parties, and whose presence is not made necessary to a complete determination of the controversy, the prayer for relief may be deemed surplusage. *O'Connor v Virginia Passenger & Power Co.*, 184 N.Y. 46, 76 N.E. 1082, 184 N.Y. (N.Y.S.) 46, 1906 N.Y. LEXIS 1333 (N.Y. 1906).

Although the prayer for relief is not a part of the cause of action it is part of the complaint, and a motion to amend the prayer is a motion to amend the complaint; but upon such amendment not affecting the facts alleged, where it is merely sought to ask equitable relief instead of money damages, a plaintiff is not required to serve a copy of the proposed amended complaint with the motion papers; especially so, when the proposed prayer for relief is set out in the moving papers. *McVey v Security Mut. Life Ins. Co.*, 118 A.D. 466, 103 N.Y.S. 1056, 1907 N.Y. App. Div. LEXIS 696 (N.Y. App. Div. 1907).

Laches barred increase of demand for judgment from \$7,500 to \$25,000. *Morey v Rochester*, 274 A.D. 969, 85 N.Y.S.2d 32, 1948 N.Y. App. Div. LEXIS 4286 (N.Y. App. Div. 1948).

Refusal to allow amendment to increase the demand for damages where motion was not made until the trial, although litigation had been pending for three years, was not abuse of discretion. *Rodford v Sample*, 30 A.D.2d 588, 290 N.Y.S.2d 30, 1968 N.Y. App. Div. LEXIS 3970 (N.Y. App. Div. 3d Dep't 1968).

Denial of leave to amend the *ad damnum* clause of the complaint was proper where the information in plaintiff's possession was the same as the information in plaintiff's possession when the complaint was served and the defendant, relying upon a limited indemnification agreement from third-party defendant, had not had a physical or mental examination of plaintiff.

Vitiello v Consolidated Edison Co., 51 A.D.2d 523, 379 N.Y.S.2d 403, 1976 N.Y. App. Div. LEXIS 10725 (N.Y. App. Div. 1st Dep't 1976).

The denial of a plaintiff's second motion to increase the ad damnum clause of her complaint and to transfer the action to a court of appropriate jurisdiction constituted an abuse of discretion, notwithstanding that plaintiff had earlier made a similar motion which had been denied, where the instant motion was based on new facts which were sufficiently supported by medical proof to indicate that plaintiff's present injuries were causally related to the incident and warranted a re-evaluation of her damages, and where no prejudice aside from an increase in liability accrued to defendant. *Bachtinger v Yee*, 85 A.D.2d 705, 445 N.Y.S.2d 848, 1981 N.Y. App. Div. LEXIS 16532 (N.Y. App. Div. 2d Dep't 1981).

Supreme Court properly exercised its discretion in denying plaintiff's motion for leave to serve amended complaint increasing ad damnum clause, and to transfer case from Civil Court to Supreme Court, where (1) alleged exacerbation of plaintiff's injuries, for which increase was requested, occurred some 2 years prior to motion, (2) several months after exacerbation plaintiff's attorneys stipulated to transfer case from Supreme Court to Civil Court and to decrease ad damnum clause from \$100,000 to \$25,000, and (3) plaintiff's only excuse for his execution of stipulation and for his delay in making motion to increase ad damnum clause was that he failed to communicate with his attorneys during period in question. *Coerbell v New York*, 132 A.D.2d 514, 517 N.Y.S.2d 532, 1987 N.Y. App. Div. LEXIS 49046 (N.Y. App. Div. 2d Dep't 1987).

The prayer, or demand for relief, is not a vital part of the complaint in an equitable action and the court may allow it to be amended at the close of the trial as the exigencies of the case require. *Badger v Scobell Chemical Co.*, 222 N.Y.S. 315, 129 Misc. 612, 1927 N.Y. Misc. LEXIS 894 (N.Y. Sup. Ct.), *aff'd*, 222 A.D. 712, 225 N.Y.S. 787, 1927 N.Y. App. Div. LEXIS 8386 (N.Y. App. Div. 1927).

11. —Illustrative cases

Plaintiff permitted to add to a complaint for personal injuries a second cause of action for wrongful death of the intestate after the case had been assigned for trial even though the accident occurred in 1962 and plaintiff's intestate died in 1967 under evidence that plaintiff's intestate suffered an injury as a result of defendant's negligence to which he did not contribute, that the resultant physical trauma progressed to mental and emotional trauma and inevitably to the addictions to drugs and alcohol that brought about death. *Palmer v New York City Transit Authority*, 33 A.D.2d 119, 305 N.Y.S.2d 831, 1969 N.Y. App. Div. LEXIS 2659 (N.Y. App. Div. 1st Dep't 1969).

Absence of dollar amount in ad damnum clause of contractor's counterclaim was properly cured by correction within trial court's discretion where such absence was adequately explained as typographical oversight, where such dollar amount was stated elsewhere in the pleading, and where timely motion to cure such defect was made without prejudice to owner. *Serena Constr. Corp. v Valley Drywall Service, Inc.*, 45 A.D.2d 896, 357 N.Y.S.2d 214, 1974 N.Y. App. Div. LEXIS 4516 (N.Y. App. Div. 3d Dep't), app. denied, 35 N.Y.2d 642, 1974 N.Y. LEXIS 2295 (N.Y. 1974).

In an action by the employee of a subcontractor to recover for injuries sustained when a car in which he was a passenger hit a large pothole in one of the construction site's access roads, in which action the pleadings and bill of particulars contained allegations of common-law negligence but there was no reference to sections of the Labor Law or plaintiff's status as a construction worker on the job, plaintiff's motion to amend the pleadings to conform to the proof should have been granted; defendants, the owner of the construction site and the general contractor, had sufficient information prior to trial by virtue of the general content of the bill of particulars and through depositions and a hearing to know that plaintiff was an employee of a subcontractor and had collected workers' compensation benefits and that they could be held liable for a breach of their statutory duty. Laws relied upon have to be particularized only if demanded and allowed in the discretion of the trial court and defendants have not shown any prejudice. *Miller v Perillo*, 71 A.D.2d 389, 422 N.Y.S.2d 424, 1979 N.Y. App. Div. LEXIS 13490

(N.Y. App. Div. 1st Dep't 1979), app. dismissed, 49 N.Y.2d 1044, 429 N.Y.S.2d 637, 407 N.E.2d 481, 1980 N.Y. LEXIS 2383 (N.Y. 1980).

Patient's complaint for damages due to injuries sustained in hospital fall sounded in medical malpractice rather than simple negligence, and thus required amendment to omit specific monetary demand for damages and to provide details as to collateral source payments, insofar as patient raised issue of staff response time as measured against standard of care customarily exercised by hospitals in community, which would require production of expert testimony; where lack of due care may be discerned by trier of fact on basis of common knowledge, action sounds in simple negligence, while if professional skill and judgment are involved, more particularized theory of medical malpractice applies. *Zellar v Tompkins Community Hospital, Inc.*, 124 A.D.2d 287, 508 N.Y.S.2d 84, 1986 N.Y. App. Div. LEXIS 61327 (N.Y. App. Div. 3d Dep't 1986).

In action to recover for broken hip sustained by 79-year-old patient in fall from hospital bed as alleged result of defendant hospital's negligence in leaving side rails of bed down, court properly denied hospital's motion to strike ad damnum clauses from complaint pursuant to CLS CPLR § 3017(c), which prohibits statement of specific monetary damages in medical malpractice complaint, since gravamen of complaint did not involve diagnosis, treatment, failure to follow physician's instructions, improper assessment of patient's condition or inadequate supervision, but instead alleged failure to exercise ordinary care to insure that no unnecessary harm befell patient, which could readily be assessed based on common everyday experience of trier of fact, and thus sounded in ordinary negligence rather than medical malpractice. *Halas v Parkway Hosp., Inc.*, 158 A.D.2d 516, 551 N.Y.S.2d 279, 1990 N.Y. App. Div. LEXIS 1803 (N.Y. App. Div. 2d Dep't 1990).

Dismissal of breach of warranty and derivative causes of action for which specific money damages are demanded in a complaint also alleging malpractice against a doctor and a hospital is not warranted by CPLR 3017 (subd [c]) which prohibits stating specific money damages in the ad damnum clause of a malpractice complaint; a corrective motion is the proper relief, since the plaintiffs should not be permitted to demand specific amounts for a claim so closely tied to the

injury out of which the malpractice claim arises, as this would defeat the purpose of the prohibition which the Legislature phrases in terms of a demand in a complaint, rather than within a malpractice claim; therefore, so much of the ad damnum clause as sets forth damages for breach of warranty and on the derivative claim must be stricken. *Pizzigrilli v Von Kessel*, 100 Misc. 2d 1062, 420 N.Y.S.2d 540, 1979 N.Y. Misc. LEXIS 2609 (N.Y. Sup. Ct. 1979).

CPLR § 3017(c) which bans ad damnum clauses from complaints in medical malpractice actions would require the elimination from the complaint of all claims for specific monetary damages when the malpractice action is joined with other claims such as negligence, products liability and assault or when there are multiple defendants, since the legislative policy behind the statute can only be effected by deeming an “action for malpractice” to exist when any one of the causes of action alleged in the complaint sets forth a claim for medical malpractice thereby requiring elimination of any and all considerations of a specific monetary claim for damages; similarly, in view of the extension of the ban on ad damnum clauses to all actions against a municipal corporation, all references to monetary damages must be eliminated not only as to a municipal defendant but as to other codefendants. *Vigo v New York Hospital*, 113 Misc. 2d 972, 450 N.Y.S.2d 256, 1981 N.Y. Misc. LEXIS 3489 (N.Y. Sup. Ct. 1981).

Plaintiff construction worker was granted motion to amend the ad damnum clause of his complaint under N.Y. C.P.L.R. §§ 3017(a) and 3025(b) and (c) to include punitive damages shortly prior to trial because defendants, a hospital and a doctor, were not prejudiced as the allegations that were already in the complaint that, inter alia, the worker was forced to submit to a rectal exam without his consent put defendants on notice that punitive damages could be claimed as such conduct was asserted to be reckless. *Persaud v New York Presbyt. Hosp.*, 850 N.Y.S.2d 333, 18 Misc. 3d 767, 2007 N.Y. Misc. LEXIS 8591 (N.Y. Sup. Ct. 2007).

12. Dismissal

A motion to dismiss should not be granted unless it is clear that there can be no relief under any facts alleged in the pleading for the relief requested or for other relief. *Richardson v Coy*, 28 A.D.2d 640, 280 N.Y.S.2d 623, 1967 N.Y. App. Div. LEXIS 4156 (N.Y. App. Div. 4th Dep't 1967).

Prayer for relief in complaint is not part of cause of action and does not justify dismissal of complaint for insufficiency when facts that are alleged demonstrate some right to relief. *Planned Consumer Marketing, Inc. v Coats & Clark, Inc.*, 127 A.D.2d 355, 513 N.Y.S.2d 417, 1987 N.Y. App. Div. LEXIS 42407 (N.Y. App. Div. 1st Dep't 1987), *aff'd*, 71 N.Y.2d 442, 527 N.Y.S.2d 185, 522 N.E.2d 30, 1988 N.Y. LEXIS 190 (N.Y. 1988).

Where plaintiffs were injured in their car when struck by second car and plaintiff husband was further injured when second car was struck by school bus, and plaintiffs sued various defendants including school district and also town, and all defendants cross-claimed for contribution and apportionment of liability, and nonsuit was granted town, which was also released by plaintiffs, and cross claims were severed, cross claims against town remained viable, and town was entitled to develop facts relative to its proportion of any negligence which might be shown against it in litigation of cross claims, and cross claim of town against owner of second car thus also remained viable and not subject to dismissal. *Powell v Gates-Chili Cent. School Dist.*, 82 Misc. 2d 924, 372 N.Y.S.2d 173, 1975 N.Y. Misc. LEXIS 3393 (N.Y. Sup. Ct.), *aff'd*, 50 A.D.2d 1079, 376 N.Y.S.2d 332, 1975 N.Y. App. Div. LEXIS 12108 (N.Y. App. Div. 4th Dep't 1975).

13. Affording complete relief, generally; effect of pleadings

Traditional judicial equity power in CLS NY Const Art VI § 7 is implemented by CLS CPLR § 3017(a). *State v Barone*, 74 N.Y.2d 332, 547 N.Y.S.2d 269, 546 N.E.2d 398, 1989 N.Y. LEXIS 3061 (N.Y. 1989).

A plaintiff may properly be limited to a recovery based upon the transactions or occurrences set out in his complaint, but if he establishes a right to money damages on the basis thereof, his complaint should not be dismissed merely because it was framed to support a cause of action

for equitable type relief. *Kaminsky v Kahn*, 23 A.D.2d 231, 259 N.Y.S.2d 716, 1965 N.Y. App. Div. LEXIS 4151 (N.Y. App. Div. 1st Dep't 1965).

The established rule that a plaintiff may not recover money damages in excess of the amount of damages demanded in the complaint has not been altered by CPLR 3017. *Wyman v Morone*, 33 A.D.2d 168, 306 N.Y.S.2d 115, 1969 N.Y. App. Div. LEXIS 2533 (N.Y. App. Div. 3d Dep't 1969).

Where the jury returned a verdict awarding damages in excess of those demanded in the petition, as a matter of law, the granting of a motion to amend the complaint to conform to the verdict of the jury was prejudicial to the rights of the defendant. *Wyman v Morone*, 33 A.D.2d 168, 306 N.Y.S.2d 115, 1969 N.Y. App. Div. LEXIS 2533 (N.Y. App. Div. 3d Dep't 1969).

Where there was considerable evidence that certain bank accounts were transferred to defendant wife with actual intent to hinder, delay or defraud creditors and it further appeared that approximately \$70,000 had been withdrawn and not located, and since, although relief demanded was declaration of constructive trusteeship, court could grant money judgment if appropriate, attachment against wife's property would not be denied because plaintiff failed to make demand for money judgment in the alternative which it could have made. *Maro Hosier Corp. v Hann*, 59 A.D.2d 674, 398 N.Y.S.2d 433, 1977 N.Y. App. Div. LEXIS 13606 (N.Y. App. Div. 1st Dep't 1977).

Although the relief granted by a trial court pursuant to N.Y. C.P.L.R. 3017(a) was discretionary, N.Y. C.P.L.R. 3017 was not intended as an expedient for forcing on plaintiff stockholders relief which they neither sought nor wanted; thus, rather than rescinding a stock redemption agreement, the trial court should have granted the stockholders, who did not want their shares of stock returned, a money judgment in the amount of the fair market value of their shares of stock in the company, deducting therefrom any offsets. *Davenport v Martin*, 294 A.D.2d 891, 740 N.Y.S.2d 923, 2002 N.Y. App. Div. LEXIS 4526 (N.Y. App. Div. 4th Dep't 2002).

Although complaint failed to specifically state a cause of action in trespass, owner of building was entitled to recover damages for trespass against defendant who refused to remove heavy

equipment or pay rent or storage. *Rand Products Co. v Mintz*, 69 Misc. 2d 1055, 332 N.Y.S.2d 452, 1972 N.Y. Misc. LEXIS 2029 (N.Y. Civ. Ct. 1972), app. dismissed, 72 Misc. 2d 621, 340 N.Y.S.2d 444, 1973 N.Y. Misc. LEXIS 2281 (N.Y. App. Term 1973).

14. —Damages

In action for compensation for legal services based on theory of joint venture whereby parties would split fees equally, trial court, after finding no joint venture, improperly granted judgment for plaintiff on theory of quantum meruit, since relief that is not requested may not be granted if there is substantial prejudice to adverse party, and defendant was substantially prejudiced by being deprived of opportunity to submit evidence of reasonable value of plaintiff's services. *Donohue v Minicucci*, 174 A.D.2d 1013, 572 N.Y.S.2d 171, 1991 N.Y. App. Div. LEXIS 8944 (N.Y. App. Div. 4th Dep't 1991).

Trial court erred in awarding a client, a commercial printer, \$3,500 in damages on the client's counterclaim against an equipment servicer for breach of an oral contract to successfully integrate a certain network printer into the client's computer network, even though the equipment servicer conceded that \$3,500 was the amount of consideration paid by the client for the contract, as there was no indication in the record that the client ever pleaded or otherwise gave the servicer notice that it was seeking such direct damages, and the client never moved pursuant to N.Y. C.P.L.R. 3025(c) to conform its pleadings to the proof that was presented at trial; the appearance of such damages for the first time in the trial court's decision and order prejudiced the servicer, who, with proper notice, could conceivably have sought to limit the award on various grounds, such as impossibility of performance. *Danka Office Imaging Co. v Gen. Bus. Supply, Inc.*, 303 A.D.2d 883, 758 N.Y.S.2d 178, 2003 N.Y. App. Div. LEXIS 2492 (N.Y. App. Div. 3d Dep't 2003).

While CPLR 3017(a) states that the complaint "shall contain a demand for the relief to which the pleader deems himself entitled" and while it is customary that there be an ad denmum clause in

a complaint, this is not a jurisdictional requirement. *Schindler v Chase Manhattan Bank, N. A.*, 106 Misc. 2d 646, 434 N.Y.S.2d 633, 1980 N.Y. Misc. LEXIS 2745 (N.Y. Civ. Ct. 1980).

There is no requirement that measure of damages be stated in complaint so long as facts are alleged from which damages may properly be inferred, and where complaint alleged damages exceeding jurisdictional limits of all lower courts which have jurisdiction over action, court would amend complaint striking all references to jurisdictional limits of lower courts and substituting therefor allegation of damages exceeding minimum sum required for jurisdiction of court. *Rhodes v Alberto-Culver*, 132 Misc. 2d 916, 505 N.Y.S.2d 989, 1986 N.Y. Misc. LEXIS 2803 (N.Y. Civ. Ct. 1986).

Mere variance between amount sought in ad damnum clause of complaint and sum supported by evidence on summary judgment motion is not ground for denying motion. *Board of Managers of the Mews at North Hills Condo. v Farajzadeh*, 185 Misc. 2d 353, 712 N.Y.S.2d 722, 2000 N.Y. Misc. LEXIS 324 (N.Y. Dist. Ct. 2000), *aff'd*, 189 Misc. 2d 38, 730 N.Y.S.2d 180, 2001 N.Y. Misc. LEXIS 287 (N.Y. App. Term 2001).

While issues of fact existed as to whether a loan materially and adversely affected an insurer's interest, pursuant to N.Y. Ins. Law §§ 3105, 3106, the insurer did not have to establish a direct causal link between an insured's alleged misrepresentations and its policy claims; the insurer was entitled to recissory damages under N.Y. C.P.L.R. 3017(a). *Syncora Guar. Inc. v Countrywide Home Loans, Inc.*, 935 N.Y.S.2d 858, 36 Misc. 3d 328, 2012 N.Y. Misc. LEXIS 1 (N.Y. Sup. Ct. 2012).

15. — —Pleading

The third sentence of subd (a) of this section was not intended to annul or affect the existing cases which forbade a court from granting monetary awards in excess of the amounts demanded by the complaint, unless a proper amendment of the pleadings is first made. *Garden Hill Estates, Inc. v Bernstein*, 24 A.D.2d 512, 261 N.Y.S.2d 648, 1965 N.Y. App. Div. LEXIS

3765 (N.Y. App. Div. 2d Dep't 1965), aff'd, 17 N.Y.2d 525, 267 N.Y.S.2d 906, 215 N.E.2d 163, 1966 N.Y. LEXIS 1619 (N.Y. 1966).

Defendant's failure to specifically plead his entitlement to contractual attorney fees in connection with his counterclaim did not warrant denial of such fees where appropriate request was contained in both ad damnum and "wherefore" clauses of his answer. *Marrotta v Blau*, 241 A.D.2d 664, 659 N.Y.S.2d 586, 1997 N.Y. App. Div. LEXIS 7347 (N.Y. App. Div. 3d Dep't 1997).

In the injured party's personal injury complaint, the dollar amount had to be stricken from the ad damnum clause pursuant to N.Y. C.P.L.R. 3017(c), as it was not proper for the dollar amount to appear in that clause. *Robinson v Canniff*, 22 A.D.3d 219, 801 N.Y.S.2d 597, 2005 N.Y. App. Div. LEXIS 10542 (N.Y. App. Div. 1st Dep't 2005), dismissed in part sub nom. *Robinson v Friedman Mgt. Corp.*, 2014 N.Y. Misc. LEXIS 3017 (N.Y. Sup. Ct. July 7, 2014).

Property purchasers were entitled to recover legal fees under N.Y. C.P.L.R. 3017(a) in their quiet title action, although such fees were not specifically requested in their complaint, because the complaint alleged that the easement would result in damages and diminution in value of their property. *Webster v Ragona*, 40 A.D.3d 1360, 836 N.Y.S.2d 381, 2007 N.Y. App. Div. LEXIS 6339 (N.Y. App. Div. 3d Dep't), app. dismissed, 9 N.Y.3d 900, 842 N.Y.S.2d 779, 874 N.E.2d 746, 2007 N.Y. LEXIS 2592 (N.Y. 2007).

Although a life tenant did not assert his life tenancy as a counterclaim in a quiet title suit, the trial court properly held that the life tenant had the right of exclusive possession of the subject property because he raised his claim as an affirmative defense, and, pursuant to N.Y. C.P.L.R. 3017(a), undemanded relief was allowed if there was no substantial prejudice to an adverse party. *Torre v Giorgio*, 51 A.D.3d 1010, 858 N.Y.S.2d 765, 2008 N.Y. App. Div. LEXIS 4561 (N.Y. App. Div. 2d Dep't 2008).

Under CPLR § 3017 subd a, even though defendant had not requested such relief, a court permitted the amendment of defendant's counterclaim under CPLR § 3025, subd c to conform the pleadings for the evidence and to state a cause of action under CPLR § 3019, subd c

against a non-party for the cost of correcting defects in defendant's newly completed home, where said non-party, a home builder, had actively participated in presenting evidence on defendant's original counterclaim against builder's escrow agent for breach of an escrow agreement, which evidence went to the cost of correcting the aforementioned defects. *Helman v Dixon*, 71 Misc. 2d 1057, 338 N.Y.S.2d 139, 1972 N.Y. Misc. LEXIS 1377 (N.Y. Civ. Ct. 1972).

In holdover summary proceedings for eviction, fact that trial court decided case on ground other than as pleaded and proved was not fatal. *Trustees of Columbia University v Bruncati*, 77 Misc. 2d 547, 356 N.Y.S.2d 158, 1974 N.Y. Misc. LEXIS 1188 (N.Y. App. Term), *aff'd*, 46 A.D.2d 743, 360 N.Y.S.2d 1002, 1974 N.Y. App. Div. LEXIS 6406 (N.Y. App. Div. 1st Dep't 1974).

16. — —Amount

In the absence of prejudice to the defendant, a motion to amend the ad damnum clause, whether made before or after the trial, should generally be granted. Thus, in a trespass action, the trial court did not abuse its discretion in entering judgment for plaintiff in excess of the amount originally set forth in the ad damnum clause of the complaint where, several months before the hearing on damages, plaintiff had informed defendant that she considered the damages to be well in excess of the amount first specified in the complaint, where defendant's expert had been granted access to plaintiff's premises to inspect the items of damage claimed, and where defendant had not demonstrated any prejudice resulting from the trial court's determination. *Loomis v Civetta Corinno Constr. Corp.*, 54 N.Y.2d 18, 444 N.Y.S.2d 571, 429 N.E.2d 90, 1981 N.Y. LEXIS 3063 (N.Y.), *reh'g denied*, 55 N.Y.2d 801, 447 N.Y.S.2d 436, 432 N.E.2d 138, 1981 N.Y. LEXIS 3320 (N.Y. 1981).

The principle that there could be no recovery for a sum greater than the amount requested in the prayer for relief is not affected by CPLR 3017, and it would constitute an abuse of discretion if the trial court entered a motion to increase the ad damnum clause at the end of a party's case. *Silbert v Silbert*, 22 A.D.2d 893, 255 N.Y.S.2d 272, 1964 N.Y. App. Div. LEXIS 2643 (N.Y. App.

Div. 2d Dep't 1964), aff'd, 16 N.Y.2d 564, 260 N.Y.S.2d 838, 208 N.E.2d 783, 1965 N.Y. LEXIS 1365 (N.Y. 1965).

Where father's complaint in action to impress trust on certain real property to compel defendant son to reconvey real property failed to give any notice to the defendant son that the father intended to rely upon inheritance, which the son had received from plaintiff's father, to obtain relief, court, in entering judgment in favor of the plaintiff, erred in requiring the son to pay the difference between one half of his inheritance and the amount which he had already given plaintiff out of money received from inheritance. *Martens v Martens*, 56 A.D.2d 594, 391 N.Y.S.2d 634, 1977 N.Y. App. Div. LEXIS 10661 (N.Y. App. Div. 2d Dep't 1977).

Conduct of plaintiff's attorney in malpractice action in suggesting large specific sum of money as award for pain and suffering, and \$10,000 annually for 26 years which plaintiff might have been expected to work, as damages for her lost earning ability, was highly improper, and emasculated purpose of CPLR 3017(c) which, at least in part, was enacted to curb effect of exaggerated damage demands read to jury which might bias jury toward making excessive awards. *Bagailuk v Weiss*, 110 A.D.2d 284, 494 N.Y.S.2d 205, 1985 N.Y. App. Div. LEXIS 51044 (N.Y. App. Div. 3d Dep't 1985).

CPLR 3017 (subd [a]), which requires that an ad damnum clause demanding the "relief to which the pleader deems himself entitled" be contained in the complaint does not, where general damages are demanded, require that the pleader demand a definite sum of money. If, however, an amount is specified in the demand, a plaintiff's recovery will be limited by the amount demanded. A plaintiff who demands a specific amount in general damages may not withdraw the demand without securing the court's approval through a motion to amend. *De Sappio v Axel Brostrom & Son*, 93 Misc. 2d 623, 403 N.Y.S.2d 668, 1978 N.Y. Misc. LEXIS 2112 (N.Y. Sup. Ct. 1978), aff'd, 70 A.D.2d 1064, 1979 N.Y. App. Div. LEXIS 17500 (N.Y. App. Div. 1st Dep't 1979).

Under N.Y. C.P.L.R. 3017(c), a plaintiff with a pure property damage cause of action was not prohibited from pleading a money figure in the complaint; a subrogation action which was limited

to a property damage claim for damage to a vehicle, with no mention of personal injuries, was allowed to include a money figure in the complaint seeking damages against a municipality. *State Farm Mut. Auto. Ins. Co. v City of White Plains*, 798 N.Y.S.2d 650, 8 Misc. 3d 916, 233 N.Y.L.J. 116, 2005 N.Y. Misc. LEXIS 1329 (N.Y. Sup. Ct. 2005).

17. — —Interest

Although interest is not demanded court may grant interest when warranted by the proof. *Vale v Heitner*, 90 Misc. 2d 921, 396 N.Y.S.2d 602, 1977 N.Y. Misc. LEXIS 2190 (N.Y. Civ. Ct. 1977).

18. — —Choice of relief

The choice of available relief lies with the sound judgment and decision of the trial court. Moreover, damages may be granted in lieu of equitable relief where the granting of equitable relief appears to be impossible or impracticable. *Ungewitter v Toch*, 31 A.D.2d 583, 294 N.Y.S.2d 1013, 1968 N.Y. App. Div. LEXIS 2874 (N.Y. App. Div. 3d Dep't 1968), *aff'd*, 26 N.Y.2d 687, 308 N.Y.S.2d 858, 257 N.E.2d 40, 1970 N.Y. LEXIS 1639 (N.Y. 1970).

Where fraud existed in sale of farm, award of damages instead of rescission was held not error. *Ungewitter v Toch*, 31 A.D.2d 583, 294 N.Y.S.2d 1013, 1968 N.Y. App. Div. LEXIS 2874 (N.Y. App. Div. 3d Dep't 1968), *aff'd*, 26 N.Y.2d 687, 308 N.Y.S.2d 858, 257 N.E.2d 40, 1970 N.Y. LEXIS 1639 (N.Y. 1970).

19. — —Punitive damages

A claim for punitive damages does not constitute a separate cause of action. *Goldman v Garofalo*, 59 A.D.2d 933, 399 N.Y.S.2d 447, 1977 N.Y. App. Div. LEXIS 14165 (N.Y. App. Div. 2d Dep't 1977).

A demand for punitive damages does not constitute a separate cause of action for pleading purposes. *Irondequoit Bay Pure Waters Dist. v Nalews, Inc.*, 97 A.D.2d 965, 468 N.Y.S.2d 770, 1983 N.Y. App. Div. LEXIS 20792 (N.Y. App. Div. 4th Dep't 1983).

20. — —Medical malpractice

In an action against a doctor for medical malpractice, negligence, intentional tort, and lack of informed consent, in which he moved for an order dismissing certain of the causes of action, the test of whether the action for personal injuries could be maintained on the theory of medical malpractice was whether the case involved a matter of science or art requiring special knowledge or skill not ordinarily possessed by the average person or was one where the common everyday experiences of the trier of the facts was sufficient in order to reach the proper conclusion. *Twitchell v MacKay*, 78 A.D.2d 125, 434 N.Y.S.2d 516, 1980 N.Y. App. Div. LEXIS 13413 (N.Y. App. Div. 4th Dep't 1980).

In an action for damages for medical expenses incurred during pregnancy and delivery, and incidental hospital expenses incurred on behalf of a child born after a sterilization procedure performed on the mother, recovery for medical expenses incurred in the delivery and postnatal care for the infant in the hospital following birth was allowable, although the husband's cause of action seeking damages for mental and emotional stress and anxiety would be dismissed, since his cause of action was independent, separate and distinct. *Sala v Tomlinson*, 87 A.D.2d 670, 448 N.Y.S.2d 830, 1982 N.Y. App. Div. LEXIS 16011 (N.Y. App. Div. 3d Dep't 1982).

In medical malpractice actions, plaintiffs' counsel in summation may suggest lump-sum for damages based upon evidence, with counsel circumscribed by pleadings and prohibited only from arguing figure which cannot be considered reasonable; although CLS CPLR § 3017 prohibits specific dollar demand in ad damnum clause where action is against physician, statute does not prohibit fair comment to jury on the evidence, and thus denial of request by plaintiff's counsel to argue specific figure for damages required new trial on issue of damages only. *Braun*

v Ahmed, 127 A.D.2d 418, 515 N.Y.S.2d 473, 1987 N.Y. App. Div. LEXIS 42572 (N.Y. App. Div. 2d Dep't 1987).

Court properly determined that action against hospital sounded in ordinary negligence rather than medical malpractice, so that court properly dismissed hospital's affirmative defense which sought to strike ad damnum clause from complaint under CLS CPLR § 3017, despite hospital's assertion that injured geriatric patient's delicate condition necessitated either chemical or physical restraint under professional expertise, where injury was caused by patient falling out of bed, and gravamen of action concerned alleged failure to exercise ordinary and reasonable care to insure that no unnecessary harm would befall patient. Papa v Brunswick General Hospital, 132 A.D.2d 601, 517 N.Y.S.2d 762, 1987 N.Y. App. Div. LEXIS 49142 (N.Y. App. Div. 2d Dep't 1987).

Statutory provision that complaint in medical malpractice action shall not state amount of claimed damages, which was silent as to whether it was to be applied prospectively or retrospectively and which became effective prior to date of service of complaint except as to one defendant, was procedural in nature rather than substantive and thus, for orderly trial of case involving multiple defendants, ad damnum clause of plaintiffs' complaint would be struck so as to eliminate amount of damages to which plaintiffs deemed themselves entitled. Dries v Gregor, 90 Misc. 2d 398, 395 N.Y.S.2d 135, 1977 N.Y. Misc. LEXIS 2071 (N.Y. Sup. Ct. 1977).

In an action based upon a podiatrist's alleged malpractice, the ad damnum clause of the complaint properly contains a demand for judgment in a specific dollar amount, since the practice of podiatry is separate and distinct from the practice of medicine and, therefore, an action in podiatry malpractice is not an action in medical malpractice and the strictures of CPLR 3017 (subd [c]), requiring that in an action based on medical malpractice the complaint may only contain a prayer for general relief, do not apply. McGinness v Rosen, 99 Misc. 2d 232, 415 N.Y.S.2d 744, 1979 N.Y. Misc. LEXIS 2237 (N.Y. Sup. Ct. 1979).

In an action stemming from the allegedly unauthorized circumcision of an infant, the cause of action alleging that the circumcision was done without the consent of the plaintiff's parents was

one for medical malpractice and monetary ad damnum clauses were improper under CPLR § 3017(c); further, the ad damnum clauses were also improper for the derivative causes of action which also fell under CPLR § 3017(c). *Vargas v Rosal-Arcillas*, 108 Misc. 2d 881, 438 N.Y.S.2d 986, 1981 N.Y. Misc. LEXIS 2307 (N.Y. Sup. Ct. 1981).

21. —Matrimonial actions

In wife's proceeding under CLS Family Ct Act Art 4 seeking increase in alimony award included in 1966 judgment of divorce, wife had adequate notice that downward modification of alimony was possibility where husband had initially applied for such downward modification; thus, in absence of some showing of actual prejudice, wife could not complain because Family Court terminated husband's alimony obligation, even after husband had withdrawn his formal request for such relief. *Hermans v Hermans*, 74 N.Y.2d 876, 547 N.Y.S.2d 832, 547 N.E.2d 87, 1989 N.Y. LEXIS 391 (N.Y. 1989).

CPLR 3017 empowers the court, once it has jurisdiction of both parties in the action, to grant a judgment of permanent separation, rather than separation for a period of one year as requested by plaintiff. *Pearson v Pearson*, 34 A.D.2d 797, 311 N.Y.S.2d 749, 1970 N.Y. App. Div. LEXIS 4928 (N.Y. App. Div. 2d Dep't), app. denied, 27 N.Y.2d 486, 1970 N.Y. LEXIS 2103 (N.Y. 1970).

Although wife specifically demanded a judgment of divorce, court was justified in ordering conveyance of certain real property from husband to both parties as tenants by the entireties where complaint of wife also alleged a cause of action substantiated by testimony, setting forth transactions by which husband pressured wife against her will into transferring to him alone title to marital abode. *Medokowich v Medokowich*, 48 A.D.2d 8, 367 N.Y.S.2d 584, 1975 N.Y. App. Div. LEXIS 9530 (N.Y. App. Div. 3d Dep't 1975).

Action by wife seeking a divorce and "such other and further relief as to the Court may seem proper and just," and which alleged that husband conditioned her returning home with children upon her conveyance to him of title to marital abode which theretofore the parties had held jointly, was not time-barred, where parties agreed that applicable limitations period was ten

years from date of the conveyance in 1963, and where action was commenced in 1969. *Medokowich v Medokowich*, 48 A.D.2d 8, 367 N.Y.S.2d 584, 1975 N.Y. App. Div. LEXIS 9530 (N.Y. App. Div. 3d Dep't 1975).

CPLR § 3017(a), which provides that the court may grant any type of relief within its jurisdiction appropriate to the proof whether or not demanded, does not authorize the award of alternative relief against the wishes of the prevailing party. Thus, in a matrimonial action the court improperly granted a judgment of divorce to the husband where, even though the wife had commenced the action by summons stating that it was an action for separation, divorce, an accounting and other relief, the wife's amended complaint only contained causes of action for separation on the grounds of abandonment and nonsupport but did not contain a cause of action for divorce, and where the husband, who had been found to have wrongfully abandoned the wife, did not counterclaim for divorce. *Ross v Ross*, 84 A.D.2d 569, 443 N.Y.S.2d 419, 1981 N.Y. App. Div. LEXIS 15654 (N.Y. App. Div. 2d Dep't 1981), *aff'd*, 55 N.Y.2d 999, 449 N.Y.S.2d 481, 434 N.E.2d 717, 1982 N.Y. LEXIS 3173 (N.Y. 1982).

In an action to recover accrued arrears under a predivorce agreement and to recover college education expenses incurred on behalf of the parties' child, defendant would be precluded from raising the claim that the trial court awarded damages in excess of that demanded in the *ad damnum* clause, where defendant failed to object at trial to either the admission of the evidence in question or to the amount awarded, and thereby failed to preserve any error of law for review under CPLR § 5501. Had defendant timely objected to proof of damages in excess of the *ad damnum* clause, plaintiff could then have moved to amend her pleadings to conform to the proof, and a motion to increase the amount of relief requested, whether made before or after the verdict, should generally be granted in the absence of prejudice under CPLR § 3017(a). *De Mund v Martin*, 103 A.D.2d 837, 478 N.Y.S.2d 362, 1984 N.Y. App. Div. LEXIS 19482 (N.Y. App. Div. 2d Dep't 1984).

In divorce action, constructive trust could not be impressed on marital residence based on wife's contribution to purchase price before marriage in reliance on husband's unfulfilled promise to

place her name on deed, since such claim was never alleged in wife's pleadings and no application to conform pleadings to proof was made at trial. *Thompson v Pittman*, 123 A.D.2d 683, 506 N.Y.S.2d 979, 1986 N.Y. App. Div. LEXIS 60830 (N.Y. App. Div. 2d Dep't 1986).

Trial court properly granted husband specific performance of wife's obligations under separation agreement, despite wife's contention that husband had improperly been granted equitable relief on tort theory, where husband's counterclaim alleged sufficient facts to show wife's breach of implied covenant of good faith and fair dealing, and thus allowed her to prepare defense to such claim. *Lavington v Edgell*, 127 A.D.2d 155, 512 N.Y.S.2d 817, 1987 N.Y. App. Div. LEXIS 41355 (N.Y. App. Div. 1st Dep't), app. denied, 70 N.Y.2d 601, 518 N.Y.S.2d 1023, 512 N.E.2d 549, 1987 N.Y. LEXIS 17372 (N.Y. 1987).

Although plaintiff prayed for separation for 1 year and 9 months, the court is not bound by such demand, and where reconciliation is highly unlikely, may decree separation forever. *Seldin v Seldin*, 55 Misc. 2d 187, 284 N.Y.S.2d 679, 1967 N.Y. Misc. LEXIS 1078 (N.Y. Sup. Ct. 1967).

22. Declaratory judgment

In a suit in which the action of a city civil service commission extending the time for the duration of an eligibility list was upheld, a declaratory judgment should be entered rather than a summary judgment dismissal order. *Uniformed Fireman's Benevolent Assn. v Herten*, 23 A.D.2d 788, 259 N.Y.S.2d 51, 1965 N.Y. App. Div. LEXIS 4410 (N.Y. App. Div. 2d Dep't 1965).

Although an action for a declaratory judgment does not lie where another remedy affords full relief, an action for such a judgment should not be dismissed because of its improper form, when the same relief is available in a special proceeding. *Board of Education v Allen*, 25 A.D.2d 659, 268 N.Y.S.2d 182, 1966 N.Y. App. Div. LEXIS 4777 (N.Y. App. Div. 2d Dep't 1966).

Declaratory judgment is not an appropriate remedy to define the rights and duties of an insurer post litem motam but appropriate relief may be granted regardless of the type of relief sought.

Mid-City Shopping Center v Consolidated Mut. Ins. Co., 35 A.D.2d 1053, 316 N.Y.S.2d 742, 1970 N.Y. App. Div. LEXIS 3032 (N.Y. App. Div. 3d Dep't 1970).

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23. —Pleading

Complaint in declaratory judgment action alleging conspiracy to breach contract was not fatally defective for failure to allege wrongful acts. Hahn v Wylie, 54 A.D.2d 629, 387 N.Y.S.2d 855, 1976 N.Y. App. Div. LEXIS 14116 (N.Y. App. Div. 1st Dep't 1976).

Where plaintiff seeking to enjoin defendant from terminating tenancy of various tenants of plaintiff did not submit a complaint, defendant was entitled to no relief on its cross motion, except denial of plaintiff's motion, where it requested declaratory judgment without any plea for such relief having been served and sought in addition to dismissal of plaintiff's cause of action. Seplow v Century Operating Co., 56 A.D.2d 515, 391 N.Y.S.2d 124, 1977 N.Y. App. Div. LEXIS 10504 (N.Y. App. Div. 1st Dep't 1977).

Motion to dismiss was properly denied because an insurer's claims that acupuncturists were unlawfully incorporated and, thus, ineligible to collect or recover no-fault benefits, and that the services provided were performed by independent contractors or other nonemployees presented justiciable controversies. State Farm Mut. Auto. Ins. Co. v Anikeyeva, 89 A.D.3d 1009, 934 N.Y.S.2d 196, 2011 N.Y. App. Div. LEXIS 8403 (N.Y. App. Div. 2d Dep't 2011), dismissed in part, 2012 N.Y. Misc. LEXIS 1311 (N.Y. Sup. Ct. Mar. 13, 2012).

Tenants' first cause of action was sufficient to invoke the trial court's power to render a declaration that the single-occupancy rooms in which they were living were subject to rent stabilization, New York City, N.Y., Admin. Code § 26-506, and as to whether the tenants were

permanent tenants; since a declaration of this nature would have resolved an actual controversy between the tenants and the owner, as well as between the tenants and the counseling center, in its capacity as the alleged sublessor of the disputed rooms, N.Y. Comp. Codes R. & Regs. tit. 9, § 2505.7(b), dismissal the first cause of action was error. The second cause of action was sufficient to invoke the trial court's power to render a declaration as to whether the alleged agreement between the owner and the counseling center constituted an illusory tenancy, and dismissal of this claim was also error. *DiGiorgio v 1109-1113 Manhattan Ave. Partners, LLC*, 102 A.D.3d 725, 958 N.Y.S.2d 417, 2013 N.Y. App. Div. LEXIS 174 (N.Y. App. Div. 2d Dep't 2013).

Amended complaint was sufficient to invoke the trial court's power to render a declaration as to whether the tenants were unlawfully harassed by the owner, in violation of New York City, N.Y., Admin. Code § 27-2005(d), and the trial court erred in granting the owner's cross motion which was to dismiss the third cause of action insofar as asserted against it; however, the amended complaint was insufficient to state a cause of action against the counseling center based on an alleged violation of § 27-2005(d), and the trial court correctly granted that branch of the counseling center's motion to dismiss the third cause of action insofar as asserted against it. *DiGiorgio v 1109-1113 Manhattan Ave. Partners, LLC*, 102 A.D.3d 725, 958 N.Y.S.2d 417, 2013 N.Y. App. Div. LEXIS 174 (N.Y. App. Div. 2d Dep't 2013).

Sixth, seventh, and eighth causes of action were sufficient to invoke the trial court's power to render a declaration as to whether the transitional residency agreements were void pursuant to N.Y. Comp. Codes R. & Regs. tit. 9, § 2520.13, invalid as against public policy, and void as unconscionable contracts of adhesion, respectively; since the amended complaint effectively alleged that the owner and the counsel center participated in the enforcement of the transitional residency agreements, the trial court erred in directing the dismissal of the sixth, seventh, and eighth causes of action insofar as asserted against those defendants. Furthermore, since the material allegations of the complaint, taken as true, implicated factual issues such that the rights of the parties could not have been determined as a matter of law, the trial court erred by, in

effect, purporting to make a declaration, upon these cross motions to dismiss the complaint, that the remaining occupants of the premises leased by the owner and the counseling center were licensees of the counseling center and were not tenants at the subject premises *DiGiorgio v 1109-1113 Manhattan Ave. Partners, LLC*, 102 A.D.3d 725, 958 N.Y.S.2d 417, 2013 N.Y. App. Div. LEXIS 174 (N.Y. App. Div. 2d Dep't 2013).

Tenants were allowed to maintain an action for a judgment declaring that a counseling center violated provisions of the Mental Hygiene Law, and the amended complaint was sufficient to allege a cause of action for a judgment declaring that the counseling center violated N.Y. Mental Hyg. Law § 22.07(b) and N.Y. Comp. Codes R. & Regs. tit. 14, §§ 815.4(g), 815.5(a)(15); accordingly, the trial court erred in granting that branch of the counseling center's cross motion to dismiss the fourth cause of action insofar asserted against it. *DiGiorgio v 1109-1113 Manhattan Ave. Partners, LLC*, 102 A.D.3d 725, 958 N.Y.S.2d 417, 2013 N.Y. App. Div. LEXIS 174 (N.Y. App. Div. 2d Dep't 2013).

Although in an action for a declaratory judgment the court is not precluded from granting additional relief, though unspecified, if warranted by the proof at the trial, a defendant is entitled to be informed by the complaint of the nature and extent of any further or consequential relief claimed against him, and a complaint which does not so inform the defendant is insufficient, and this is especially true as to a defendant against whom no declaration is sought and who has been joined solely for the purpose of "additional, further or different relief." *American Hydrocarbon Corp. v Selby*, 47 Misc. 2d 777, 263 N.Y.S.2d 280, 1965 N.Y. Misc. LEXIS 1781 (N.Y. Sup. Ct. 1965).

24. —Illustrative cases

Where an administrative act is attacked on the basis that the body acted without power and its decision was void, the remedy of a declaratory judgment under CPLR 3017 subd b was not foreclosed by the circumstance that an administrative hearing was had, that a determination was made, and that a proceeding was available under CPLR 7801 et seq. to the party affected to

review such determination. *Lutheran Church in America v New York*, 27 A.D.2d 237, 278 N.Y.S.2d 1, 1967 N.Y. App. Div. LEXIS 4570 (N.Y. App. Div. 1st Dep't 1967).

In an action for a declaratory judgment that the New York Institute for the Education of the Blind was a public employer and that its employees were public employees within the meaning of Civ S Law §§ 201(6) and 201(7), and that the Institute was therefore within the jurisdiction of the State Public Employment Relations Board, pursuant to Civ S Law §§ 200-214, or, alternatively, if the Institute was not a public employer, that it was within the jurisdiction of the National Labor Relations Board, pursuant to the National Labor Relations Act (29 USCS §§ 151-169), rather than within the jurisdiction of the State Labor Relations Board, the trial court abused its discretion in denying the motions to dismiss made by defendants, a local teachers' union and the State Labor Relations Board, and in making the requested declaration. Since the State Board was specifically authorized by Labor Law §§ 705(3) and 706(2),(3) to conduct a formal evidentiary hearing to determine whether it had jurisdiction over the matter, the trial court should have relegated the parties to that remedy; thereafter, the Institute would have the remedy of judicial review of the State Labor Relations Board's determination as provided by Labor Law §§ 707(1) and 707(4). Defendants were not estopped from challenging the status of the Institute as a "public employer" by virtue of a previous finding by the National Labor Relations Board that the Institute was a political subdivision of the state and not an employer subject to the National Labor Relations Act, since the issue of political subdivision status under the Act is not identical to the issue of public employer status under Civ S Law § 201(6). *N.Y. Inst. for Educ. of Blind v United Fed'n of Teachers' Comm.*, 83 A.D.2d 390, 444 N.Y.S.2d 637, 1981 N.Y. App. Div. LEXIS 15148 (N.Y. App. Div. 1st Dep't 1981), *aff'd*, 57 N.Y.2d 982, 457 N.Y.S.2d 244, 443 N.E.2d 492, 1982 N.Y. LEXIS 3833 (N.Y. 1982).

In action for, inter alia, accounting and injunctive relief by several former members of dissolved partnership against one other former member of partnership, defendant was not entitled to dismissal of cause of action seeking declaration that partnership had wound up its affairs since partners are permitted to seek winding up by court and to seek declaration that partnership's

activities have been wound up. *Yorkes v Ross*, 142 A.D.2d 642, 530 N.Y.S.2d 590, 1988 N.Y. App. Div. LEXIS 7372 (N.Y. App. Div. 2d Dep't 1988).

Although N.Y. Est. Powers & Trusts Law § 6-2.2(a) created a presumption that a husband and wife created a tenancy in common when they purchased a cooperative apartment in 1989, that presumption could be overcome by clear and convincing evidence that the parties created a joint tenancy, and the appellate court held that a separation agreement the husband and wife signed six years after they purchased the apartment provided the necessary evidence and that the trial court erred, in an action filed by the husband's second wife seeking partition of the apartment, when it denied the first wife's motion to dismiss the action and the first wife's request for a judgment declaring that the first wife was the sole owner of the apartment and its contents. *Estate of Menon v Menon*, 303 A.D.2d 622, 756 N.Y.S.2d 639, 2003 N.Y. App. Div. LEXIS 3219 (N.Y. App. Div. 2d Dep't 2003).

Order was modified dismissing a declaratory judgment action because instead of dismissing the action on the ground that the withdrawing limited liability member was not entitled to the relief he sought, the proper procedure was for the court to deny the motion and then declare the rights of the parties, including declaring the withdrawal and ordering the value of his membership interest and to follow the procedures pursuant to the operating agreement. *Matter of Jacobs v Cartalemi*, 156 A.D.3d 635, 66 N.Y.S.3d 503, 2017 N.Y. App. Div. LEXIS 8596 (N.Y. App. Div. 2d Dep't 2017).

A proceeding to declare a local law invalid should not be dismissed simply because it may be improper in form under CPLR 3211(a), but the court may treat it as a plenary action, and if the municipality has proceeded under a want of authority or in excess of authority, judicial intervention is warranted, and an injunction will issue under this section restraining the municipal authorities from acting pursuant to the invalid law. *Barile v City Comptroller of Utica*, 56 Misc. 2d 190, 288 N.Y.S.2d 191, 1968 N.Y. Misc. LEXIS 1673 (N.Y. Sup. Ct. 1968).

Where valve manufacturer, which sought declaratory judgment that it was covered as additional insured under vendor's endorsement of general liability policy issued forging manufacturer and

which was entitled to recover for breach of insurer's duty to defend valve manufacturer in action brought for fire damage to refinery, made no demand for fees and expenses incurred in related federal action, valve manufacturer could not recover such expenses in declaratory judgment action. *Sucrest Corp. v Fisher Governor Co.*, 83 Misc. 2d 394, 371 N.Y.S.2d 927, 1975 N.Y. Misc. LEXIS 2915 (N.Y. Sup. Ct. 1975).

Where medical center challenged, pursuant to N.Y. C.P.L.R. art. 78, the authority of the State Comptroller to conduct a post-payment audit of payments made to the center under the Medicaid program, and where the center requested declaratory relief pursuant to N.Y. C.P.L.R. § 3017, the matter was converted to a declaratory judgment action and the court addressed the merits of the claim. *Matter of Signature Health Ctr. LLC v Hevesi*, 822 N.Y.S.2d 835, 13 Misc. 3d 1189, 2006 N.Y. Misc. LEXIS 2968 (N.Y. Sup. Ct. 2006).

At this early stage in these proceedings, accepting all of the facts alleged in the amended complaint as true, such as the manner in which all of the plaintiffs herein were issued appearance tickets, the New York City Police Department interpreted and effectuated N.Y. Crim. Proc. Law § 150.20 (1)(a) in a way that had been called into question by plaintiffs. Plaintiffs properly pleaded a cause of action for a declaratory judgment. *Douglas v City of New York*, 79 Misc. 3d 496, 190 N.Y.S.3d 847, 2023 N.Y. Misc. LEXIS 1551 (N.Y. Sup. Ct. 2023).

II. Under Former Civil Practice Laws

25. Prayer for relief; generally

While a plaintiff was required by CPA § 255 to state in his complaint the judgment to which he supposed himself entitled, this requirement did not contemplate that the court had to award a judgment other than one based on the facts established on the trial. *Model Bldg. & Loan Ass'n v Reeves*, 236 N.Y. 331, 140 N.E. 715, 236 N.Y. (N.Y.S.) 331, 1923 N.Y. LEXIS 891 (N.Y. 1923).

Where complaint in action alleged that ejectment would have been more costly to all parties and prayed declaration for such other and further relief, it was within inherent power of court to grant appropriate affirmative relief by directing that respondent be let into possession upon payment of deposit of \$500, rather than require respondent to institute another action. *Great River Realty Corp. v Emanuel Church*, 284 A.D. 977, 134 N.Y.S.2d 926, 1954 N.Y. App. Div. LEXIS 4284 (N.Y. App. Div. 1954), *aff'd*, 308 N.Y. 973, 127 N.E.2d 338, 308 N.Y. (N.Y.S.) 973, 1955 N.Y. LEXIS 1206 (N.Y. 1955).

Any questions of fact growing out of any of the rights and relations of the parties which the court is called upon to settle may be determined by a proceeding for declaratory judgment. *Town Bd. of Greece v Murray*, 223 N.Y.S. 606, 130 Misc. 55, 1927 N.Y. Misc. LEXIS 993 (N.Y. Sup. Ct. 1927).

Where a complaint specifies the precise rights and other legal relations of which declaration is requested including the further relief of an injunction, the question whether the complaint seeks too much does not spoil the adequacy of the complaint, and that the trial court will determine. *Welton v Lockport*, 13 Misc. 2d 341, 177 N.Y.S.2d 438, 1958 N.Y. Misc. LEXIS 2812 (N.Y. Sup. Ct. 1958).

26. —Applications of rule

The court held that its determination as to the validity of a change in a city's election laws was in the nature of a declaratory judgment. *Bareham v Rochester*, 221 A.D. 36, 222 N.Y.S. 141, 1927 N.Y. App. Div. LEXIS 6365 (N.Y. App. Div.), *modified*, 246 N.Y. 140, 158 N.E. 51, 246 N.Y. (N.Y.S.) 140, 1927 N.Y. LEXIS 855 (N.Y. 1927).

Defendant held not entitled to amend its answer by pleading a counterclaim in the form of a prayer for a declaratory judgment. *Piedmont Hotel Co. v A. E. Nettleton Co.*, 241 A.D. 562, 272 N.Y.S. 573, 1934 N.Y. App. Div. LEXIS 8307 (N.Y. App. Div. 1934).

RCP 211 was inapplicable to claim against executor individually, where claim was upon his individual contract and which was not claim against deceased. *Fink v Chase Nat'l Bank*, 273 A.D. 858, 76 N.Y.S.2d 622, 1948 N.Y. App. Div. LEXIS 4987 (N.Y. App. Div. 1948).

Cause of action for declaratory judgment may embrace, in single cause of action, claims for further or consequential relief which otherwise would be regarded as separate causes of action, including claims for injunctive relief; such corollary claims may be dismissed if they do not state facts sufficient to constitute sufficient causes of action, though sufficient cause for declaratory judgment be pleaded. *Chesny v Chesny*, 277 A.D. 879, 98 N.Y.S.2d 151, 1950 N.Y. App. Div. LEXIS 3707 (N.Y. App. Div. 1950).

Although the insured was held not to be entitled to a declaratory judgment that the policy was in force on the date of the accident, the insurer was entitled to a declaration on its counterclaim that the policy did not cover a cause of action brought by a third party against the plaintiffs. *Klein v Continental Casualty Co.*, 7 A.D.2d 615, 178 N.Y.S.2d 835, 1958 N.Y. App. Div. LEXIS 4581 (N.Y. App. Div. 4th Dep't 1958).

Rule applied where the reasonableness of landlord's refusal to consent to a sublease was sought and plaintiff prayed for other and further relief. *Allen v Carsted Realty Corp.*, 231 N.Y.S. 585, 133 Misc. 359, 1928 N.Y. Misc. LEXIS 1145 (N.Y. Sup. Ct. 1928).

Where good cause for declaratory judgment is made out, complaint cannot be dismissed whether or not declaration of rights is to be made in judgment as plaintiff claims them to be. *Bradford v Utica Mut. Ins. Co.*, 39 N.Y.S.2d 810, 179 Misc. 919, 1943 N.Y. Misc. LEXIS 1576 (N.Y. Sup. Ct. 1943).

27. —Conformity to process

The complaint should agree with summons as to amount claimed. *Blanchard v Strait*, 8 How. Pr. 83, 1853 N.Y. Misc. LEXIS 107 (N.Y. Sup. Ct. Mar. 1, 1853); *Allen*, 14 How. Pr. 248, 1857 N.Y. Misc. LEXIS 12 (N.Y. Sup. Ct. July 3, 1857); *Johnson v Paul*, 14 How. Pr. 454, 6 Abb. Pr. 335n;

but see *Field & Stone v Morse*, 7 How. Pr. 12, 1852 N.Y. Misc. LEXIS 9 (N.Y. Sup. Ct. 1852); *Voorhies v Scofield*, 7 How. Pr. 51, 1852 N.Y. Misc. LEXIS 75 (N.Y. Sup. Ct. June 1, 1852).

28. —Sufficiency of prayer

Prayer for general relief is as broad as the equitable powers of court, and under it court may properly shape its decree in accord with equities of case. *Weil v Atlantic Beach Holding Corp.*, 1 N.Y.2d 20, 150 N.Y.S.2d 13, 133 N.E.2d 505, 1956 N.Y. LEXIS 1001 (N.Y. 1956).

Where a complaint sets forth a cause of action at law for the conversion of stock, the fact that the prayer for relief demands an accounting as a method of ascertaining the damages, does not make it one in equity. *Brightson v H. B. Claflin Co.*, 108 A.D. 284, 95 N.Y.S. 751, 1905 N.Y. App. Div. LEXIS 3164 (N.Y. App. Div. 1905).

Complaint should show whether equitable or legal relief is desired. *Abbott v Harbeson Textile Co.*, 162 A.D. 405, 147 N.Y.S. 1031, 1914 N.Y. App. Div. LEXIS 6103 (N.Y. App. Div. 1914).

Subdivision 3 of CPA § 255 met all demands necessary to obtain for plaintiff his full rights after the proof is in. *Whalen v Strong*, 230 A.D. 617, 246 N.Y.S. 40, 1930 N.Y. App. Div. LEXIS 8699 (N.Y. App. Div. 1930).

Where complaint prayed judgment “for such other and further relief as to court may seem just and proper”, court may grant such judgment as it deems proper in accord with equities of case as established in evidence. *Kelley v Farmers Production Credit Ass'n*, 88 N.Y.S.2d 872, 1948 N.Y. Misc. LEXIS 3963 (N.Y. Sup. Ct. 1948).

Character of action may be determined from prayer for relief. *Truman Homes, Inc. v Lane Holding Corp.*, 88 N.Y.S.2d 406, 1949 N.Y. Misc. LEXIS 2113 (N.Y. Sup. Ct. 1949).

The prayer for relief forms no part of a cause of action and does not change or otherwise affect the character or nature of the action; it adds nothing which will supply a lack of facts sufficient to

constitute a cause of action. *Kings County Pharmaceutical Soc. v New York*, 198 N.Y.S.2d 339 (N.Y. Sup. Ct. 1960).

A party should ask any relief to which he supposes himself entitled, but his doing so does not preclude him from declining to take any part thereof, nor from demanding aught additional supported by the facts. .

The relief demanded in the complaint is not the test of the cause of action. *People v Platt* (1887, NY) 46 Hun 394; *Marie v Garrison*, 13 Abb NC 210.

An action against a foreign administrator upon the guaranty of a bond made by the intestate and praying a money judgment, is an action at law, and cannot be changed into an action in equity by adding a prayer for an injunction and an accounting. *Hankinson v Page*, 3 How. Pr. (n.s.) 323.

29. —Consistency between allegations and prayer

Where demand for relief is inconsistent with allegations of complaint. *Brown v Snell*, 57 N.Y. 286, 57 N.Y. (N.Y.S.) 286, 1874 N.Y. LEXIS 287 (N.Y. 1874).

A demand for an equitable lien cannot be founded upon allegations inconsistent with the right thereto. *Behrens v Sturges*, 121 A.D. 746, 106 N.Y.S. 501, 1907 N.Y. App. Div. LEXIS 1894 (N.Y. App. Div. 1907).

Unless a plaintiff demands judgment consistent with this cause of action he has failed to state facts sufficient to constitute a cause of action. *Consolidated Rubber Tire Co. v Firestone Tire & Rubber Co.*, 135 A.D. 805, 120 N.Y.S. 128, 1909 N.Y. App. Div. LEXIS 4071 (N.Y. App. Div. 1909), *aff'd*, 199 N.Y. 536, 92 N.E. 1081, 199 N.Y. (N.Y.S.) 536, 1910 N.Y. LEXIS 1300 (N.Y. 1910).

Effect of demanding relief not warranted by facts pleaded. *Sims v Farson*, 157 A.D. 38, 141 N.Y.S. 673, 1913 N.Y. App. Div. LEXIS 5850 (N.Y. App. Div. 1913).

The demand for judgment is no part of the statement of a cause of action and does not enlarge its scope. *Jones v Van Heusen Charles Co.*, 230 A.D. 694, 246 N.Y.S. 204, 1930 N.Y. App. Div. LEXIS 8721 (N.Y. App. Div. 1930).

Prayer is essential part of complaint and may be resorted to in determining character of action, but not for purpose of ascertaining if cause of action is stated. *Dagood Holding Corp. v Rosenbluth*, 231 A.D. 470, 247 N.Y.S. 489, 1931 N.Y. App. Div. LEXIS 16079 (N.Y. App. Div. 1931).

Inconsistencies in the relief sought are not grounds under the present practice for a motion to dismiss the complaint for insufficiency. *Lonsdale v Speyer*, 249 A.D. 127, 291 N.Y.S. 490, 1936 N.Y. App. Div. LEXIS 5054 (N.Y. App. Div. 1936).

Demand for both legal and equitable relief did not render complaint bad for insufficiency. *Aetna Casualty & Surety Co. v Utica Structural Steel, Inc.*, 270 A.D. 871, 61 N.Y.S.2d 784, 1946 N.Y. App. Div. LEXIS 4380 (N.Y. App. Div. 1946).

“Wherefore” clause of complaint may be read to determine character of action but not its sufficiency. *Prouty v Drake*, 144 N.Y.S.2d 517, 208 Misc. 540, 1955 N.Y. Misc. LEXIS 3773 (N.Y. Sup. Ct. 1955); *Bako Realty Inc. v Hays*, 153 N.Y.S.2d 442 (N.Y. Sup. Ct. 1956), *aff'd*, 3 A.D.2d 834, 163 N.Y.S.2d 938, 1957 N.Y. App. Div. LEXIS 5711 (N.Y. App. Div. 1st Dep't 1957).

Prayer for declaratory judgment and, “if” court grants such relief, for money judgment, held sufficient and not “premature.” *Mutual Life Ins. Co. v Francis Emory Fitch, Inc.*, 37 N.Y.S.2d 965, 1942 N.Y. Misc. LEXIS 2126 (N.Y. Sup. Ct. 1942).

Fact that some of relief prayed for cannot be had, is irrelevant to determination of a motion to separately state and number. *Kings County Pharmaceutical Soc. v New York*, 198 N.Y.S.2d 339 (N.Y. Sup. Ct. 1960).

A plaintiff cannot recover upon a cause of action entirely different from that stated in the complaint and inconsistent with it. *McClung v Foshour*, 47 Hun 421, 14 N.Y. St. 367 (N.Y.), *aff'd*, 113 N.Y. 640, 21 N.E. 414, 113 N.Y. (N.Y.S.) 640, 1889 N.Y. LEXIS 1017 (N.Y. 1889).

30. —Demand for damages

Where a complaint is sufficiently specific in stating the facts constituting the cause of action, to authorize the plaintiff's recovery it is not material that it does not demand the precise damages to which the plaintiff is entitled, or that it mistakes the true rule of damages. *Colrick v Swinburne*, 105 N.Y. 503, 12 N.E. 427, 105 N.Y. (N.Y.S.) 503, 8 N.Y. St. 172, 1887 N.Y. LEXIS 742 (N.Y. 1887).

A demand for the wrong measure of damages in the prayer for judgment is not fatal, provided damages be shown and the cause of action is otherwise sufficiently alleged. *Sorenson v Keesey Hosiery Co.*, 244 N.Y. 73, 154 N.E. 826, 244 N.Y. (N.Y.S.) 73, 1926 N.Y. LEXIS 626 (N.Y. 1926).

It is immaterial that plaintiff in his complaint alleged an incorrect rule of damages. The measure of damages need not be stated in the complaint when facts are alleged from which damages can properly be inferred. *Lurie v New Amsterdam Casualty Co.*, 270 N.Y. 379, 1 N.E.2d 472, 270 N.Y. (N.Y.S.) 379, 1936 N.Y. LEXIS 1558 (N.Y. 1936).

The damages claimed may not have resulted from wrong charges is no ground for invalidating complaint; it must be held good as pleading if it may be construed as charging legal wrong for which pleader is entitled to recover in any form and to any extent. *Wohlers v Martorella*, 279 A.D. 629, 107 N.Y.S.2d 834, 1951 N.Y. App. Div. LEXIS 3260 (N.Y. App. Div. 1951), *aff'd*, 304 N.Y. 694, 107 N.E.2d 601, 304 N.Y. (N.Y.S.) 694, 1952 N.Y. LEXIS 906 (N.Y. 1952).

Complaint is not invalidated by allegation of improper measure of damages. *Thompson-Starrett Co. v Concrete Steel Co.*, 281 A.D. 965, 120 N.Y.S.2d 796, 1953 N.Y. App. Div. LEXIS 3914 (N.Y. App. Div. 1953).

Where complaint alleged two causes of action for legal services and demanded specified sum for services to defendant's wife and specified sum for services to defendant himself, and court submitted to jury only reasonable value of services to wife, and jury rendered greater sum than demanded, plaintiff's recovery was reduced to amount demanded. *Young v Wallace*, 284 A.D. 929, 134 N.Y.S.2d 136, 1954 N.Y. App. Div. LEXIS 4077 (N.Y. App. Div. 1954).

Demand in complaint in action for negligent injuries for "such sums of money as facts will warrant" was insufficient, since word "suppose" in CPA § 255, subd 3 required prayer for specific sums as damages, and was subject to motion to make more definite and certain. *Geisler v Rutkowski*, 29 N.Y.S.2d 1001, 177 Misc. 284, 1941 N.Y. Misc. LEXIS 2201 (N.Y. Sup. Ct. 1941).

Improper demand in complaint did not destroy right to proper damages on uncontradicted facts. *Seedman v Benenson Realty Co.*, 60 N.Y.S.2d 341, 185 Misc. 769, 1945 N.Y. Misc. LEXIS 2674 (N.Y. App. Term 1945).

In all actions for the recovery of damages, whether sounding in tort or on contract, the sum demanded in the complaint must be sufficient to cover the real demand, and it would be unjust to allow it to be enlarged after verdict without granting a new trial. *Pharis v Gere*, 31 Hun 443 (N.Y.).

The fact that plaintiff demands a larger sum in his complaint than he is entitled to, is not fatal to his right to recover. *Dodge v Johnson*.

31. —Damages

Particular items of damage need not be stated, but facts must be alleged which are claimed to have caused damage. *Smith v D. A. Schulte, Inc.*, 280 A.D. 913, 116 N.Y.S.2d 212, 1952 N.Y. App. Div. LEXIS 4158 (N.Y. App. Div. 1952).

Damage is essential in an action based on prima facie tort and must be pleaded specially. *Glaser v Kaplan*, 5 A.D.2d 829, 170 N.Y.S.2d 522, 1958 N.Y. App. Div. LEXIS 7058 (N.Y. App.

Div. 2d Dep't), reh'g denied, 5 A.D.2d 873, 172 N.Y.S.2d 550, 1958 N.Y. App. Div. LEXIS 6675 (N.Y. App. Div. 2d Dep't 1958).

Complaint may state cause of action though it indicates wrong theory as to amount of damages. *Aldock v Wnuk*, 98 N.Y.S.2d 964, 198 Misc. 474, 1950 N.Y. Misc. LEXIS 1864 (N.Y. Sup. Ct. 1950).

Where complaint alleged facts from which general damage could be inferred, it was not important to validity of cause of action that plaintiff supplied wrong measure of damages. *Werblud v Mehadrin Dairy Corp.*, 11 Misc. 2d 167, 169 N.Y.S.2d 465, 1957 N.Y. Misc. LEXIS 2024 (N.Y. Sup. Ct. 1957).

The measure of damages need not be stated in complaint. *Colvin v Smith*, 94 N.Y.S.2d 98, 1948 N.Y. Misc. LEXIS 3985 (N.Y. Sup. Ct. 1948), *aff'd*, 276 A.D. 9, 92 N.Y.S.2d 794, 1949 N.Y. App. Div. LEXIS 3100 (N.Y. App. Div. 1949).

32. —Effect of prayer for improper relief

There is no objection to inserting in one action a demand for both legal and equitable relief. But they must not be inconsistent with each other. *Reubens v Joel*, 13 N.Y. 488, 13 N.Y. (N.Y.S.) 488, 1856 N.Y. LEXIS 62 (N.Y. 1856).

Where complaint avers a legal wrong and a resulting pecuniary injury, court can adjust the recovery upon the true basis, although plaintiff in his demand mistook the true basis. *Colrick v Swinburne*, 105 N.Y. 503, 12 N.E. 427, 105 N.Y. (N.Y.S.) 503, 8 N.Y. St. 172, 1887 N.Y. LEXIS 742 (N.Y. 1887).

Where an objection has been properly taken, or an exception presents the question, it is fatal to a recovery that it does not conform in all material respects to the allegations in the pleadings. *Romeyn v Sickles*, 108 N.Y. 650, 15 N.E. 698, 108 N.Y. (N.Y.S.) 650, 13 N.Y. St. 864, 1888 N.Y. LEXIS 669 (N.Y. 1888).

Where facts alleged in a complaint expressly and by reasonable intendment state an equitable cause of action a demand for inappropriate relief may be disregarded and the complaint sustained. *Wainwright & Page, Inc. v Burr & McAuley, Inc.*, 272 N.Y. 130, 5 N.E.2d 64, 272 N.Y. (N.Y.S.) 130, 1936 N.Y. LEXIS 879 (N.Y. 1936).

Where plaintiff pleads equitable cause of action only and fails to prove facts relied on to sustain equity jurisdiction, equity will not retain cause of action to award damages, but if plaintiff succeeds in proving that he is entitled to equitable relief, equity may grant damages in addition to or as incident of some other special equitable relief or, where granting of equitable relief appears to be impossible or impractical, equity may award damages in lieu of desired equitable relief. *Doyle v Allstate Ins. Co.*, 1 N.Y.2d 439, 154 N.Y.S.2d 10, 136 N.E.2d 484, 1956 N.Y. LEXIS 743 (N.Y. 1956).

When facts are stated sufficient to constitute a cause of action, either legal or equitable, the complaint is not objectionable on the ground that it does not state sufficient facts, because both legal and equitable relief are demanded, when the plaintiff is entitled to but one form of relief. *Doyle v Delaney*, 112 A.D. 856, 98 N.Y.S. 468, 1906 N.Y. App. Div. LEXIS 792 (N.Y. App. Div. 1906).

Allegations of fact in the complaint form the basis of relief to be obtained, so in a suit for specific performance or return of money paid on a land contract, the money may be recovered. *Perlman v East Annadale Beach Corp.*, 233 A.D. 599, 253 N.Y.S. 775, 1931 N.Y. App. Div. LEXIS 11373 (N.Y. App. Div. 1931).

An improper prayer for damages for permanent injuries to the fee may be disregarded in determining the sufficiency of a cause of action for damages for temporary loss of use. *Mahoney v Ogden*, 6 A.D.2d 711, 174 N.Y.S.2d 623, 1958 N.Y. App. Div. LEXIS 5882 (N.Y. App. Div. 2d Dep't 1958).

A complaint which alleges a contract, a breach thereof and that plaintiff was damaged thereby states a good cause of action, and a failure to demand the proper relief does not render the

complaint bad. *Norton v Kull*, 132 N.Y.S. 387, 74 Misc. 476, 1911 N.Y. Misc. LEXIS 679 (N.Y. App. Term 1911).

A mistake as to remedy does not affect sufficiency of complaint to state cause of action. *Cavallaro v Lewis*, 98 N.Y.S.2d 730, 198 Misc. 412, 1950 N.Y. Misc. LEXIS 1819 (N.Y. Sup. Ct. 1950).

It is inconsequential that plaintiff has asked for wrong relief or too much relief. *Prouty v Drake*, 144 N.Y.S.2d 517, 208 Misc. 540, 1955 N.Y. Misc. LEXIS 3773 (N.Y. Sup. Ct. 1955).

Complaint which states no cause of action cognizable in equity, but which prays for equitable relief, should be dismissed upon motion made before answer is served. *Barber v Farmers & Traders Life Ins. Co.*, 109 N.Y.S.2d 448, 1951 N.Y. Misc. LEXIS 2690 (N.Y. Sup. Ct. 1951).

Prayer for relief forms no part of a pleading and if incorrect relief is prayed for it is not necessarily determinative of rights of parties. *Brevoort, Inc. v Meredith*, 161 N.Y.S.2d 236 (N.Y. Mun. Ct. 1956).

The plaintiff is entitled to such relief as the facts proven on the trial entitle him to. *Hatton v McFaddin*, 15 N.Y. St. 124.

Under Code pleading the plaintiff must state the facts and pray for such relief as he supposes himself entitled to, but he is not to be turned out of court because he prays for too much or too little or for wrong relief. *Muldowney v Morris & E. R. Co.*, 42 Hun 444, 6 N.Y. St. 80 (N.Y.).

The fact that a complaint demands judgment for a specific sum of money, instead of asking for equitable relief, will not necessarily characterize the action or limit the plaintiff in respect to his remedy, and the fact that he demanded a recovery judgment by way of damages, will not preclude the recovery of the same amount by way of equitable relief, when the facts entitle him thereto. *Thacher v Hope Cemetery Asso.*, 46 Hun 594, 12 N.Y. St. 857 (N.Y.).

33. —Prayer for relief in the alternative

A complaint being framed in a double capacity so as to permit a recovery either on an express contract or a quantum meruit, and treated as an action of the latter nature, does not admit of the application of the statute of frauds. *Harmon v Alfred Peats Co.*, 243 N.Y. 473, 154 N.E. 314, 243 N.Y. (N.Y.S.) 473, 1926 N.Y. LEXIS 774 (N.Y. 1926).

Neither at common law nor under the Code of Civil Procedure could a plaintiff join two defendants upon the theory that he had a right to relief against one or the other of them. If, however, the complaint alleged facts which showed that he was entitled to relief, legal or equitable, against one of the defendants joined, the complaint was sustained against him; but when a complaint against two defendants asking alternative relief did not state a cause of action against either, it was dismissed. *Cohn-Baer-Myers & Aronson Co. v Realty Transfer Co.*, 117 A.D. 215, 102 N.Y.S. 122, 1907 N.Y. App. Div. LEXIS 224 (N.Y. App. Div. 1907), *aff'd*, 191 N.Y. 533, 84 N.E. 1110, 191 N.Y. (N.Y.S.) 533, 1908 N.Y. LEXIS 1148 (N.Y. 1908).

Where plaintiff pleads a liability in the alternative both the alternative allegations must be sufficient to make out liability. *Johansson v Kemp*, 211 A.D. 276, 207 N.Y.S. 468, 1925 N.Y. App. Div. LEXIS 10612 (N.Y. App. Div. 1925).

Where the complaint prayed for money damages as alternative relief, election to take the property involved, which had depreciated in value, was revocable, and demand for money damages was properly granted. *Donaghue v Di Giorgio Fruit Corp.*, 225 A.D. 81, 232 N.Y.S. 178, 1928 N.Y. App. Div. LEXIS 8748 (N.Y. App. Div. 1928).

The prayer for relief is no part of the cause of action. If a complaint states a cause of action, the relief to be awarded must be left to the trial court for determination. A plaintiff may include in his complaint allegations of fact in the alternative in stating his cause of action, and upon the trial he is entitled to obtain relief in accordance with his proof. In such a case, a complaint is not subject to a motion to dismiss for insufficiency. *Lonsdale v Speyer*, 249 A.D. 133, 291 N.Y.S. 495, 1936 N.Y. App. Div. LEXIS 5055 (N.Y. App. Div. 1936).

Where the execution of a mortgage given to secure moneys used to pay off a prior encumbrance is denied, the holder of the mortgage, on foreclosing, may ask as alternative relief that if he fails to establish its execution, he be adjudged equitably entitled to enforce the prior encumbrance. *Campbell v Campbell*, 5 N.Y.S. 171, 52 Hun 612, 1889 N.Y. Misc. LEXIS 2867 (N.Y. Sup. Ct. 1889).

In action for breach of contract of purchase of realty by purchaser, complaint alleging that defendant's failure to accept deed and pay balance of purchase price has "damaged" plaintiff, was sufficient and did not plead equitable cause of action despite prayer for specific performance or alternatively for money judgment. *Deutinger v Fleischmann*, 132 N.Y.S.2d 407, 1954 N.Y. Misc. LEXIS 2614 (N.Y. Sup. Ct. 1954).

34. Demand in controversy between parties

Where one assigns a judgment he has obtained by default guaranteeing the amount due thereon, and the default is afterwards opened and the assignee is made a defendant in the subsequent litigation, the court can adjust the rights between the codefendants as well as between the plaintiff and defendants. *Derham v Lee*, 87 N.Y. 599, 87 N.Y. (N.Y.S.) 599, 1882 N.Y. LEXIS 46 (N.Y. 1882).

Where judgment was regularly entered against all defendants and default of one of them only was open, the order opening it in no manner affected the judgment against the others who did not ask for any determination of rights as between them and the codefendant knowing that he disclaimed liability as a party, and subsequent dismissal as to the codefendant did not release them. *Hewlett v Van Voorhis*, 196 A.D. 322, 187 N.Y.S. 533, 1921 N.Y. App. Div. LEXIS 5519 (N.Y. App. Div. 1921), *aff'd*, 233 N.Y. 642, 135 N.E. 952, 233 N.Y. (N.Y.S.) 642, 1922 N.Y. LEXIS 1064 (N.Y. 1922).

Service by plaintiff upon the defeated party's attorney of judgment and entry does not exempt a codefendant from the like act to secure in his favor the limit of time for appeal; and the defendants' change of attorneys due to the death of the first and the provision that controversies

between defendants shall not hinder plaintiff, do not alter this rule. *Title Guaranty & Trust Co. v Uniform Fibrous Talc Co.*, 215 N.Y.S. 437, 127 Misc. 183, 1926 N.Y. Misc. LEXIS 948 (N.Y. Sup. Ct. 1926).

Where the defendant ultimately liable is already in the action, there should be a complete determination of the issues whether tortious or contractual, since they are not unrelated. *Weiner v Mager & Throne, Inc.*, 3 N.Y.S.2d 918, 167 Misc. 338, 1938 N.Y. Misc. LEXIS 1520 (N.Y. Mun. Ct. 1938).

The court could grant judgment pursuant to CPA § 264 (§§ 3012(a), 3019(b), 3020(a) herein) and former RCP 112 without regard to which party made the motion. *United States Trust Co. v Wenzell*, 19 N.Y.S.2d 448, 173 Misc. 998, 1939 N.Y. Misc. LEXIS 2770 (N.Y. Sup. Ct. 1939), *aff'd*, 258 A.D. 1046, 18 N.Y.S.2d 1001, 1940 N.Y. App. Div. LEXIS 8797 (N.Y. App. Div. 1940).

In action by third party against plaintiff and defendant as parties defendant, judgment is not res adjudicata unless parties were adversaries and disposed of issues between them on pleadings raising such issues. *Boyne v Samac Motors, Inc.*, 22 Misc. 2d 686, 91 N.Y.S.2d 634, 1949 N.Y. Misc. LEXIS 1652 (N.Y. Sup. Ct. 1949).

Controversy between defendants themselves is matter as to which plaintiff has no legal concern, since § 264 provides that controversy between parties defendant shall not delay judgment in main controversy between plaintiff and defendant. *American Surety Co. v Manufacturers Trust Co.*, 3 Misc. 2d 363, 154 N.Y.S.2d 260, 1956 N.Y. Misc. LEXIS 1667 (N.Y. Sup. Ct. 1956), *aff'd*, 3 A.D.2d 831, 162 N.Y.S.2d 334, 1957 N.Y. App. Div. LEXIS 5745 (N.Y. App. Div. 1st Dep't 1957).

The court may, in an equity action, direct the manner of enforcing the judgment, so as to secure justice among the defendants. *Varnum v Hart*, 6 N.Y.S. 346, 53 Hun 631, 1889 N.Y. Misc. LEXIS 568 (N.Y. Sup. Ct. 1889), *rev'd*, 119 N.Y. 101, 23 N.E. 183, 119 N.Y. (N.Y.S.) 101, 1890 N.Y. LEXIS 1064 (N.Y. 1890).

A judgment in an action on a note is not conclusive as to the respective rights thereunder of the maker and an indorser, where both were parties defendant in the action and the indorser not only did not demand determination of such rights, pursuant to this section, but defaulted in pleading therein. *Kelly v O'Brien*, 196 N.Y.S. 705, 1922 N.Y. Misc. LEXIS 1566 (N.Y. Sup. Ct. 1922).

35. Demand as affecting amount of judgment; generally

A judgment determines all the issues presented and which might have been presented, and applies only to adverse parties, and should not be extended to codefendants claiming no relief against each other. *Earle v Earle*, 73 A.D. 300, 76 N.Y.S. 851, 1902 N.Y. App. Div. LEXIS 1556 (N.Y. App. Div. 1902), *aff'd*, 173 N.Y. 480, 66 N.E. 398, 173 N.Y. (N.Y.S.) 480, 1903 N.Y. LEXIS 1174 (N.Y. 1903).

Under CPA § 479 the power of the supreme court to render judgment was limited to the relief demand by the complaint, or, if there was an answer, to such as was embraced within the issue made by the pleadings. *Clapp v McCabe*, 32 N.Y.S. 425, 84 Hun 379 (1895), *aff'd*, 155 N.Y. 525, 50 N.E. 274, 155 N.Y. (N.Y.S.) 525, 1898 N.Y. LEXIS 901 (N.Y. 1898).

36. —Recovery as affected by demand or prayer for relief

As to necessity of making objections and exceptions to refusal to dismiss complaint by referee, where plaintiff offered evidence not within the pleadings, and going beyond the cause of action as stated in the complaint. See *Peck v Goodberlett*, 109 N.Y. 180, 16 N.E. 350, 109 N.Y. (N.Y.S.) 180, 15 N.Y. St. 182, 1888 N.Y. LEXIS 718 (N.Y. 1888).

Alternative prayer for damages held to have no effect. *Rockefeller Purchasing Corp. v Rockefeller Center, Inc.*, 270 N.Y. 447, 1 N.E.2d 842, 270 N.Y. (N.Y.S.) 447, 1936 N.Y. LEXIS 1568 (N.Y. 1936).

Under CPA § 479 the referee's finding of amount of damages in excess of that claimed, in an action to recover damages for use of water power in excess of lease, did not justify an award of that amount without amendment of the complaint. *Stebbins v Frisbie & Stansfield Knitting Co.*, 201 A.D. 477, 194 N.Y.S. 559, 1922 N.Y. App. Div. LEXIS 6340 (N.Y. App. Div. 1922).

The plaintiff should receive that relief that the pleadings and proofs show he is entitled to receive, although he may have demanded too much. *Frear v Pugsley*, 30 N.Y.S. 149, 9 Misc. 316, 1894 N.Y. Misc. LEXIS 704 (N.Y. Sup. Ct. 1894); *Dodge v Johnson*.

Receivership of partnership assets was granted although complaint for accounting did not ask for a receiver. *Smith v Fitchett*, 2 N.Y.S. 261, 1888 N.Y. Misc. LEXIS 133 (N.Y. Sup. Ct. 1888), *aff'd*, 10 N.Y.S. 459, 56 Hun 473, 1890 N.Y. Misc. LEXIS 2169 (N.Y. Sup. Ct. 1890).

If the judgment is greater than the demand, judgment should be reduced to amount of verdict or new trial granted. *Graves v Hunt*, 8 N.Y. St. 308.

Court has power to conform the judgment to the facts alleged in the complaint and established by the evidence; so held, where a person was charged by the attorney general with usurping and unlawfully retaining an office. *People v Platt*, 46 Hun 394, 12 N.Y. St. 409 (N.Y.).

A verdict was for a small amount greater than the claim set out in the complaint; on appeal it was held that the judgment should be reduced by deducting the excess. 33 Hun 660.

Trial judge has power to order an amendment of the complaint if verdict exceeds the amount demanded in the complaint, but is doubtful whether general term possesses the power to make such amendment upon an appeal. *Jenks v Van Brunt*.

The rule, that in a litigated cause the demand for judgment is no criterion of the nature of the cause of action nor the amount of the judgment to be entered, reiterated. *Marie v Garrison*, 13 Abb NC 210.

37. —Where defendant answers

Where the defendant answered the complaint, judgment to be directed is not controlled by the relief demanded. *Marquat v Marquat*, 12 N.Y. 336, 12 N.Y. (N.Y.S.) 336, 1855 N.Y. LEXIS 16 (N.Y. 1855); *Armitage v Pulver*, 37 N.Y. 494, 37 N.Y. (N.Y.S.) 494, 1868 N.Y. LEXIS 10 (N.Y. 1868); *Durand v Hankerson*, 39 N.Y. 287, 39 N.Y. (N.Y.S.) 287, 1868 N.Y. LEXIS 153 (N.Y. 1868); *National Tradesmen's Bank v Wetmore*, 124 N.Y. 241, 26 N.E. 548, 124 N.Y. (N.Y.S.) 241, 1891 N.Y. LEXIS 1363 (N.Y. 1891); *Latimer v McKinnon*, 85 A.D. 224, 83 N.Y.S. 315, 1903 N.Y. App. Div. LEXIS 2085 (N.Y. App. Div. 1903).

Under CPA § 479 where there was an answer, the plaintiff could take any judgment consistent with the case made by him and within the issues, and was not restricted to his demand or prayer for relief. *Murtha v Curley*, 90 N.Y. 372, 90 N.Y. (N.Y.S.) 372, 1882 N.Y. LEXIS 393 (N.Y. 1882); *Black v Vanderbilt*, 70 A.D. 16, 74 N.Y.S. 1095, 1902 N.Y. App. Div. LEXIS 649 (N.Y. App. Div. 1902); *Redpath v Redpath*, 75 A.D. 95, 77 N.Y.S. 668, 1902 N.Y. App. Div. LEXIS 2087 (N.Y. App. Div. 1902); *Queen v Benesch*, 191 A.D. 83, 180 N.Y.S. 856, 1920 N.Y. App. Div. LEXIS 4662 (N.Y. App. Div. 1920); ; *Wilsey v Rooney*, 16 N.Y.S. 471, 62 Hun 618, 1891 N.Y. Misc. LEXIS 2072 (N.Y. Sup. Ct. 1891); *McVity v Stanton*, 30 N.Y.S. 934, 10 Misc. 105, 1894 N.Y. Misc. LEXIS 898 (N.Y.C.P. 1894); *Garrett v Cohen*, 117 N.Y.S. 129, 63 Misc. 450, 1909 N.Y. Misc. LEXIS 156 (N.Y. Sup. Ct. 1909).

Scope of relief in action to rescind contract for fraud where defendant answers, *Davis v William Rosenzweig Realty Operating Co.*, 192 N.Y. 128, 84 N.E. 943, 192 N.Y. (N.Y.S.) 128, 1908 N.Y. LEXIS 861 (N.Y. 1908).

Under CPA § 479 a recovery could exceed the amount demanded in complaint in absence of motion to amend. *Michalowski v Ey*, 8 A.D.2d 854, 190 N.Y.S.2d 535, 1959 N.Y. App. Div. LEXIS 7753 (N.Y. App. Div. 2d Dep't), *aff'd*, 7 N.Y.2d 71, 195 N.Y.S.2d 633, 163 N.E.2d 863, 1959 N.Y. LEXIS 875 (N.Y. 1959).

A greater amount than demanded is recoverable in replevin where defendant answers, *Thompson v Fuller*, 16 N.Y.S. 486, 62 Hun 618, 1891 N.Y. Misc. LEXIS 2079 (N.Y. Sup. Ct. 1891).

38. —Consistency with issues under CPA § 479 generally

Recovery for money had and received denied in action for conversion of note, *Walter v Bennett*, 16 N.Y. 250, 16 N.Y. (N.Y.S.) 250, 1857 N.Y. LEXIS 64 (N.Y. 1857); *Gordon v Hostetter*, 37 N.Y. 99, 37 N.Y. (N.Y.S.) 99, 1867 N.Y. LEXIS 111 (N.Y. 1867).

Plaintiff, even where defendant has answered, can have no relief that is not “consistent with the case made by his complaint and embraced within the issue.” *Beach v Cooke*, 28 N.Y. 508, 28 N.Y. (N.Y.S.) 508, 1864 N.Y. LEXIS 6 (N.Y. 1864); *Stevens v New York*, 84 N.Y. 296, 84 N.Y. (N.Y.S.) 296, 1881 N.Y. LEXIS 399 (N.Y. 1881); *Hollister v Englehart*, 11 Hun 446 (N.Y.); *Olcott v Kohlsaas*, 8 N.Y.S. 117, 55 Hun 607, 1889 N.Y. Misc. LEXIS 2199 (N.Y. Sup. Ct. 1889); *Adams v McCann*, 13 N.Y.S. 424, 59 N.Y. Super. Ct. 59, 1891 N.Y. Misc. LEXIS 1152 (N.Y. Super. Ct. 1891); *Weatherby v Wood*, 29 How. Pr. 404, 1865 N.Y. Misc. LEXIS 176 (N.Y. Sup. Ct. Mar. 1, 1865); *Graham v Read*, 57 N.Y. 681, 57 N.Y. (N.Y.S.) 681, 1874 N.Y. LEXIS 371 (N.Y. 1874); *Weeks v New York, W. & B. R. Co.*, 145 A.D. 535, 129 N.Y.S. 888, 1911 N.Y. App. Div. LEXIS 4780 (N.Y. App. Div. 1911), rev'd, 207 N.Y. 190, 100 N.E. 719, 207 N.Y. (N.Y.S.) 190, 1912 N.Y. LEXIS 1424 (N.Y. 1912); *Evans v Burton*, 5 N.Y. St. 216; *Allen v Mattison*, 14 N.Y.S.2d 711, 1939 N.Y. Misc. LEXIS 2294 (N.Y. Sup. Ct. 1939).

Section 275 of the Code of Procedure was intended to relieve a plaintiff from any technical objection that he has not prayed for, the precise relief to which on the trial it may seem he is entitled, but the relief to be granted must still be consistent with the case made by the complaint. *Bradley v Aldrich*, 40 N.Y. 504, 40 N.Y. (N.Y.S.) 504, 1869 N.Y. LEXIS 49 (N.Y. 1869).

Recovery authorized on contract in action for conversion, see *Conaughty v Nichols*, 42 N.Y. 83, 42 N.Y. (N.Y.S.) 83, 1870 N.Y. LEXIS 24 (N.Y. 1870); *Austin v Rawdon*, 44 N.Y. 63, 44 N.Y. (N.Y.S.) 63, 1870 N.Y. LEXIS 127 (N.Y. 1870); *Ross v Mather*, 51 N.Y. 108, 51 N.Y. (N.Y.S.) 108, 1872 N.Y. LEXIS 544 (N.Y. 1872); *Ledwich v McKim*, 53 N.Y. 307, 53 N.Y. (N.Y.S.) 307, 1873 N.Y. LEXIS 400 (N.Y. 1873); *Dudley v Scranton*, 57 N.Y. 424, 57 N.Y. (N.Y.S.) 424, 1874

N.Y. LEXIS 301 (N.Y. 1874); Knapp v Roche, 62 N.Y. 614, 62 N.Y. (N.Y.S.) 614, 1875 N.Y. LEXIS 557 (N.Y. 1875).

A judgment directed by a referee which was embraced "within the issue" is permissible. Bolivar v Bolivar Water Co., 62 A.D. 484, 70 N.Y.S. 750, 1901 N.Y. App. Div. LEXIS 1278 (N.Y. App. Div. 1901).

Whether an action be legal or equitable in its nature, the judgment against the defendant should be one consistent with the case set forth in the complaint. Maher v Home Ins. Co., 75 A.D. 226, 78 N.Y.S. 44, 1902 N.Y. App. Div. LEXIS 2125 (N.Y. App. Div. 1902), aff'd, 178 N.Y. 589, 70 N.E. 1102, 178 N.Y. (N.Y.S.) 589, 1904 N.Y. LEXIS 818 (N.Y. 1904).

Even if allegation stamped action as one ex delicto, after answer judgment could be had as for breach of contract without proof of the conversion. Paradies-Carroll Co. v Lyman, 193 A.D. 766, 184 N.Y.S. 604, 1920 N.Y. App. Div. LEXIS 5645 (N.Y. App. Div. 1920).

In action to foreclose mortgage as against owner of redemption, plaintiff who sought foreclosure and sale of mortgage premises, could not, without notice to owner, get more favorable judgment than was justified by complaint, and where complaint omitted reference to its own subordinate liens, plaintiff could not save same from being cut off by sale, though judgment as entered preserved such liens. C. G. Swackhamer, Inc. v P. F. L. Constr. Corp., 285 A.D. 841, 137 N.Y.S.2d 209, 1955 N.Y. App. Div. LEXIS 5751 (N.Y. App. Div. 1955).

An action by one firm against another for goods sold and delivered is not defeated by the fact that one of the defendants is a member of both firms, as under this section the court is authorized to permit the plaintiff to take any judgment consistent with the issues raised by the pleadings. Schnaier v Schmidt, 13 N.Y.S. 725, 59 Hun 625, 1891 N.Y. Misc. LEXIS 1657 (N.Y. Sup. Ct.), aff'd, 128 N.Y. 683, 29 N.E. 149, 128 N.Y. (N.Y.S.) 683, 1891 N.Y. LEXIS 1132 (N.Y. 1891).

Where sufficient facts are alleged in wife's complaint as to separation agreement to support relief if she had brought action for declaratory judgment, fact that prayer for relief as stated in

her complaint seeks inappropriate relief is not necessarily controlling. *Stuberfield v Pomerance*, 150 N.Y.S.2d 652 (N.Y. Sup. Ct. 1956).

An objection that the judgment is not “consistent with the case made by the complaint and embraced within the issue” is not tenable where the evidence upon which it is based was not objected to on the ground that it was not relevant to the issues. *Mengis v Fifth A. R. Co.*, 30 N.Y.S. 999, 81 Hun 480 (1894).

39. —Recovery on cause of action not pleaded

If the instrument as sued on is a specialty, although it could not be enforced as a specialty, this does not authorize a recovery where the action is founded solely upon the instrument, and where upon the trial plaintiffs claim to recover solely by virtue thereof. *SCHAEFEE v HENKEL*, 75 N.Y. 378, 75 N.Y. (N.Y.S.) 378, 7 Abb. N. Cas. 1, 57 How. Pr. 97, 1878 N.Y. Misc. LEXIS 230 (N.Y. 1878).

If a plaintiff has “wholly failed to establish the allegations contained in her complaint” there is no way of avoiding the conclusion of law that the complaint should be dismissed upon the merits. *Edmondson v Hamilton*, 60 A.D. 630, 69 N.Y.S. 857, 1901 N.Y. App. Div. LEXIS 833 (N.Y. App. Div. 1901).

Plaintiff cannot recover judgment on cause of action not stated in complaint, *Flinsch v Viele*, *Blackwell & Buck* (1920) 194 AD 460, 185 NYS 520; where the complaint stated no cause of action and proper exceptions were reserved, though defendant participated in the trial. *Allerton v Rhineland Mach. Works Co.* (1914) 165 App Div 557, 150 NYS 265; *Salters v Genin*, 16 Super Ct (3 Bosw) 250; *Bailey v Ryder*, 10 N.Y. 363, 10 N.Y. (N.Y.S.) 363, 1852 N.Y. LEXIS 160 (N.Y. 1852); *Boardman v Davidson*, 7 Abb Pr NS 439; *Redmond v Dana*, 16 Super Ct (3 Bosw) 615.

A party must prove the facts constituting his cause of action, and a recovery upon a cause of action, not alleged in the complaint, although proved under objection and exception on the trial,

is not sustainable, *Clark v Post* (1889) 113 NY 17, 20 NE 573; where the complaint was not amended to conform to the proofs. *Adams v McCann*, 13 N.Y.S. 424, 59 N.Y. Super. Ct. 59, 1891 N.Y. Misc. LEXIS 1152 (N.Y. Super. Ct. 1891).

40. —Legal and equitable grounds of action

Although the grounds upon which the judgment was rendered were different from those intended by the pleader. 10 N.Y. 51.

Where the complaint was framed in a double aspect praying for damages upon the breach of a written contract and also a reformation of the contract, if the evidence sustains either, judgment should be rendered, whether the action be tried at circuit or special term. *New York Ice Co. v North Western Ins. Co.*, 23 N.Y. 357, 23 N.Y. (N.Y.S.) 357, 21 How. Pr. 296, 1861 N.Y. LEXIS 36, 1861 N.Y. Misc. LEXIS 140 (N.Y. 1861).

The court will allow a plaintiff any judgment to which, upon the allegations and proof, he is entitled, either at law or in equity. *Armitage v Pulver*, 37 N.Y. 494, 37 N.Y. (N.Y.S.) 494, 1868 N.Y. LEXIS 10 (N.Y. 1868).

The relief demanded in the complaint, does not necessarily characterize the action or limit plaintiff in respect to the remedy which he may have; and the fact that plaintiff has demanded judgment for a sum of money by way of damages does not preclude the recovery of the same amount by way of equitable relief, if the facts entitle the plaintiff to such relief. *Hale v Omaha Nat'l Bank*, 49 N.Y. 626, 49 N.Y. (N.Y.S.) 626, 1872 N.Y. LEXIS 216 (N.Y. 1872).

If complaint states a cause of action, whether legal or equitable, and the defendant answers, the court should give the appropriate relief. *Wright v Wright*, 54 N.Y. 437, 54 N.Y. (N.Y.S.) 437, 1873 N.Y. LEXIS 60 (N.Y. 1873).

If sufficient facts are set forth in the complaint to entitle plaintiff to the relief sought, whether the form of the action be legal or equitable, the court will grant the relief to which the plaintiff is entitled. *Murtha v Curley*, 90 N.Y. 372, 90 N.Y. (N.Y.S.) 372, 1882 N.Y. LEXIS 393 (N.Y. 1882).

As to distinction between legal and equitable actions. *Murtha v Curley*, 90 N.Y. 372, 90 N.Y. (N.Y.S.) 372, 1882 N.Y. LEXIS 393 (N.Y. 1882).

When plaintiff pleads an equitable cause of action only, and fails to prove the facts relied on to sustain the equity jurisdiction, equity will not retain the cause for the purpose of awarding him damages. *Electrolux Corp. v Val-Worth, Inc.*, 6 N.Y.2d 556, 190 N.Y.S.2d 977, 161 N.E.2d 197, 1959 N.Y. LEXIS 1180 (N.Y. 1959).

While the distinction between actions at law and suits in equity have been abolished, we still have in fact the action of law and the suit in equity, and in either case the judgment obtained must be warranted by the facts stated in the complaint and embraced within the issue. *Wasey v Holbrook*, 141 A.D. 336, 125 N.Y.S. 1087, 1910 N.Y. App. Div. LEXIS 3863 (N.Y. App. Div. 1910), *aff'd*, 206 N.Y. 708, 99 N.E. 1119, 206 N.Y. (N.Y.S.) 708, 1912 N.Y. LEXIS 1120 (N.Y. 1912).

A complaint must be dismissed even though the suit has been tried without a jury and even though equity may adapt its relief to the exigencies of an equitable case where the remedy is an action at law since to allow the action to stay as one at law would be to deny defendants their right to a jury trial. *Willier v Dauber*, 12 Misc. 2d 974, 171 N.Y.S.2d 615, 1958 N.Y. Misc. LEXIS 4063 (N.Y. Sup. Ct. 1958).

The judgment should dispose of the action and award suitable relief adapted to the case and within the issues, although the complaint did not specifically require all the relief provided for by the referee and the judgment upon his report. *Chester v Jumel*, 5 N.Y.S. 823 (N.Y. Sup. Ct. 1889); *Peck v Goodberlett*, 109 N.Y. 180, 16 N.E. 350, 109 N.Y. (N.Y.S.) 180, 15 N.Y. St. 182, 1888 N.Y. LEXIS 718 (N.Y. 1888); *Barrick v Schifferdecker*, 1 N.Y.S. 21, 48 Hun 355, 1888 N.Y. Misc. LEXIS 1168 (N.Y. Sup. Ct. 1888), *rev'd*, 123 N.Y. 52, 25 N.E. 365, 123 N.Y. (N.Y.S.) 52, 1890 N.Y. LEXIS 1707 (N.Y. 1890).

Where suit is brought by plaintiffs in a representative capacity instead of as individuals, it is not the practice to dismiss the complaint where it discloses a legal right of action in the plaintiff.

Bingham v Marine Nat'l Bank 4 NYSR 528, 18 Abb NC 135, affd (1889) 112 NY 661, 19 NE 416; as to defective parties to action, see Crane v McDonald (1890) 2 NYSR 150, affd 118 NY 648, 23 NE 991; as to granting equitable relief to the different parties to suit as they may severally be entitled, see Powers v Athens, 99 N.Y. 592, 2 N.E. 609, 99 N.Y. (N.Y.S.) 592, 1885 N.Y. LEXIS 819 (N.Y. 1885).

A complaint will not be dismissed, because the facts proved at the trial will not support a recovery at law. Williams v Freeman.

41. — —Legal relief in equity

Damages for breach in action to reform a contract, Bidwell & Banta v Astor Mut. Ins. Co., 16 N.Y. 263, 16 N.Y. (N.Y.S.) 263, 1857 N.Y. LEXIS 67 (N.Y. 1857); Beck v Village of Rondout, 15 Abb. Pr. 48, 1862 N.Y. Misc. LEXIS 109 (N.Y. Sup. Ct. Nov. 1, 1862); Coleman v Second A. R. Co., 38 N.Y. 201, 38 N.Y. (N.Y.S.) 201, 1868 N.Y. LEXIS 77 (N.Y. 1868).

Where the complaint is solely for equitable relief, and the action is tried as one in equity, the court on finding that plaintiff is not entitled to equitable relief, but that the facts would warrant an action for damages, cannot enter judgment therefor; defendant is entitled to an opportunity to a trial by jury on that ground of action. Wheelock v Lee, 74 N.Y. 495, 74 N.Y. (N.Y.S.) 495, 1878 N.Y. LEXIS 772 (N.Y. 1878).

A court of equity, having obtained jurisdiction of the parties and the subject matter of an action, may adapt its relief to the exigencies of the case; it may give to the plaintiff a money judgment simply, when that form of relief becomes necessary in order to prevent a failure of justice, and when it is for any reason impracticable to grant the specific equitable relief demanded. Valintine v Richardt, 126 N.Y. 272, 27 N.E. 255, 126 N.Y. (N.Y.S.) 272, 1891 N.Y. LEXIS 1632 (N.Y. 1891).

As to money judgment in action to set aside bill of sale as fraudulent, *Harrison v Obermeyer & Liebmann Brewing Co.*, 64 A.D. 499, 72 N.Y.S. 270, 1901 N.Y. App. Div. LEXIS 1838 (N.Y. App. Div. 1901).

When a judgment for a complaint demands an accounting, *Gee v Pendas*, 66 A.D. 566, 73 N.Y.S. 247, 1901 N.Y. App. Div. LEXIS 2449 (N.Y. App. Div. 1901).

Where the court has obtained jurisdiction of an equity action, it may give such relief as the facts proved require. *Nanny v Fancher*, 15 N.Y.S. 628, 60 Hun 586, 1891 N.Y. Misc. LEXIS 84 (N.Y. Sup. Ct. 1891).

42. —Relief not asked for in terms

The relief, being consistent with the case made by the complaint and embraced within the issue, can be granted although not specifically demanded by the complaint. *Beck v Allison*, 56 N.Y. 366, 56 N.Y. (N.Y.S.) 366, 1874 N.Y. LEXIS 131 (N.Y. 1874); *Benedict v Benedict*, 85 N.Y. 625, 85 N.Y. (N.Y.S.) 625, 1881 N.Y. LEXIS 140 (N.Y. 1881); *Marquat v Marquat*, 12 N.Y. 336, 12 N.Y. (N.Y.S.) 336, 1855 N.Y. LEXIS 16 (N.Y. 1855); *Post v West Shore R. Co.*, 3 N.Y.S. 172, 50 Hun 301, 1888 N.Y. Misc. LEXIS 536 (N.Y. Sup. Ct. 1888), modified, 123 N.Y. 580, 26 N.E. 7, 123 N.Y. (N.Y.S.) 580, 1890 N.Y. LEXIS 1767 (N.Y. 1890).

Relief may be granted, although not asked for in terms, when it is clearly equitable. *Hiscock v Harris*, 80 N.Y. 402, 80 N.Y. (N.Y.S.) 402, 1880 N.Y. LEXIS 111 (N.Y. 1880).

43. — —Damages

It is not material that the complaint did not demand the precise damages to which he was entitled or that he mistook the true rule of damages, he was entitled to whatever damages were recoverable for the wrong. *Colrick v Swinburne*, 105 N.Y. 503, 12 N.E. 427, 105 N.Y. (N.Y.S.) 503, 8 N.Y. St. 172, 1887 N.Y. LEXIS 742 (N.Y. 1887).

44. —Dismissal and nonsuit

A judgment granted defendant upon a motion for a dismissal of the complaint on the ground that plaintiff had failed to establish a cause of action is not a judgment of nonsuit but a judgment on the trial of the issues and a decision of the same on the merits. *Deeley v Heintz*, 169 N.Y. 129, 62 N.E. 158, 169 N.Y. (N.Y.S.) 129, 1901 N.Y. LEXIS 786 (N.Y. 1901).

Under CPA § 479, a judgment dismissing the complaint in an action in pursuance of a remittitur was not a bar to a subsequent action between the parties unless the judgment declared or it appeared from the judgment roll or the remittitur that the decision had been rendered on the merits. *Genet v President of Del. & H. Canal Co.*, 170 N.Y. 278, 63 N.E. 350, 170 N.Y. (N.Y.S.) 278, 1902 N.Y. LEXIS 1062 (N.Y. 1902).

A plea of former adjudication is fatally defective unless it alleges that the former judgment or decree was on the merits; the fact that the costs of a former action between the same parties and for the same subject matter have not been paid, does not deprive the court of jurisdiction when set in motion by the party resting under a stay. *Patchen v President, etc., of Delaware & H. Canal Co.*, 62 A.D. 543, 71 N.Y.S. 122, 1901 N.Y. App. Div. LEXIS 1295 (N.Y. App. Div. 1901).

A dismissal for nonjoinder of parties defendant should be without prejudice. *Duff v Gallo*, 64 A.D. 616, 72 N.Y.S. 156, 1901 N.Y. App. Div. LEXIS 1902 (N.Y. App. Div. 1901).

Where the decision was that the evidence was not sufficient to show a cause of action, the dismissal should not be upon the merits. *Grace v Fassott*, 67 A.D. 443, 73 N.Y.S. 906, 1902 N.Y. App. Div. LEXIS 1 (N.Y. App. Div. 1902).

Where a decision is in effect a nonsuit because of failure of proof, a judgment upon the merits is improper. *Weeks v Van Ness*, 104 A.D. 7, 93 N.Y.S. 337, 1905 N.Y. App. Div. LEXIS 1691 (N.Y. App. Div. 1905).

45. —Summary judgment

CPA § 479 was applicable on motion for summary judgment, that is, that, irrespective of relief demanded in complaint, plaintiff on such motion was entitled to judgment in accord with facts pleaded where there was no triable issue. *Renol Holding Corp. v Lankenau*, 116 N.Y.S.2d 861, 1952 N.Y. Misc. LEXIS 1969 (N.Y. Sup. Ct. 1952).

Amount due at time when motion was made for summary judgment, is amount which plaintiff should be granted. *Heitzmann v Fred Astaire Dance Studios Corp.*, 136 N.Y.S.2d 543, 1954 N.Y. Misc. LEXIS 3461 (N.Y. App. Term 1954).

46. —Particular actions and proceedings; accounting

Although a complaint was inartificially framed to compel an accounting, and the facts showed it was a case for an accounting, an accounting was adjudged upon the prayer for general relief. *Wood v Brown*, 34 N.Y. 337, 34 N.Y. (N.Y.S.) 337, 1866 N.Y. LEXIS 21 (N.Y. 1866), limited, *Burt v Burt*, 41 N.Y. 46, 41 N.Y. (N.Y.S.) 46, 1869 N.Y. LEXIS 225 (N.Y. 1869).

In an action by a salesman for compensation for services, he is entitled to a money judgment although the complaint demands an accounting. *Gee v Pendas*, 66 A.D. 566, 73 N.Y.S. 247, 1901 N.Y. App. Div. LEXIS 2449 (N.Y. App. Div. 1901).

Judgment in an action for an accounting under a commission contract held not to violate CPA § 479. *Stevens v Van Wagoner-Linn Const. Co.*, 165 A.D. 44, 150 N.Y.S. 502, 1914 N.Y. App. Div. LEXIS 8535 (N.Y. App. Div. 1914), app. dismissed, 215 N.Y. 713, 109 N.E. 1093, 215 N.Y. (N.Y.S.) 713, 1915 N.Y. LEXIS 1150 (N.Y. 1915).

A receiver of partnership assets may be appointed on the report of referee appointed to hear and determine an action of accounting between partners, although the complaint did not ask the appointment of a receiver. *Smith v Fitchett*, 2 N.Y.S. 261, 1888 N.Y. Misc. LEXIS 133 (N.Y. Sup. Ct. 1888), *aff'd*, 10 N.Y.S. 459, 56 Hun 473, 1890 N.Y. Misc. LEXIS 2169 (N.Y. Sup. Ct. 1890).

47. — —Bail bond; action against sureties

That a judgment by default upon a bail bond exceeds the amount of the bond does not void the judgment, but the excess should be credited so as to prevent abuse of process. *Bode v Maiberger*.

48. — —Conversion

In an action for conversion of a promissory note sounding in tort, it is too late after appeal to amend the complaint, and a recovery cannot be had as for money had and received. *Walter v Bennett*, 16 N.Y. 250, 16 N.Y. (N.Y.S.) 250, 1857 N.Y. LEXIS 64 (N.Y. 1857); *Gordon v Hostetter*, 37 N.Y. 99, 37 N.Y. (N.Y.S.) 99, 1867 N.Y. LEXIS 111 (N.Y. 1867).

A recovery will be authorized for a cause of action on contract, although the summons was for relief and the complaint for a conversion. *Conaughty v Nichols*, 42 N.Y. 83, 42 N.Y. (N.Y.S.) 83, 1870 N.Y. LEXIS 24 (N.Y. 1870); *Austin v Rawdon*, 44 N.Y. 63, 44 N.Y. (N.Y.S.) 63, 1870 N.Y. LEXIS 127 (N.Y. 1870); *Ross v Mather*, 51 N.Y. 108, 51 N.Y. (N.Y.S.) 108, 1872 N.Y. LEXIS 544 (N.Y. 1872); *Ledwich v McKim*, 53 N.Y. 307, 53 N.Y. (N.Y.S.) 307, 1873 N.Y. LEXIS 400 (N.Y. 1873); *Dudley v Scranton*, 57 N.Y. 424, 57 N.Y. (N.Y.S.) 424, 1874 N.Y. LEXIS 301 (N.Y. 1874); and see *Knapp v Roche*, 62 N.Y. 614, 62 N.Y. (N.Y.S.) 614, 1875 N.Y. LEXIS 557 (N.Y. 1875).

49. — —Divorce

Where an action for divorce is commenced by the service upon defendant of a summons alone, and he neglects to appear therein, the judgment may award final alimony, if demanded in the complaint, without any notice being given to him of the application to be made therefor. *Park v Park*, 80 N.Y. 156, 80 N.Y. (N.Y.S.) 156, 1880 N.Y. LEXIS 78 (N.Y. 1880).

In wife's action to restrain husband from prosecuting action in foreign state for divorce, court cannot, where defendant defaulted, amend pleadings at inquest to conform to proof. *Sivakoff v*

Sivakoff, 280 A.D. 106, 111 N.Y.S.2d 864, 1952 N.Y. App. Div. LEXIS 3402 (N.Y. App. Div. 1952).

50. — —Fraud

That a complaint alleges fraudulent representations, by which plaintiff was induced to pay money, and which he seeks to recover back, does not necessarily make the action one in tort, and plaintiff may recover as for money received to his use without any proof of fraud. *Byxbie v Wood*, 24 N.Y. 607, 24 N.Y. (N.Y.S.) 607, 1862 N.Y. LEXIS 105 (N.Y. 1862).

Although mere allegations of fraud do not render the action one ex delicto, the whole complaint must be considered. *Ledwich v McKim*, 53 N.Y. 307, 53 N.Y. (N.Y.S.) 307, 1873 N.Y. LEXIS 400 (N.Y. 1873).

Where fraud is the basis of the complaint, a recovery cannot be had on a contract. *Graves v Waite*, 59 N.Y. 156, 59 N.Y. (N.Y.S.) 156, 1874 N.Y. LEXIS 396 (N.Y. 1874); *Barnes v Quigley*, 59 N.Y. 265, 59 N.Y. (N.Y.S.) 265, 1874 N.Y. LEXIS 413 (N.Y. 1874).

After failing to establish the fraud upon the trial, the plaintiff cannot turn the action into one on contract. *James v Cowing*, 4 N.Y. St. 73 (1889).

Where the allegation of the complaint is an injury inflicted on plaintiff by a fraudulent combination of defendants, plaintiff must prove the fraud or fail in his action. *Train v Taylor*, 4 N.Y.S. 492, 51 Hun 215, 1889 N.Y. Misc. LEXIS 1565 (N.Y. App. Term 1889).

51. — —Fraudulent conveyances

In an action by the receiver of a corporation, to set aside as fraudulent a judgment against the corporation, in which an answer was interposed. Held, that the court having acquired jurisdiction of the cause of action and of the parties, had authority not only to vacate the judgment, but to pass upon and finally dispose of the defendant's claim. *Whittlesey v Delaney*, 73 N.Y. 571, 73 N.Y. (N.Y.S.) 571, 1878 N.Y. LEXIS 652 (N.Y. 1878).

In an equitable action to set aside a bill of sale as fraudulent as to creditors, a money judgment could not be granted under CPA § 479 where no such relief was demanded in the complaint. *Harrison v Obermeyer & Liebmann Brewing Co.*, 64 A.D. 499, 72 N.Y.S. 270, 1901 N.Y. App. Div. LEXIS 1838 (N.Y. App. Div. 1901).

A decree denying support to a wife is not a bar to an action to set aside the judgment on the ground of fraud. *Everett v Everett*, 75 A.D. 369, 78 N.Y.S. 193, 1902 N.Y. App. Div. LEXIS 2165 (N.Y. App. Div. 1902).

In action by judgment creditor to set aside chattel mortgage given by corporation to director, where value of property transferred was not alleged or proven, personal judgment could not be taken against the director for amount of plaintiff's judgment, in view of Stock Corp Law, § 66. *Doti v Henderson*, 177 N.Y.S. 736, 107 Misc. 533, 1919 N.Y. Misc. LEXIS 1006 (N.Y. Sup. Ct. 1919).

52. — —Landlord and tenant; leases

In an action for the renewal of a lease to entitle defendant to a judgment for the rents which had accrued during the litigation, the demand for them should have been set forth in an answer by way of counterclaim. *Mullenbrinck v Pooler*, 4 N.Y. St. 127.

53. — —Life tenant; receivership

In an action to recover from life tenant, on account of taxes paid by plaintiff remaindermen after failure of the life tenant to pay same, held that plaintiffs were entitled to the appointment of a receiver of the life estate to collect the rents, issues and profits thereof and apply the proceeds to the payment of taxes due and unpaid, taxes theretofore paid by the plaintiffs, and future taxes unless paid by the defendant life tenant. *Keeley v Clark*, 211 N.Y.S. 391, 125 Misc. 541, 1925 N.Y. Misc. LEXIS 923 (N.Y. Sup. Ct. 1925).

54. — —Mechanic's lien; enforcement, foreclosure

In action for foreclosure of mechanic's lien and other equitable relief, personal money judgment for amount of lien was improper. *Nelson v Schrank*, 273 A.D. 72, 75 N.Y.S.2d 761, 1947 N.Y. App. Div. LEXIS 2932 (N.Y. App. Div. 1947).

Where owner may be held personally liable in an action for foreclosure of a mechanic's lien. *Richardson & Boynton Co. v Reid*, 3 N.Y.S. 224, 50 Hun 606, 1888 N.Y. Misc. LEXIS 560 (N.Y. Sup. Ct. 1888); *Lawson v Reilly*, 13 Civ Proc .

55. — —Mortgage; enforcement, foreclosure

An amendment of a judgment of foreclosure, in an action in which the mortgage trustee was made a party but did not answer, by directing such trustee to convey to the purchaser at the sale, is at most voidable and not void, and disobedience thereof by the trustee is ground for his removal. *Harrison v Union Trust Co.*, 144 N.Y. 326, 39 N.E. 353, 144 N.Y. (N.Y.S.) 326, 1895 N.Y. LEXIS 533 (N.Y. 1895).

A judgment declaring a junior mortgage a prior lien on a fund, left over after sale on a first mortgage, as against defaulting mechanic's lien claimants, was not more favorable than demanded by a complaint seeking foreclosure as against the owners and the lien claimants. *Hookey v Greenstein*, 119 A.D. 209, 104 N.Y.S. 621, 1907 N.Y. App. Div. LEXIS 3911 (N.Y. App. Div. 1907).

In action to foreclose mortgage as against owner of redemption, plaintiff who sought foreclosure and sale of mortgaged premises, could not, without notice to owner, get more favorable judgment than was justified by complaint, and where complaint omitted reference to its own subordinate liens, plaintiff could not save same from being cut off by sale, though judgment as entered preserved such liens. *C. G. Swackhamer, Inc. v P. F. L. Constr. Corp.*, 285 A.D. 841, 137 N.Y.S.2d 209, 1955 N.Y. App. Div. LEXIS 5751 (N.Y. App. Div. 1955).

In an action to foreclose a mortgage, wherein the complaint contains no demand for judgment, a deficiency judgment entered upon sale of the mortgaged premises is void. *Manhattan Beach Co. v Bonner*, 205 N.Y.S. 639, 123 Misc. 441, 1924 N.Y. Misc. LEXIS 976 (N.Y. Sup. Ct. 1924).

56. — —Negotiable instruments

In an action on a note, the fact that judgment for the full amount of the indebtedness was more favorable to the plaintiff than that demanded in the complaint did not preclude the court from rendering such judgment. *Title Guarantee & Trust Co. v Nessel*, 296 N.Y.S. 270, 163 Misc. 577, 1937 N.Y. Misc. LEXIS 1276 (N.Y. Sup. Ct. 1937).

In an action to restrain a bank from paying a check drawn upon partnership funds on deposit in the name of one of the partners, the interest of the said partner having been transferred to the plaintiffs by an assignment of all his interest in the partnership, in which action the drawer and drawee of the check were made defendants, plaintiffs could not have judgment against the said partner for the amount of the check under CPA § 479, no cause of action therefor having been alleged in the complaint. *Adams v McCann*, 13 N.Y.S. 424, 59 N.Y. Super. Ct. 59, 1891 N.Y. Misc. LEXIS 1152 (N.Y. Super. Ct. 1891).

57. — —Partnership litigation

Where the complaint alleges a partnership and asks for an accounting, if the plaintiff fails to establish the partnership he will not be entitled to the accounting. *Salter v Ham*, 31 N.Y. 321, 31 N.Y. (N.Y.S.) 321, 1865 N.Y. LEXIS 41 (N.Y. 1865); but see *Emery v Pease*, 20 N.Y. 62, 20 N.Y. (N.Y.S.) 62, 1859 N.Y. LEXIS 158 (N.Y. 1859).

Complaint in action by assignee of retiring partner against continuing partners to recover agreed annual payments and to have judgment decreed lien on plaintiffs for amount due, held not to state a cause of action in law. *Low v Swartwout*, 171 A.D. 725, 157 N.Y.S. 1067, 1916 N.Y. App. Div. LEXIS 5377, 1916 N.Y. App. Div. LEXIS 9737 (N.Y. App. Div. 1916).

58. — —Party wall; enforcement of rights in

Where, under a parol agreement between two owners of adjoining lots for the building of a party wall, one of the owners completes his part, and the other refuses to proceed, the first may finish the wall and recover from the other one-half the cost, this being not purely an action at law for the breach of the parol contract, but for money by way of performance. *Rindge v Baker*, 57 N.Y. 209, 57 N.Y. (N.Y.S.) 209, 1874 N.Y. LEXIS 282 (N.Y. 1874).

59. — —Rescission

Where a contract is sought to be rescinded on the ground of fraud, a rescission cannot be asked on the ground of mutual mistake. *Bruce v Burr*, 67 N.Y. 237, 67 N.Y. (N.Y.S.) 237, 1876 N.Y. LEXIS 377 (N.Y. 1876).

The fact that the plaintiff, in an action to rescind contract for fraud demanded more than that to which he was entitled was not important under CPA § 479, because the defendant interposed an answer, denying the allegations of the complaint and pleading ratification and waiver by the plaintiff of any right to rescind or to recover damages. *Davis v William Rosenzweig Realty Operating Co.*, 192 N.Y. 128, 84 N.E. 943, 192 N.Y. (N.Y.S.) 128, 1908 N.Y. LEXIS 861 (N.Y. 1908).

60. — —Reformation

The court having jurisdiction of an action to reform a contract may give judgment for any damages proved for breach of the contract. *Bidwell & Banta v Astor Mut. Ins. Co.*, 16 N.Y. 263, 16 N.Y. (N.Y.S.) 263, 1857 N.Y. LEXIS 67 (N.Y. 1857); but see *Coleman v Second A. R. Co.*, 38 N.Y. 201, 38 N.Y. (N.Y.S.) 201, 1868 N.Y. LEXIS 77 (N.Y. 1868); *Beck v Village of Rondout*, 15 Abb. Pr. 48, 1862 N.Y. Misc. LEXIS 109 (N.Y. Sup. Ct. Nov. 1, 1862).

61. — —Replevin

A recovery cannot exceed the amount demanded in complaint. *Michalowski v Ey*, 8 A.D.2d 854, 190 N.Y.S.2d 535, 1959 N.Y. App. Div. LEXIS 7753 (N.Y. App. Div. 2d Dep't), aff'd, 7 N.Y.2d 71, 195 N.Y.S.2d 633, 163 N.E.2d 863, 1959 N.Y. LEXIS 875 (N.Y. 1959).

The amount of money demanded in a replevin action is not conclusive on this point. If an answer were put in, a greater amount could be recovered. *Thompson v Fuller*, 16 N.Y.S. 486, 62 Hun 618, 1891 N.Y. Misc. LEXIS 2079 (N.Y. Sup. Ct. 1891).

62. — —Sales

Verdict directed for plaintiff for amount found due and owing him for goods sold and delivered. *Bloom v Wiener*, 239 N.Y.S. 574, 135 Misc. 757, 1930 N.Y. Misc. LEXIS 997 (N.Y. City Ct. 1930).

63. — —Specific performance

In a case for specific performance and in default, compensation in damages is consistent with relief in damages merely. *Greason v Keteltas*, 17 N.Y. 491, 17 N.Y. (N.Y.S.) 491, 1858 N.Y. LEXIS 90 (N.Y. 1858); *Barlow v Scott*, 24 N.Y. 40, 24 N.Y. (N.Y.S.) 40, 1861 N.Y. LEXIS 88 (N.Y. 1861); *Marquat v Marquat*, 12 N.Y. 336, 12 N.Y. (N.Y.S.) 336, 1855 N.Y. LEXIS 16 (N.Y. 1855).

Where defendant cannot make title to all the property, the court may decree performance to so much as he may be able to make title to; and it may be decreed though not asked for in the original complaint, but it must be asked for at the trial. *Mills v Van Voorhies*, 20 N.Y. 412, 20 N.Y. (N.Y.S.) 412, 1859 N.Y. LEXIS 210 (N.Y. 1859).

Where the court has no power to order specific performance of an agreement to repair in a lease. Held, that the action might be continued with proper amendments of complaint for damages for failure to repair, and a jury trial be had. *Beck v Allison*, 56 N.Y. 366, 56 N.Y. (N.Y.S.) 366, 1874 N.Y. LEXIS 131 (N.Y. 1874).

Complaint for specific performance of contract to sell realty will not be held insufficient where it states facts sufficient to support equitable relief by way of vendee's lien. *Rait v Netlee Const. Corp.*, 283 A.D. 1099, 132 N.Y.S.2d 59, 1954 N.Y. App. Div. LEXIS 6425 (N.Y. App. Div. 1954).

The complaint in an action for specific performance of an agreement between heirs to share the real estate equally, in consideration of an agreement by a part of them not to contest the will, must allege that there was no contest. *Strong v Strong*, 32 N.Y.S. 349, 84 Hun 314 (1895).

64. — —Torts generally; negligence

Recovery for money had and received denied in action for conversion of note, *Walter v Bennett*, 16 N.Y. 250, 16 N.Y. (N.Y.S.) 250, 1857 N.Y. LEXIS 64 (N.Y. 1857); *Gordon v Hostetter*, 37 N.Y. 99, 37 N.Y. (N.Y.S.) 99, 1867 N.Y. LEXIS 111 (N.Y. 1867).

But upon a cause of action laid in tort plaintiff cannot recover on a contract. *Degraw v Elmore*, 50 N.Y. 1, 50 N.Y. (N.Y.S.) 1, 1872 N.Y. LEXIS 378 (N.Y. 1872).

Demand in complaint in action for negligent injuries for "such sums of money as facts will warrant" was insufficient, since specific sum of money must be stated so that defendant may, if he so desires, pay such sum. *Geisler v Rutkowski*, 29 N.Y.S.2d 1001, 177 Misc. 284, 1941 N.Y. Misc. LEXIS 2201 (N.Y. Sup. Ct. 1941).

Where the complaint sets forth a cause of action sounding in tort, no recovery can be had upon an implied assumpsit unless the tort is expressly waived. *Allen v Allen*, 2 N.Y.S. 566, 1888 N.Y. Misc. LEXIS 831 (N.Y. Sup. Ct. 1888), *aff'd*, 5 N.Y.S. 518, 52 Hun 398, 1889 N.Y. Misc. LEXIS 2495 (N.Y. Sup. Ct. 1889).

Where in an action for maliciously cutting and taking away sod from the plaintiff's land, in violation of the statute (Laws 1877, ch 451), the plaintiff failed to prove that the acts were maliciously done, and was not entitled to recover within the statute, but might recover. *Stilwell v Zinsser*, 6 N.Y. St. 10.

65. — —Trespass

In an action for trespass on land and cutting timber thereon, a verdict that defendant did not cut timber and that the plaintiff owned the land does not sustain a judgment that defendant be barred of all claim to the land and that the plaintiff have costs. *Hill v McMahon*, 81 A.D. 324, 81 N.Y.S. 431, 1903 N.Y. App. Div. LEXIS 892 (N.Y. App. Div. 1903).

Plaintiffs not entitled to recover in an action to restrain defendant from laying a railway on the street in front of plaintiffs' land, upon the theory that defendant was a trespasser upon the interest which plaintiffs had in the public street. *Benedict v Seventh W. R. Co.*, 5 N.Y.S. 406, 51 Hun 111, 1889 N.Y. Misc. LEXIS 3007 (N.Y. Sup. Ct. 1889).

66. — —Trusts and trustees

The final determination of the appellate division on appeal from the decision of the surrogate, as to the liability of a trustee for funds misappropriated by his cotrustee, is *res adjudicata* and binding upon the referee and the supreme court, in an action subsequently brought therein to remove the trustees and to charge the interest of one of them in the trust estate with the amount of the defalcation. *Westerfield v Rogers*, 174 N.Y. 230, 66 N.E. 813, 174 N.Y. (N.Y.S.) 230, 1903 N.Y. LEXIS 1324 (N.Y. 1903).

A judgment of the supreme court which assumed to bestow upon retiring trustees of a terminated trust a continuing faculty as testamentary trustees for an indefinite duration was in contravention of CPA § 479. *In re Miller's Will*, 257 N.Y. 349, 178 N.E. 555, 257 N.Y. (N.Y.S.) 349, 1931 N.Y. LEXIS 862 (N.Y. 1931).

67. Mistake in remedy demanded; generally

Court had power to correct by amendment all defects in matters of procedure in assessment. *People ex rel. Gleason v Purdy*, 223 N.Y. 88, 119 N.E. 249, 223 N.Y. (N.Y.S.) 88, 1918 N.Y. LEXIS 1160 (N.Y. 1918).

Paragraphs of complaint disregarded as surplusage or mistake in remedy. *Winter v American Aniline Products, Inc.*, 236 N.Y. 199, 140 N.E. 561, 236 N.Y. (N.Y.S.) 199, 1923 N.Y. LEXIS 875 (N.Y. 1923).

Mistake in remedy was not ground for dismissing complaint, as it could have been corrected under CPA § 111. *Pattison v Pattison*, 301 N.Y. 65, 92 N.E.2d 890, 301 N.Y. (N.Y.S.) 65, 1950 N.Y. LEXIS 830 (N.Y. 1950).

Amendment of answer granted pursuant to CPA § 111. *Kaplan v Girard Fire & Marine Ins. Co.*, 238 A.D. 577, 266 N.Y.S. 226, 1933 N.Y. App. Div. LEXIS 9557 (N.Y. App. Div. 1933).

Substitution as relator of successor to landowner who instituted certiorari to review special assessment for sewer was barred by laches where successor delayed action for 9 years after institution of proceeding. *Max L. Reben Realty Corp. v Common Council of Kingston*, 261 A.D. 641, 27 N.Y.S.2d 674, 1941 N.Y. App. Div. LEXIS 7400 (N.Y. App. Div. 1941).

Claim against State: failure to file printed, instead of typewritten copies of claim, was not jurisdictional defect, and was disregarded. *Harvey Chalmers & Son, Inc. v State*, 271 A.D. 699, 68 N.Y.S.2d 827, 1947 N.Y. App. Div. LEXIS 5125 (N.Y. App. Div.), *aff'd*, 297 N.Y. 690, 77 N.E.2d 8, 297 N.Y. (N.Y.S.) 690, 1947 N.Y. LEXIS 1154 (N.Y. 1947).

CPA § 111 made it the duty of the court to disregard a mistaken prayer for relief and all formal defects in a pleading before or after judgment, and to administer the proper relief if it had jurisdiction on any statements of facts properly pleaded and proved. *Small v Kronstat*, 24 N.Y.S.2d 535, 175 Misc. 626, 1940 N.Y. Misc. LEXIS 2510 (N.Y. Sup. Ct. 1940).

Action against executor's attorney for fraudulently inducing plaintiff to release interest in estate was not barred by surrogate's decree that plaintiff was barred by such release from demanding executor to account. *Davies v Stumpf*, 39 N.Y.S.2d 75, 179 Misc. 401, 1942 N.Y. Misc. LEXIS 2297 (N.Y. Sup. Ct. 1942), *aff'd*, 266 A.D. 732, 41 N.Y.S.2d 949, 1943 N.Y. App. Div. LEXIS 4165 (N.Y. App. Div. 1943).

Where negligence action had been commenced within time limited therefor, plaintiff was permitted to serve amended complaint and amended bill of particulars after expiration of statutory period, where no additional claims were advanced, and amendment sought only to amplify claim already pleaded and worked no prejudice on defendant. *Weitz v Consolidated Edison Co.*, 21 Misc. 2d 932, 198 N.Y.S.2d 351, 1960 N.Y. Misc. LEXIS 3668 (N.Y. Sup. Ct. 1960).

Complaint is merely procedural step in bringing dispute before court for decision, and justice requires that facts should control and not technical omissions on part of pleader. *Breuer v Treffinger*, 143 N.Y.S.2d 488, 1955 N.Y. Misc. LEXIS 2864 (N.Y. Sup. Ct. 1955).

An amendment which merely amplifies the cause of action, will be permitted even though the statute of limitations has run between the commencement of the action and the amendment. *Breuer v Treffinger*, 143 N.Y.S.2d 488, 1955 N.Y. Misc. LEXIS 2864 (N.Y. Sup. Ct. 1955); *Weitz v Consolidated Edison Co.*, 21 Misc. 2d 932, 198 N.Y.S.2d 351, 1960 N.Y. Misc. LEXIS 3668 (N.Y. Sup. Ct. 1960).

68. —Application of section

Action upon burglary insurance policy may be so amended by consent of the justice as to apply to the preliminary policy or “binder.” *Sherri v National Surety Co.*, 243 N.Y. 266, 153 N.E. 70, 243 N.Y. (N.Y.S.) 266, 1926 N.Y. LEXIS 750 (N.Y. 1926).

Action for rescission of an oil lease purchase contract, commenced in New York, is the election of a remedy, and not the later action, begun in Missouri, for the purchase price. *Clark v Kirby*, 243 N.Y. 295, 153 N.E. 79, 243 N.Y. (N.Y.S.) 295, 1926 N.Y. LEXIS 753 (N.Y. 1926).

A plaintiff who had sued for rescission of a contract was permitted at the trial to amend his complaint and ask for damages inasmuch as rescission was an ineffectual remedy and the defendant was not surprised or prejudiced by the amendment. *Urdang v Posner*, 220 A.D. 609,

222 N.Y.S. 396, 1927 N.Y. App. Div. LEXIS 9372 (N.Y. App. Div. 1927), *aff'd*, 247 N.Y. 565, 161 N.E. 184, 247 N.Y. (N.Y.S.) 565, 1928 N.Y. LEXIS 1158 (N.Y. 1928).

Application in action by note holders to impress lien upon earnings of street railway company, wherein complaint failed to show grounds for equitable relief. *Fidelity Trust Co. v International R. Co.*, 193 N.Y.S. 726, 118 Misc. 227, 1922 N.Y. Misc. LEXIS 1155 (N.Y. Sup. Ct. 1922).

Where the income from a trust fund, payable to a husband and wife, was in part unexpended and remained on deposit in the name of the wife at the time of her death, and likewise so remained at the death of the husband, and the husband's administrators sued the defendant as depositary of the fund to recover their intestate's interest therein, while the defendant resisted payment on the ground that as executor of the wife's estate it had title to the whole fund, or in the alternative that in its capacity as trustee of the fund it could be held accountable only in an equitable proceeding, held that in view of this section, all the facts being disclosed and all the parties before the court, it was within the power of the court to determine the capacity in which the defendant should be sued, and to apply the appropriate remedy. *Bruff v Rochester Trust & Safe Deposit Co.*, 193 N.Y.S. 321, 118 Misc. 394, 1922 N.Y. Misc. LEXIS 1092 (N.Y. Sup. Ct. 1922).

Where widow's letters of administration were revoked for infancy and her guardian substituted as administratrix, she was entitled to substitution of such administratrix as plaintiff in action for death, not *nunc pro tunc* but as of present time. *Walthour v Public Service Interstate Transp. Co.*, 109 N.Y.S.2d 10, 201 Misc. 999, 1951 N.Y. Misc. LEXIS 2621 (N.Y. Sup. Ct. 1951), *rev'd*, 280 A.D. 818, 113 N.Y.S.2d 764, 1952 N.Y. App. Div. LEXIS 3805 (N.Y. App. Div. 1952).

Where plaintiff enters judgment on contract, and moves to vacate it because he had done so by mistake and further moves for permission to put in proof of the allegations of conversion alleged in the complaint, plaintiff should be granted such relief only upon showing a reasonable excuse for the error, and a meritorious cause of action in conversion. *Onondaga Provident Loan Ass'n v Holmes*, 24 Misc. 2d 971, 205 N.Y.S.2d 743, 1960 N.Y. Misc. LEXIS 2833 (N.Y. Sup. Ct. 1960).

In view of the fact that CPA §§ 105 (§§ 2001, 3025(b), Rule 305(c), 2101(f) herein) and 111 were expressly made applicable to actions pending on October 1, 1921, the court had power, where a party to an action so pending, had mistakenly given notice for examination before trial under former CPA §§ 288–290 (§§ 3101(a), 3102(b), Rule 3106(a), 3107, 3109, 3211 herein) without first having obtained an order of court in that behalf, to disregard the error and make an order for such examination under former CPA § 292 (Rule 3105, 3106(a) herein) if such course appeared in the interest of justice. *Columbus Trust Co. v Upper H. E. & R. Co.*, 190 N.Y.S. 737, 1921 N.Y. Misc. LEXIS 1799 (N.Y. Sup. Ct. 1921).

Where plaintiff sues in a representative capacity he cannot have a personal judgment unless he asks for it and the proofs sustain it. *MacLeod v Miller*, 201 N.Y.S. 108, 1923 N.Y. Misc. LEXIS 1208 (N.Y. Sup. Ct. 1923).

Where there has been misnomer and real party plaintiff is party who is suing, changing allegation that plaintiff is corporation to legal entity was allowed. *Bata, Nat'l Corp. v Bata Shoe Co.*, 86 N.Y.S.2d 587, 1949 N.Y. Misc. LEXIS 1802 (N.Y. Sup. Ct. 1949), *aff'd*, 276 A.D. 896, 94 N.Y.S.2d 819, 1950 N.Y. App. Div. LEXIS 5020 (N.Y. App. Div. 1950).

69. —Erroneous commencement of special proceeding

The erroneous commencement of a special proceeding to reform a deed of trust by presentation of an affidavit in lieu of a suit in equity could not be disregarded under CPA § 111. In *re Federman*, 267 N.Y.S. 126, 149 Misc. 4, 1933 N.Y. Misc. LEXIS 1652 (N.Y. Sup. Ct. 1933).

70. —Change from statutory to common law cause of action

CPA § 111 was of no avail to plaintiff where his original complaint counted on a federal statute and an amendment was filed setting up a common-law cause of action against which the statute of the state had run. *D'Allesandro v United Marine Contracting Corp.*, 30 F.2d 718, 1928 U.S. Dist. LEXIS 1693 (D.N.Y. 1928).

71. —Remedy justified by evidence

Where the appropriate remedy upon the facts alleged was different from the relief asked for in the pleading, case was remitted in order that appropriate relief might be granted on the facts and judgment dismissing the complaint was reversed. *Boissevain v Boissevain*, 252 N.Y. 178, 169 N.E. 130, 252 N.Y. (N.Y.S.) 178, 1929 N.Y. LEXIS 542 (N.Y. 1929).

Action before court on equity side to rescind contract for sale of stock is improperly dismissed on the ground that complaint sets up claim of agency between the parties where the evidence establishes a fiduciary relation between the parties and the proof warrants a finding that the relation was that of purchaser and seller and that the sale was effected by fraudulent representations, as, in such case, the court should have granted relief in the form of such a judgment as the evidence warranted. *Amberg v Allen*, 207 A.D. 571, 202 N.Y.S. 29, 1923 N.Y. App. Div. LEXIS 5982 (N.Y. App. Div. 1923).

Where the facts alleged in a complaint, so far as material, correspond with those proven on the trial, in equity the complaint will be regarded as amended to conform to the evidence, and that relief will be awarded to which the plaintiff is entitled under the proofs, notwithstanding a different form of judgment is sought by the complaint. *Newton v Millard*, 193 N.Y.S. 567, 118 Misc. 93, 1922 N.Y. Misc. LEXIS 1131 (N.Y. Sup. Ct. 1922), *aff'd*, 205 A.D. 854, 198 N.Y.S. 935, 1923 N.Y. App. Div. LEXIS 5413 (N.Y. App. Div. 1923).

72. —Remedy at law or in equity

The objection that a plaintiff in equity cannot maintain his action because he has an adequate remedy at law should be taken by answer, and will not be considered where raised for the first time at the trial, as by motion to dismiss at the close of plaintiff's case. *Durant v Whedon*, 201 A.D. 196, 194 N.Y.S. 126, 1922 N.Y. App. Div. LEXIS 6285 (N.Y. App. Div. 1922).

That remedy is sought in law when the proper relief is in equity does not warrant dismissal of the complaint. *Moore v Bonbright & Co.*, 202 A.D. 281, 195 N.Y.S. 854, 1922 N.Y. App. Div. LEXIS 4894 (N.Y. App. Div. 1922).

Dismissal on the merits of an action in equity is no bar to an action at law, the cause of action being necessarily different. *Pacific Southwest Trust & Sav. Bank v Hyman*, 221 A.D. 16, 222 N.Y.S. 756, 1927 N.Y. App. Div. LEXIS 6361 (N.Y. App. Div. 1927).

A defendant is entitled in an action at law to the benefit of findings of fact made in a previously dismissed action in equity regarding the same subject matter. *Pacific Southwest Trust & Sav. Bank v Hyman*, 221 A.D. 16, 222 N.Y.S. 756, 1927 N.Y. App. Div. LEXIS 6361 (N.Y. App. Div. 1927).

In action for reformation of written contract and for damages for breach, court may deny reformation and yet grant money judgment. *Atlantic Metal Products, Inc. v Minskoff*, 267 A.D. 1002, 48 N.Y.S.2d 436, 1944 N.Y. App. Div. LEXIS 6011 (N.Y. App. Div. 1944), *aff'd*, 295 N.Y. 566, 64 N.E.2d 277, 295 N.Y. (N.Y.S.) 566, 1945 N.Y. LEXIS 1169 (N.Y. 1945).

Complaint for specific performance of contract to sell realty will not be held insufficient where it states facts sufficient to support equitable relief by way of vendee's lien. *Rait v Netlee Const. Corp.*, 283 A.D. 1099, 132 N.Y.S.2d 59, 1954 N.Y. App. Div. LEXIS 6425 (N.Y. App. Div. 1954).

Plaintiff should not be required to change from an action at law to one of equity on a note against one of two joint makers after the death of one, when this would involve his getting a representative appointed for the decedent's estate which is insolvent. *First Nat'l Bank v Knickerbocker*, 214 N.Y.S. 465, 126 Misc. 467, 1926 N.Y. Misc. LEXIS 645 (N.Y. Sup. Ct. 1926).

Where prayer in plaintiff's complaint is limited to demand for money judgment, pleadings in action in nature of creditor's bill should be conformed to proof and plaintiff awarded relief to which he is entitled. *Brown Packing Co. v Lewis*, 58 N.Y.S.2d 443, 185 Misc. 445, 1943 N.Y. Misc. LEXIS 1491 (N.Y. Sup. Ct. 1943).

An objection that a complaint was improperly framed in equity made after answer was untimely. *Moen v Thompson*, 61 N.Y.S.2d 257, 186 Misc. 647, 1946 N.Y. Misc. LEXIS 2023 (N.Y. Sup. Ct. 1946).

Complaint alleging that plaintiff advanced down payments on purchase price of realty, which defendant agreed to refund on resale, and that defendants diverted proceeds of resales to their own personal use, states sufficient facts to entitle plaintiff to some relief in law or equity. *Le Boyer v Steinleger*, 131 N.Y.S.2d 847, 1954 N.Y. Misc. LEXIS 3368 (N.Y. Sup. Ct. 1954).

73. —Mandamus; certiorari

A contention that certiorari did not lie to review a determination of the medical board of the New York State Employees' Retirement System for the reason that the determination was not final might be disregarded under CPA § 111. *Nash v Brooks*, 276 N.Y. 75, 11 N.E.2d 545, 276 N.Y. (N.Y.S.) 75, 1937 N.Y. LEXIS 1034 (N.Y. 1937).

Where the Teachers' Retirement Board has taken no action on a teacher's application for retirement a mandamus order will issue requiring the Board to make an order of retirement, in a proper case, although petitioner's application is for a certiorari order to review the action of the Board in failing to retire her. *O'Brien v New York State Teachers' Retirement Board*, 215 A.D. 220, 213 N.Y.S. 738, 1926 N.Y. App. Div. LEXIS 10940 (N.Y. App. Div.), *aff'd*, 244 N.Y. 530, 155 N.E. 884, 244 N.Y. (N.Y.S.) 530, 1926 N.Y. LEXIS 685 (N.Y. 1926).

The appraisal of tubercular cattle by the Commissioner of Farms and Markets is not final; and on an appeal from an order denying an application for an order of mandamus to compel the Commissioner to award an amount greater than the appraisal, the papers being complete, the court may treat the appeal as a certiorari proceeding to review the determination of the Commissioner. *In re Beckley*, 218 A.D. 352, 218 N.Y.S. 329, 1926 N.Y. App. Div. LEXIS 5933 (N.Y. App. Div. 1926), *aff'd*, 245 N.Y. 541, 157 N.E. 850, 245 N.Y. (N.Y.S.) 541, 1927 N.Y. LEXIS 698 (N.Y. 1927).

An error in granting a writ of certiorari instead of an order may be disregarded. *People ex rel. Staten I. R. T. R. Co. v Taylor*, 247 A.D. 405, 287 N.Y.S. 456, 1936 N.Y. App. Div. LEXIS 8278 (N.Y. App. Div. 1936).

Petition for certiorari order to review sewer assessment changed to writ of certiorari, and all other papers deemed amended accordingly. *New York C. R. Co. v Limburg*, 261 A.D. 562, 26 N.Y.S.2d 321, 1941 N.Y. App. Div. LEXIS 7381 (N.Y. App. Div.), app. denied, 262 A.D. 746, 28 N.Y.S.2d 156, 1941 N.Y. App. Div. LEXIS 5714 (N.Y. App. Div. 1941), app. dismissed, 286 N.Y. 605, 35 N.E.2d 942, 286 N.Y. (N.Y.S.) 605, 1941 N.Y. LEXIS 2152 (N.Y. 1941).

In proceeding for order annulling petitioner's removal as civil service commissioner, court on its own motion brought in substituted appointee. *Hall v Scanlon*, 35 N.Y.S.2d 697, 1942 N.Y. Misc. LEXIS 1701 (N.Y. Sup. Ct. 1942).

74. —Ad damnum clause

Permitting amendment of complaint on eve of trial to increase damages was an abuse of discretion where plaintiff was guilty of inordinate laches and where defendant was likely to be prejudiced on its cross-claim for indemnity as result of such amendment. *Cox v New York Tel. Co.*, 10 A.D.2d 565, 195 N.Y.S.2d 537, 1960 N.Y. App. Div. LEXIS 12018 (N.Y. App. Div. 1st Dep't 1960).

Court permitted plaintiff to amend complaint, ten years after occurrence, to increase ad damnum clause from \$50,000 to \$100,000 where injuries indicated, if causally connected with the negligence or malpractice charged, were of such grievous nature as to justify a plea to jury for higher award. *Reardon v Heaver*, 21 Misc. 2d 230, 195 N.Y.S.2d 889, 1959 N.Y. Misc. LEXIS 2376 (N.Y. Sup. Ct. 1959), *aff'd*, 11 A.D.2d 656, 203 N.Y.S.2d 1018, 1960 N.Y. App. Div. LEXIS 9251 (N.Y. App. Div. 1st Dep't 1960).

A plaintiff should not be lightly deprived of an opportunity to seek full redress for a wrong inflicted upon him, and therefore formal charge of laches, absent any showing of resultant

prejudice, was deemed insufficient to defeat motion on eve of trial to increase ad damnum clause of malpractice complaint. *Belitsky v Herman*, 215 N.Y.S.2d 297 (N.Y. Sup. Ct. 1961).

Opinion Notes

Agency Opinions

1. Notice of claim against municipality

A municipality served with an otherwise proper notice of claim but including a statement of damages in violation of section 50-e(2) of the General Municipal Law should accept service and make a motion to the court for an order directing the claimant to file an amended notice in compliance with the statute. 1981 N.Y. Op. Att'y Gen. No. 81-60, 1981 N.Y. AG LEXIS 95.

Research References & Practice Aids

Cross References:

Interpleader, CLS CPLR § 1006.

Kinds of pleadings, CLS CPLR § 3011.

Service of pleadings and demand for complaint, CLS CPLR § 3012.

Particularity of statements generally, CLS CPLR § 3013.

Statements, CLS CPLR § 3014.

Default judgment, CLS CPLR 3215.

Notice of trial where all parties appear by attorney, CLS Unif Civ Rules for Dist Cts § 212.17.

Federal Aspects:

§ 3017. Demand for relief.

Pleadings and motions, Rules 7 to 16 of the Federal Rules of Civil Procedure, USCS Court Rules.

Claims for relief, Rule 8(a) of the Federal Rules of Civil Procedure, USCS Court Rules.

Demand for judgment; relief to be granted, Rule 54(c) of the Federal Rules of Civil Procedure, USCS Court Rules.

Jurisprudences:

76A NY Jur 2d Mechanics Liens § 201. .

77 NY Jur 2d Mechanics Liens § 272. .

61A Am Jur 2d, Pleading §§ 158.– 202.

5A Am Jur PI & Pr Forms (Rev), Captions, Prayers, and Formal Parts, Forms 301., 397., 598.

8A Am Jur PI & Pr Forms (Rev), Declaratory Judgments, Forms 1 et seq.

31 Am Jur Proof of Facts 3d 203., Proof of Negligence by Hospital Emergency Room Nurse.

Law Reviews:

Rapp, Article 30—remedies and pleading: CPLR 3017: postverdict motion to amend ad damnum clause should be granted in the absence of prejudice to defendant. 56 St. John's L Rev 382.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3017, Demand for Relief.

1 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 7.05.

3 Rohan, New York Civil Practice: EPTL ¶5-4.1.

§ 3017. Demand for relief.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 20.04, 20.07, 33.01, 34.03.

1 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶¶302.05, 303.06, 304.12; 4 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶¶1904.01.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 6.01. Joinder of claims and consolidation of actions; joint trials.

CPLR Manual § 19.02. Declaratory judgment.

CPLR Manual § 19.03. Election of remedies.

CPLR Manual § 19.07. Rules governing drafting of pleadings.

CPLR Manual § 19.08. Special rules governing pleading of specific issues.

Matthew Bender's New York Practice Guides:

2 New York Practice Guide: Business and Commercial § 12.14.

1 New York Practice Guide: Domestic Relations §§ 3.04, 4.09; 2 New York Practice Guide: Domestic Relations § 34.14.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 1.10. Preparing Summons and Complaint.

LexisNexis AnswerGuide New York Negligence § 2.16. Preparing Summons and Complaint.

LexisNexis AnswerGuide New York Negligence § 5.26. Drafting Complaint and Establishing Elements of Cause of Action.

LexisNexis AnswerGuide New York Negligence § 5.36. Filing Complaint.

LexisNexis AnswerGuide New York Negligence § 6.03. Identifying Statutes That Provide for Shortened Time for Commencement of Action.

LexisNexis AnswerGuide New York Negligence § 6.25. Defining Elements of Cause of Action and Necessary Allegations.

LexisNexis AnswerGuide New York Negligence § 7.25. Defining Elements of Cause of Action and Necessary Allegations.

Annotations:

Group insurance: construction, application, and effect of policy provision extending conversion privilege to employee after termination of employment. 32 ALR4th 1037.

Locating easement of way created by necessity. 36 ALR4th 769.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 ALR4th 496.

Punitive damages for interference with contract or business relationship. 44 ALR4th 1078.

Equipment leasing expense as element of construction contractor's damages. 52 ALR4th 712.

Standard of proof as to conduct underlying punitive damage awards—modern status. 58 ALR4th 878.

Excessiveness or inadequacy of punitive damages in cases not involving personal injury or death. 14 ALR5th 242.

Ophthalmological malpractice. 30 ALR5th 571.

Medical malpractice: negligent catheterization. 31 ALR5th 1.

Medical malpractice liability of sports medicine care providers for injury to, or death of, athlete. 33 ALR5th 619.

Allowance of punitive damages in medical malpractice action. 35 ALR5th 145.

Matthew Bender's New York Checklists:

Checklist for Preparing Initial Pleadings LexisNexis AnswerGuide New York Civil Litigation § 1.08.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 3017:1 et seq.

LexisNexis Forms FORM 75-CPLR 3017:1.— General Form of Demand for Relief.

LexisNexis Forms FORM 75-CPLR 3017:10.— Demand for Relief; Rescission of Contract.

LexisNexis Forms FORM 75-CPLR 3017:11.— Demand for Relief; To Determine Heirs.

LexisNexis Forms FORM 75-CPLR 3017:12.— Demand for Relief; Action for Divorce.

LexisNexis Forms FORM 75-CPLR 3017:13.— Demand for Relief; Action Against Executor.

LexisNexis Forms FORM 75-CPLR 3017:14.— Demand for Relief; Action to Enjoin Defendant From Practicing Law.

LexisNexis Forms FORM 75-CPLR 3017:15.— Demand for Relief; Action to Enjoin Violation of Agreement Not to Compete.

LexisNexis Forms FORM 75-CPLR 3017:16.— Demand for Relief; Injunction Against Use of Partnership Name Following Dissolution.

LexisNexis Forms FORM 75-CPLR 3017:17.— Demand for Relief; Injunction Against Violation Not to Engage in Similar Business.

LexisNexis Forms FORM 75-CPLR 3017:18.— Demand for Relief; Accounting and Dissolution of Partnership.

LexisNexis Forms FORM 75-CPLR 3017:19.— Demand for Relief; Reformation of Contract.

LexisNexis Forms FORM 75-CPLR 3017:2.— Demand for Relief in the Alternative or of Several Different Types.

LexisNexis Forms FORM 75-CPLR 3017:20.— Demand for Relief; To Set Aside a Release.

LexisNexis Forms FORM 75-CPLR 3017:21.— Notice of Motion to Amend Complaint by Increasing Ad Damnum Clause and Amending Bill of Particulars.

LexisNexis Forms FORM 75-CPLR 3017:22.— Affidavit in Support of Motion to Amend Complaint by Increasing Ad Damnum Clause and Amending Bill of Particulars.

LexisNexis Forms FORM 75-CPLR 3017:23.— Physician's Affidavit in Support of Motion to Amend Complaint by Increasing Ad Damnum Clause and Amending Bill of Particulars.

LexisNexis Forms FORM 75-CPLR 3017:24.— Order to Amend Complaint by Increasing Ad Damnum Clause and Amending Bill of Particulars.

LexisNexis Forms FORM 75-CPLR 3017:25.— Decretal Provisions Order Granting Leave to Increase Ad Damnum Clause; Permission to Defendants to Conduct Further Examinations.

LexisNexis Forms FORM 75-CPLR 3017:26.— Attorney's Affidavit in Opposition to Motion to Increase Ad Damnum Clause.

LexisNexis Forms FORM 75-CPLR 3017:27.— Affidavit in Opposition to Motion to Increase Ad Damnum Clause; Another Form.

LexisNexis Forms FORM 75-CPLR 3017:28.— Notice of Motion to Increase Ad Damnum Clause and to Remove Action to Supreme Court.

LexisNexis Forms FORM 75-CPLR 3017:29.— Affidavit on Motion to Increase Ad Damnum Clause and to Remove Action to Supreme Court.

LexisNexis Forms FORM 75-CPLR 3017:3.— Demand for Relief; General and Special Damages.

LexisNexis Forms FORM 75-CPLR 3017:30.— Physician's Affidavit in Support of Motion to Increase Ad Damnum Clause and to Remove Action to Supreme Court.

LexisNexis Forms FORM 75-CPLR 3017:31.— Order Permitting Increase in Ad Damnum Clause and Removal to Supreme Court.

LexisNexis Forms FORM 75-CPLR 3017:32.— Decretal Provision Order Granting Leave to Remove Action and Increase Ad Damnum Clause Conditioned on Payment by Plaintiff's Attorney.

LexisNexis Forms FORM 75-CPLR 3017:33.— Attorney's Affidavit in Opposition to Motion for Removal and to Increase Ad Damnum Clause.

LexisNexis Forms FORM 75-CPLR 3017:34.— Demand for Declaratory Relief Determining Rights Under a Contract.

LexisNexis Forms FORM 75-CPLR 3017:35.— Demand for Declaratory Judgment Determining Rights Under a Lease.

LexisNexis Forms FORM 75-CPLR 3017:36.— Demand for Declaratory Judgment Determining Rights Under an Insurance Policy.

LexisNexis Forms FORM 75-CPLR 3017:37.— Demand for Declaratory Judgment That Insurer Not Under Obligation to Defend Action Against Insure.

LexisNexis Forms FORM 75-CPLR 3017:38.— Demand for Declaratory Judgment With Respect to Trust Instrument.

LexisNexis Forms FORM 75-CPLR 3017:39.— Demand for Declaratory Judgment With Respect to the Administration of a Trust.

LexisNexis Forms FORM 75-CPLR 3017:4.— Demand for Relief; Compensatory and Punitive Damages.

LexisNexis Forms FORM 75-CPLR 3017:40.— Demand for Relief in an Action for Declaratory Judgment Determining Certain Rights to Corporate Stock.

LexisNexis Forms FORM 75-CPLR 3017:41.— Demand for Relief in an Action for Declaratory Judgment to Determine the Validity of a Statute.

LexisNexis Forms FORM 75-CPLR 3017:42.— Jurisdictional Allegations and Demand for Relief in Action for Personal Injury or Wrongful Death.

LexisNexis Forms FORM 75-CPLR 3017:43.— Request for Supplemental Demand Pursuant to CPLR 3017(c).

LexisNexis Forms FORM 75-CPLR 3017:44.— Notice of Motion to Compel Service of a Supplemental Demand for Relief.

LexisNexis Forms FORM 75-CPLR 3017:45.— Affidavit in Support of Motion Requiring Plaintiff to Serve a Supplemental Demand for Relief Pursuant to CPLR 3017(c).

LexisNexis Forms FORM 75-CPLR 3017:46.— Order Compelling Service of a Supplemental Demand for Relief Pursuant to CPLR 3017(c).

LexisNexis Forms FORM 75-CPLR 3017:47.— Affidavit in Support of Motion to Strike Ad Damnum Clause of Medical Malpractice Complaint.

LexisNexis Forms FORM 75-CPLR 3017:48.— Affidavit in Opposition to Motion to Strike Ad Damnum Clause of Medical Malpractice Complaint.

LexisNexis Forms FORM 75-CPLR 3017:5.— Demand for Relief; Complaint to Open Account Stated.

LexisNexis Forms FORM 75-CPLR 3017:6.— Demand for Relief; Review Assessment of Real Property.

LexisNexis Forms FORM 75-CPLR 3017:7.— Demand for Relief; Action by Assignee for Benefit of Creditors.

LexisNexis Forms FORM 75-CPLR 3017:8.— Demand for Relief; Payee Against Maker of Note.

LexisNexis Forms FORM 75-CPLR 3017:9.— Demand for Relief; Accounting Against Real Estate Broker.

LexisNexis Forms FORM 120-7:10.— Allegations of Skull Fracture.

LexisNexis Forms FORM 120-7:11.— Allegations of Fracture of Forehead.

LexisNexis Forms FORM 120-7:12.— Allegations of Lacerations and Disfigurement of the Face and Speech Impediment.

LexisNexis Forms FORM 120-7:13.— Allegations of Tearing of Facial Nerve.

LexisNexis Forms FORM 120-7:14.— Allegations by Actress of Injuries to Face and Nose.

LexisNexis Forms FORM 120-7:15.— Allegations of Eye Injury.

LexisNexis Forms FORM 120-7:16.— Allegations of Loss of Hearing.

LexisNexis Forms FORM 120-7:17.— Allegations of Injuries to Teeth.

LexisNexis Forms FORM 120-7:18.— Allegations of Injury to Tongue.

LexisNexis Forms FORM 120-7:19.— Allegations of Injuries to Mouth and Teeth.

LexisNexis Forms FORM 120-7:20.— Allegations of Injury Causing Fracture and Dislocation of Collarbone.

LexisNexis Forms FORM 120-7:21.— Allegations of Injuries to Shoulder Requiring Amputation.

LexisNexis Forms FORM 120-7:22.— Allegations of Injuries to Arm, Shoulder, and Wrist.

LexisNexis Forms FORM 120-7:23.— Allegations of Loss of Arm.

LexisNexis Forms FORM 120-7:24.— Allegations of Neck and Spine Injuries.

LexisNexis Forms FORM 120-7:25.— Allegations of Injuries Causing Effusion of Spine.

LexisNexis Forms FORM 120-7:26.— Allegations of Injuries Causing Spinal Shock and Malfunctions of Organs.

LexisNexis Forms FORM 120-7:27.— Allegations of Injuries to Spinal Cord and Vertebrae Causing Paralysis.

LexisNexis Forms FORM 120-7:28.— Allegations of Injuries to Back, Spine, Pelvis, and Legs.

LexisNexis Forms FORM 120-7:29.— Allegations of Fractures of the Vertebrae.

LexisNexis Forms FORM 120-7:30.— Allegations of Aggravation of Heart Condition.

LexisNexis Forms FORM 120-7:31.— Allegations of Injuries Causing Heart Disorder.

LexisNexis Forms FORM 120-7:32.— Allegations of Injuries Causing Heart Impairment.

LexisNexis Forms FORM 120-7:33.— Allegations of Diseases of the Lungs.

LexisNexis Forms FORM 120-7:34.— Allegations of Injuries Causing Broken Rib, Intercostal Neuritis and Pleurisy.

LexisNexis Forms FORM 120-7:35.— Allegations Including Rib Injuries.

LexisNexis Forms FORM 120-7:37.— Allegations of Injuries Causing Miscarriage.

LexisNexis Forms FORM 120-7:38.— Allegations of Injuries to Abdomen Causing Hernia.

LexisNexis Forms FORM 120-7:39.— Allegations of Injuries Requiring Leg Operation.

LexisNexis Forms FORM 120-7:40.— Allegations of Leg Fractures.

LexisNexis Forms FORM 120-7:41.— Allegations of Injuries Causing Leg to be Shortened.

LexisNexis Forms FORM 120-7:42.— Allegations of Burns Causing Infant to be Unable to Walk.

LexisNexis Forms FORM 120-7:43.— Allegation of Injuries Requiring Amputation of Leg Above the Knee.

LexisNexis Forms FORM 120-7:44.— Allegations of Lacerations Requiring Skin Grafting to Leg.

LexisNexis Forms FORM 120-7:46.— Allegations of Burns Requiring Skin Grafting.

LexisNexis Forms FORM 120-7:47.— Allegations of Infection From Food.

LexisNexis Forms FORM 120-7:49.— Allegations of Diseases Resulting From Injuries.

LexisNexis Forms FORM 120-7:57.— Spouse's Allegations of Damages in Death Action.

LexisNexis Forms FORM 120-7:58.— Spouse's Allegations of Damages in Death Action Where Decedent Operated His or Her Own Business.

LexisNexis Forms FORM 120-7:59.— Allegations in Death Action by Sisters Who Were Dependent Upon the Deceased For Support.

LexisNexis Forms FORM 120-7:60.— Allegations of Distributees in Death Action.

LexisNexis Forms FORM 120-7:61.— Parent's Allegations in Death Action.

LexisNexis Forms FORM 120-9:1.— General Form of Demand for Relief in Complaint.

LexisNexis Forms FORM 120-9:10.— Demand for Relief in Action for Wrongful Death.

LexisNexis Forms FORM 120-9:2.— Demand for Relief Where Plaintiff Is Unable to Determine Definitely Which Defendant Is Responsible.

LexisNexis Forms FORM 120-9:3.— Demand for Relief in Complaint Where Interest Is Payable on Different Amounts From Different Dates.

LexisNexis Forms FORM 120-9:4.— Demand for Relief in Third Party Complaint.

LexisNexis Forms FORM 120-9:7.— Demand for Relief in Interpleader Complaint.

LexisNexis Forms FORM 120-12:14.— Complaint in Action for Assault Where Medical Procedure Performed Against Patient's Expressed Wishes.

LexisNexis Forms FORM 120-12:15.— Complaint in Action Against Physician for Assault for Operating on Patient Against Patient's Express Instructions.

LexisNexis Forms FORM 120-12:16.— Complaint in Action Against Private Hospital for Assault by Employee.

LexisNexis Forms FORM 120-12:17.— Complaint in Action for Assault Against Doctor, Hospital and Patient.

LexisNexis Forms FORM 120-12:18.— Claim in Action Against State for Assault by Violent Outpatient at State Mental Health Facility.

LexisNexis Forms FORM 120-12:19.— Complaint in Action Against Municipality for Assault by Roadworkers.

LexisNexis Forms FORM 120-15:1.— General Form of Complaint in Action for Wrongful Death.

LexisNexis Forms FORM 120-15:10.— Complaint in Action Against a School District for the Death of a Child Struck by an Automobile After Disembarking From a School Bus.

LexisNexis Forms FORM 120-15:11.— Complaint in Action for Personal Injuries and Wrongful Death Resulting from Railroad Crossing Accident.

LexisNexis Forms FORM 120-15:18.— Complaint in Action for Wrongful Death as a Result of Negligence Occurring Outside of the State of New York.

LexisNexis Forms FORM 120-15:19.— Complaint in Action for Death in Airplane Accident Brought Under the Laws of a Foreign Country Against the Manufacturers of an Airplane and Its Parts.

LexisNexis Forms FORM 120-15:2.— Complaint in Action for Wrongful Death when the Plaintiff's Intestate Was Killed in an Automobile Collision.

LexisNexis Forms FORM 120-15:20.— Complaint in Action Against Airline for Wrongful Death when Court Is Asked Not to Apply Limitation on Recovery Contained in Foreign Statute.

LexisNexis Forms FORM 120-15:3.— Complaint in Action for Wrongful Death when the Driver of an Automobile Was Killed in a Collision with Another Automobile.

LexisNexis Forms FORM 120-15:30.— Complaint in Action for Wrongful Death of Informer Resulting from Failure to Provide Police Protection.

LexisNexis Forms FORM 120-15:32.— Complaint in Action for Death of Railroad Employee under Federal Safety Appliance Act and Federal Employers' Liability Act.

LexisNexis Forms FORM 120-15:33.— Complaint in Action for Wrongful Death when Plaintiff's Intestate Drowned in Swimming Pool of Defendant's Hotel.

LexisNexis Forms FORM 120-15:4.— Complaint in Action for Wrongful Death of Guest in an Automobile.

LexisNexis Forms FORM 120-15:46.— Complaint in Action for Wrongful Death Against Driver Who Allowed Teenager to Leave Vehicle and Cross Highway.

LexisNexis Forms FORM 120-15:5.— Claim Against the State for Wrongful Death of a Passenger on a Motorcycle Due to Hazardous Road Condition.

LexisNexis Forms FORM 120-15:55.— Complaint in Action for Wrongful Death when Passenger in Automobile Was Killed in Collision with Fire Truck.

LexisNexis Forms FORM 120-15:6.— Complaint in Action for Wrongful Death when Decedent-Wife Was a Guest in an Automobile Driven by Her Husband.

LexisNexis Forms FORM 120-15:60.— Complaint in Action for Wrongful Death of School Bus Driver Resulting From Collision with Motor Vehicle.

LexisNexis Forms FORM 120-15:7.— Complaint in Action for Wrongful Death Against Owner and Driver of an Automobile that Struck and Killed a Pedestrian.

LexisNexis Forms FORM 120-15:8.— Complaint in Action for Wrongful Death and Pain and Suffering of Firefighter Struck by Automobile.

LexisNexis Forms FORM 120-15:9.— Complaint in Action for Wrongful Death and Personal Injuries for Pedestrian Killed at Street Intersection.

LexisNexis Forms FORM 120-45:2.— Complaint in Action Where Pedestrian Struck by Wooden Awning.

LexisNexis Forms FORM 120-45:3.— Complaint in Action Where Person on Sidewalk Comes in Contact With Iron Bar of Drop Awning.

LexisNexis Forms FORM 120-7:48.— Allegations of Injuries From Drinking Polluted Water.

LexisNexis Forms FORM 120-51:1.— Complaint in Action Against Proprietor of Beauty Parlor Where Patron Was Injured Obtaining Permanent Wave.

LexisNexis Forms FORM 120-51:2.— Complaint in Action Against Beauty Parlor Where Patron's Hair Caught Fire During Bleaching Process.

LexisNexis Forms FORM 120-51:3.— Complaint in Action Against Beauty Parlor for Injuries Resulting From Negligent Use and Operation of Equipment.

LexisNexis Forms FORM 120-51:4.— Complaint in Action Against Proprietor of Beauty Parlor and Manufacturer Where Patron Was Injured When Pedestal Swivel Chair Broke.

LexisNexis Forms FORM 120-52:2.— Complaint in Action Against Infant and Parent Where Injury Was Caused by Operation of Bicycle.

LexisNexis Forms FORM 120-53:2.— Complaint in Action Against Contractor Where Patron in Beauty Shop Was Injured When Shelf Fell as a Result of Blasting.

LexisNexis Forms FORM 120-54:1.— Complaint in Action Where Passenger on Excursion Boat Was Killed in Fire.

LexisNexis Forms FORM 120-54:10.— Complaint in Action by Longshoreworker Against Shipping Company, Manufacturer, and Stevedoring Company for Personal Injuries Caused by Fumes.

LexisNexis Forms FORM 120-54:11.— Complaint in Action Where Longshoreworker Was Injured; Failure to Furnish Safe Work Place.

LexisNexis Forms FORM 120-54:12.— Complaint in Action Where Stevedore Was Injured When Cargo Fell On Him; Failure to Furnish Safe Work Place.

LexisNexis Forms FORM 120-54:13.— Complaint in Action Where Longshoreworker Was Struck by Derrick Boom on Ship.

LexisNexis Forms FORM 120-54:14.— Complaint in Action by Harborworker for Personal Injuries Caused by Defective Equipment.

LexisNexis Forms FORM 120-54:15.— Complaint in Action Where Checker of Merchandise Was Struck by a Draft of Cargo While on Ship.

LexisNexis Forms FORM 120-54:16.— Complaint in Action by Seaman for Injuries Sustained on Vessel Alleging Negligence.

LexisNexis Forms FORM 120-54:17.— Complaint in Action by Seaman for Personal Injuries.

LexisNexis Forms FORM 120-54:2.— Complaint in Action Where Passenger on Ship Was Injured When Bench Collapsed.

LexisNexis Forms FORM 120-54:21.— Complaint in Action by Waterskier for Personal Injuries Caused by Negligent Operation of Two Motorboats.

LexisNexis Forms FORM 120-54:26.— Complaint in Action Against Ferryboat by Passenger Injured in Collision Resulting from Violation of Pilot Rules.

LexisNexis Forms FORM 120-54:27.— Complaint in Action Against Infant and Parent for Personal Injuries Caused by Negligent Operation of Motorboat in Violation of Statutes and Ordinances.

LexisNexis Forms FORM 120-54:3.— Complaint in Action Where Passenger on Ship Was Injured by Foreign Matter Blown Into Eyes.

LexisNexis Forms FORM 120-54:4.— Complaint in Action Where Passenger on Ship Was Injured When Coffee Urns Spilled.

LexisNexis Forms FORM 120-54:5.— Complaint in Action Where Passenger on Ship Was Injured by Slip in Wet Bathtub.

LexisNexis Forms FORM 120-54:7.— Complaint in Action by Boat Owner for Personal Injuries Sustained While Disembarking Boat in Defendant's Boatyard.

LexisNexis Forms FORM 120-54:8.— Complaint in Action Where Dock Master Was Injured While Casting Off Towing Lines of Barge.

LexisNexis Forms FORM 120-54:9.— Complaint in Action for Negligence of Charterer of Barge for Injuries Sustained by Person Working On It.

LexisNexis Forms FORM 120-57:10.— Complaint in Action by Passenger Injured When Bus Began to Move While Passenger Was Attempting to Alight.

LexisNexis Forms FORM 120-57:11.— Complaint in Action Against Private Bus Company by Alighting Bus Passenger Injured When Bus Suddenly Lurched Forward.

LexisNexis Forms FORM 120-57:12.— Complaint in Action Against Private Bus Company by Passenger Injured While Attempting to Exit Bus.

LexisNexis Forms FORM 120-57:13.— Complaint in Action by Bus Passenger Injured When Door Closed on Passenger's Hand.

LexisNexis Forms FORM 120-57:14.— Complaint in Action Against Private Bus Company and Driver by Alighting Bus Passenger Injured When Leg Caught in Door.

LexisNexis Forms FORM 120-57:15.— Complaint in Action by Alighted Bus Passenger Struck by Automobile While Attempting to Cross Street in Front of Bus.

LexisNexis Forms FORM 120-57:16.— Complaint in Action Against Bus Company Where Plaintiff Struck by Bicycle When Alighting From Bus.

LexisNexis Forms FORM 120-57:17.— Complaint in Action by Passenger Who Slipped and Fell on Ice and Snow After Alighting From Bus.

LexisNexis Forms FORM 120-57:18.— Complaint in Action by Passenger Who Slipped on Ice in Street While Attempting to Board Bus.

LexisNexis Forms FORM 120-57:2.— Complaint in Action by Bus Passenger Injured When Private Bus Collided With Automobile.

LexisNexis Forms FORM 120-57:20.— Complaint in Action by Passenger Injured While Boarding Bus.

LexisNexis Forms FORM 120-57:27.— Complaint in Action by Pedestrian Struck by Bus While Waiting to Board It.

LexisNexis Forms FORM 120-57:33.— Complaint in Wrongful Death Action Where Bus Collided With Automobile.

LexisNexis Forms FORM 120-57:34.— Complaint in Action Against Bus Company, County, and Highway Department Where Automobile Collided With Bus.

LexisNexis Forms FORM 120-57:35.— Complaint in Action by Owner of Automobile Injured in Collision With Bus.

LexisNexis Forms FORM 120-57:36.— Complaint in Action by Passenger in Taxicab Injured in Collision With Bus.

LexisNexis Forms FORM 120-57:37.— Complaint in Action by Taxicab Passenger Where Taxicab Struck by Bus Following Collision Between Bus and Another Automobile.

LexisNexis Forms FORM 120-57:38.— Complaint in Wrongful Death Action Where Automobile Passenger Killed in Collision Between Automobile and Bus.

LexisNexis Forms FORM 120-57:39.— Complaint in Action Against Private Bus Company and Truck Owner Where Bus Sideswiped Truck and Then Struck Plaintiff's Automobile.

LexisNexis Forms FORM 120-57:4.— Complaint in Action by Bus Passenger Injured When Overcrowded Bus Backed Into Truck.

LexisNexis Forms FORM 120-57:40.— Complaint in Wrongful Death Action Where Automobile Passenger Killed When Bus Struck Rear of Automobile.

LexisNexis Forms FORM 120-57:42.— Complaint in Action by Automobile Passenger Injured When Automobile Struck Parked Bus.

LexisNexis Forms FORM 120-57:43.— Complaint in Action by Bicyclist Injured When Bicycle Struck Bus That Stopped Suddenly.

LexisNexis Forms FORM 120-57:44.— Complaint in Action by Bicyclist Struck by Bus and Dragged Along Ground.

LexisNexis Forms FORM 120-57:45.— Complaint in Action by Firefighter Injured in Collision Between Fire Truck and Bus.

LexisNexis Forms FORM 120-57:5.— Complaint in Action by Bus Passenger Injured When Overcrowded Bus Collided With Automobile.

LexisNexis Forms FORM 120-57:7.— Complaint in Action by Bus Passenger Injured When Bus Stopped Suddenly to Avoid Colliding With Automobile.

LexisNexis Forms FORM 120-64:2.— Complaint in Action Where Plaintiff Fell Off Wall at Country Club.

LexisNexis Forms FORM 120-64:3.— Complaint in Action by Members' Guest Against Club and Members Where Guest Was Struck by Falling Tree.

LexisNexis Forms FORM 120-64:4.— Complaint in Action Where Club Member Stumbled Over Pail in Unlighted Hallway.

LexisNexis Forms FORM 120-64:5.— Complaint in Action Against Private Club Where Club Member's Spouse Was Injured While Using Ski Lift.

LexisNexis Forms FORM 120-67:10.— Complaint in Action Where Plaintiff Injured When Condemned Building Collapsed.

LexisNexis Forms FORM 120-67:11.— Complaint in Action for Injuries Sustained Through Collapse of Private Bridge.

LexisNexis Forms FORM 120-67:12.— Complaint in Action Against Contractor for Injuries Resulting From Collapse of Temporary Bridge.

LexisNexis Forms FORM 120-67:3.— Complaint in Wrongful Death Action Against Owner and Net Lessee Where Hotel Collapsed.

LexisNexis Forms FORM 120-67:4.— Complaint in Action by Tenant Injured When Stairs Collapsed.

LexisNexis Forms FORM 120-67:5.— Complaint in Action Where Tenant's Guest Injured by Collapse of Stairs.

LexisNexis Forms FORM 120-67:6.— Complaint in Action Where Stairway in Stable Collapsed.

LexisNexis Forms FORM 120-67:9.— Complaint in Action Against Railroad Company for Injuries Caused by Collapse of Train Shed.

LexisNexis Forms FORM 120-72:1.— Complaint in Action Where Plaintiff Was Injured as the Result of Being Forced Between Car and Trailer by Crowd.

LexisNexis Forms FORM 120-72:2.— Complaint in Action Against Company Operating Subway Trains for Injuries to Passenger Caused by Crowd.

LexisNexis Forms FORM 120-73:1.— Complaint in Action Where Store Customer Falls Down Stairway in Dark.

LexisNexis Forms FORM 120-73:2.— Complaint in Action by Tenant Against Landlord for Injuries Sustained as a Result of Fall on Improperly Lit Stairway.

LexisNexis Forms FORM 120-73:3.— Complaint in Action by Cooperative Shareholder Against Managing Agent for Injuries Sustained Due to Darkness of Hallway in an Emergency Situation.

LexisNexis Forms FORM 120-77:6.— Complaint in Action Against Plumber by Bicyclist Injured After Hitting Ditch in Roadway.

LexisNexis Forms FORM 120-78:1.— Complaint in Action Where Restaurant Patron Injured by “Electric Eye” Door.

LexisNexis Forms FORM 120-78:10.— Complaint in Action Where Store Customer Stumbled Over Doorsill.

LexisNexis Forms FORM 120-78:11.— Complaint in Action Where Person Entering Apartment House Tripped Over Door Mat.

LexisNexis Forms FORM 120-78:12.— Complaint in Action Where Plaintiffs Fell Through Door Abutting Sidewalk and Into Basement.

LexisNexis Forms FORM 120-78:13.— Complaint in Action Where Pedestrian Fell Through Doorway of Delivery Chute.

LexisNexis Forms FORM 120-78:14.— Complaint in Action Where Person Entering Hotel Injured by Shattering Plate Glass Door.

LexisNexis Forms FORM 120-78:15.— Complaint in Action Where Public School Student Struck by Glass Falling From Door.

LexisNexis Forms FORM 120-78:16.— Complaint in Action Where Restaurant Patron Walked Into Plate-Glass Window Obstructing Temporary Exit.

LexisNexis Forms FORM 120-78:17.— Complaint in Action Against Owner and Lessee for Injuries Sustained by Patron Who Walked Into Glass Door.

LexisNexis Forms FORM 120-78:18.— Complaint in Action Where Plaintiff Fell Against Unmarked Glass Drum Surrounding Unmarked Glass Revolving Door.

LexisNexis Forms FORM 120-78:19.— Complaint in Action Where Plaintiff Injured in Revolving Door Revolving at Excessive Speed.

LexisNexis Forms FORM 120-78:2.— Complaint in Action by Tenant Injured by Swinging Entrance Door.

LexisNexis Forms FORM 120-78:20.— Complaint in Action Where Restaurant Customer Struck by Revolving Door.

LexisNexis Forms FORM 120-78:21.— Complaint in Action Where Person Leaving Hotel Injured in Revolving Door.

LexisNexis Forms FORM 120-78:22.— Complaint in Action Where Plaintiff Struck by Revolving Door Shoved by Defendant's Employee.

LexisNexis Forms FORM 120-78:23.— Complaint in Action Where Customer Was Knocked Down by Malfunctioning Electronic Sliding Door.

LexisNexis Forms FORM 120-78:3.— Complaint in Action Where Store Customer Struck by Door.

LexisNexis Forms FORM 120-78:4.— Complaint in Action Against Homeowner Where Worker Struck Head on Low Doorway.

LexisNexis Forms FORM 120-78:5.— Complaint in Action Against Summer Camp Where Camper Struck in Eye by Hook on Cabin Door.

LexisNexis Forms FORM 120-78:6.— Complaint in Action Where Plaintiff Injured by Revolving Door Placed Too Close to Step.

LexisNexis Forms FORM 120-78:7.— Complaint in Action Where Plaintiff Injured by Door Which Swung Outward Over Steps.

LexisNexis Forms FORM 120-78:8.— Complaint in Action Where Plaintiff Struck in Back by Door and Knocked Down Steps.

LexisNexis Forms FORM 120-78:9.— Complaint in Action Where Plaintiff Attempted to Enter Restaurant Through Wrong Door and Fell Down Stairs.

LexisNexis Forms FORM 120-80:11.— Complaint in Action Against Railroad and Chemical Manufacturer Where Chemicals Escaped From Derailed Train.

LexisNexis Forms FORM 120-83:1.— Complaint in Action Where Person Loading Goods Into Elevator Killed by Its Fall.

LexisNexis Forms FORM 120-83:11.— Complaint in Action by Wife for Loss of Consortium Based Upon Husband's Injury in Elevator Accident.

LexisNexis Forms FORM 120-83:12.— Complaint in Action Where Plaintiff Injured While Unloading Freight Elevator.

LexisNexis Forms FORM 120-83:16.— Complaint in Action Where Plaintiff Injured in Self-Operated Elevator.

LexisNexis Forms FORM 120-83:17.— Complaint in Action Where Plaintiff Struck by Elevator Door.

LexisNexis Forms FORM 120-83:18.— Complaint in Action Where Plaintiff Struck When Elevator Doors Suddenly Swung Outward.

LexisNexis Forms FORM 120-83:19.— Complaint in Action Where Plaintiff Slipped on Floor of Self-Service Elevator.

LexisNexis Forms FORM 120-83:20.— Complaint in Action Where Plaintiff Fell While Entering Store Elevator.

LexisNexis Forms FORM 120-83:21.— Complaint in Action Where Plaintiff Injured Through Negligent Operation of Elevator.

LexisNexis Forms FORM 120-83:22.— Complaint in Action Against Property Owner and Elevator Maintenance Company Based Upon a Fire in an Elevator.

LexisNexis Forms FORM 120-83:23.— Complaint in Action by Elevator Repairman Against Garage Owner Alleging Negligence and Violation of Labor Law 200 and 240.

LexisNexis Forms FORM 120-83:24.— Complaint in Action Against Elevator Service, Repair and Inspection Company.

LexisNexis Forms FORM 120-83:4.— Complaint in Action by Tenant Against Landlord for Injuries Resulting From Fall of Elevator.

LexisNexis Forms FORM 120-83:5.— Complaint in Action Against Landlord by Tenant's Employee Where Freight Elevator Suddenly Fell and Stopped.

LexisNexis Forms FORM 120-83:6.— Complaint in Action Against Proprietor of Store Where Passenger Elevator Fell.

LexisNexis Forms FORM 120-83:8.— Complaint in Action Against Owner and Service Corporation Where Elevator Fell Into Pit.

LexisNexis Forms FORM 120-83:9.— Complaint in Action Against Landlord and Elevator Repair Company Where Elevator Fell to Bottom of Shaft.

LexisNexis Forms FORM 120-87:1.— Complaint in Action Where Plaintiff Injured On Escalator.

LexisNexis Forms FORM 120-88:1.— Complaint in Action Against Property Owner When Plaintiff Fell Into Excavation in Sidewalk.

LexisNexis Forms FORM 120-88:2.— Complaint in Action When Plaintiff Stepped Into Unguarded Ditch Adjacent to Sidewalk.

LexisNexis Forms FORM 120-88:3.— Complaint in Action Against Landowner When Person Fell Through Door Into Excavation Abutting Sidewalk.

LexisNexis Forms FORM 120-88:4.— Complaint in Action When Person Fell Into Excavation on Defendant's Property in Close Proximity to Sidewalk.

LexisNexis Forms FORM 120-88:8.— Complaint in Action Against Municipality and Contractor for Injuries Resulting From Excavation in Highway.

LexisNexis Forms FORM 120-96:1.— Complaint in Action Where Hunter Shot Companion.

LexisNexis Forms FORM 120-96:2.— Complaint in Action Where Hunter Shot Passerby.

LexisNexis Forms FORM 120-98:4.— Complaint in Action When Plaintiff Injured in Fall From Movable Stairway of Fire Escape.

LexisNexis Forms FORM 120-98:6.— Complaint in Action When Tenant Fell Through Opening in Fire Escape .

LexisNexis Forms FORM 120-99:1.— Complaint in Action Where Plaintiff Slips on Wet Paint on Floor of Vestibule in Store.

LexisNexis Forms FORM 120-99:2.— Complaint in Action Where Plaintiff Fell When She Slipped on Spinach on Floor of Store.

LexisNexis Forms FORM 120-99:3.— Complaint in Action Where Plaintiff Falls on Slippery Floor.

LexisNexis Forms FORM 120-99:4.— Complaint in Action Where Plaintiff Injured When Portion of Floor Gave Way.

LexisNexis Forms FORM 120-99:5.— Complaint in Action Against Proprietor of Store Where Plaintiff Fell Through Opening in Floor.

LexisNexis Forms FORM 120-99:6.— Complaint in Action Where Plaintiff Stumbled Over Raised Portion of Floor of Store.

LexisNexis Forms FORM 120-99:7.— Complaint in Action Where Plaintiff Injured When Heel of Shoe Was Caught in Depression in Floor of Store.

LexisNexis Forms FORM 120-99:8.— Complaint in Action Where Plaintiff Fell on Floor of Store's Parking Lot.

LexisNexis Forms FORM 120-21(1):1.— Complaint in Action for Willful Destruction of Personal Property.

LexisNexis Forms FORM 120-105:1.— Complaint in Action Where Bottle Being Unloaded From Truck Fell to Sidewalk, Exploded, and Injured Plaintiff.

LexisNexis Forms FORM 120-108:4.— Complaint in Action Where Pedestrian Fell Into Subway Air Shaft Due to Unsecured Subway Grating.

LexisNexis Forms FORM 120-110:1.— Complaint in Action Against Landlord for Negligence of Contractor Repairing Hallway.

LexisNexis Forms FORM 120-117:10.— Complaint in Action Where Child Was Injured by Falling Pile of Lumber.

LexisNexis Forms FORM 120-117:11.— Complaint in Action Where Infant Junior Camp Counselor Was Injured Using Unsuitable Instrumentality.

LexisNexis Forms FORM 120-117:13.— Complaint in Action Where Infant Plaintiff Was Injured by Explosion of Fireworks Taken From Fair Grounds.

LexisNexis Forms FORM 120-117:14.— Complaint in Action by Child for Injuries Sustained Before Birth.

LexisNexis Forms FORM 120-117:15.— Complaint in Action Against Owner of Property for Injury to Child Where Machinery Was Not Properly Guarded and Play Not Supervised.

LexisNexis Forms FORM 120-117:16.— Complaint in Action for Injuries Received by Infant Patron Directed to Use Grinding Machine.

LexisNexis Forms FORM 120-117:17.— Complaint for Injuries Received by Infant Student Due to Defective School Gym Equipment and Parents' Action for Loss of Services and Medical Expenses.

LexisNexis Forms FORM 120-117:18.— Complaint in Action for Injuries Received by Infant Student Who Was Requested to Bring Milk to Cafeteria and Fell Down Stairs.

LexisNexis Forms FORM 120-117:19.— Complaint in Action Where Infant Was Bitten by Dog.

LexisNexis Forms FORM 120-110:2.— Complaint in Action Where Tenant is Injured Because of Landlord's Failure to Keep Hallway Lighted.

LexisNexis Forms FORM 120-117:20.— Complaint in Action By Infant and Mother For Lead Poisoning Caused by Negligence of Cooperative Association, Apartment Owner and Managing Agent.

LexisNexis Forms FORM 120-110:4.— Complaint in Action Where Tenant Stumbles Over Obstruction in Hallway.

LexisNexis Forms FORM 120-110:5.— Complaint in Action Where Plaintiff Stumbled Over Mat in Hallway.

LexisNexis Forms FORM 120-110:6.— Complaint in Action Where Plaintiff Slipped in Recurring Puddle in Hallway.

LexisNexis Forms FORM 120-145:25.— Complaint in Action Against Airline and Airplane Manufacturer for Death of Passenger in Crash.

LexisNexis Forms FORM 120-145:26.— Complaint in Wrongful Death Action Against Airplane Manufacturer When Plans Furnished to Show Method of Overhauling and Reassembling Were Defective.

LexisNexis Forms FORM 120-145:28.— Complaint in Action Against Duck Feed Manufacturer When Feed Killed and Injured Ducks.

LexisNexis Forms FORM 120-145:29.— Complaint in Action Against Pharmaceutical Manufacturer Based on Negligence and Breach of Express and Implied Warranties.

LexisNexis Forms FORM 120-145:30.— Complaint in Action Against Manufacturer of Oral Contraceptive and Doctor for Injuries Sustained by Consumer.

LexisNexis Forms FORM 120-145:33.— Complaint in Action by Mother on Behalf of Child Against Manufacturer for Failure to Produce Child Resistant Cigarette Lighter.

LexisNexis Forms FORM 120-145:34.— Complaint in Action Against Manufacturer of Extended Wear Contact Lenses for Failure to Warn and Breach of Warranties.

LexisNexis Forms FORM 120-145:34.— Complaint in Action by Guardian ad Litem for Infant Against Manufacturers and Distributors of Flammable Sleeping Bag and Children's Clothing.

LexisNexis Forms FORM 120-145:36.— Complaint in Action by Person Injured by Defective Razor Manufactured by Defendant.

LexisNexis Forms FORM 120-145:38.— Complaint in Action by Person Seriously Injured in Snowmobiling Accident Against Manufacturer, Distributor, and Seller of Snowmobile.

LexisNexis Forms FORM 120-152:10.— Complaint in Action by Parent Against Emancipated Child for Negligence in Operation of Automobile.

LexisNexis Forms FORM 120-152:13.— Complaint in Action by Infant and Father for Injuries to Child Caused by Collision of Automobile.

LexisNexis Forms FORM 120-192:10.— Complaint in Action by Infant Plaintiff for Injuries Sustained in School Yard.

LexisNexis Forms FORM 120-192:11.— Complaint in Action Where Pupil Was Injured Tripping Over Wire in School Yard.

LexisNexis Forms FORM 120-192:12.— Complaint in Action Against School District Where Plaintiff Injured When Elevator Shaft on Sidewalk Gave Way.

LexisNexis Forms FORM 120-192:13.— Complaint in Action for Personal Injuries Sustained by Student While Playing Basketball Game in Gymnasium.

LexisNexis Forms FORM 120-192:14.— Complaint in Action Where Pupil Injured on Slippery Gymnasium Floor.

LexisNexis Forms FORM 120-192:15.— Complaint in Action by Adult Against School Board for Injuries Sustained When Plaintiff Fell Through Trap Door in Stage of Auditorium.

LexisNexis Forms FORM 120-192:16.— Complaint in Action Where Pupil in School Was Injured by Unguarded Buzz Saw.

LexisNexis Forms FORM 120-192:17.— Complaint in Action When Adult Student in Private Vocational School Operating Engine Under Instructions from Instructor Was Injured from Engine Backfiring.

LexisNexis Forms FORM 120-192:18.— Complaint in Action Against Town, Board of Elections and School District for Injuries to Plaintiff Suffered in Fall Leaving Voting Place.

LexisNexis Forms FORM 120-192:19.— Complaint in Action Against School District Where Pupil Fell in Bus in Which She Was Being Transported.

LexisNexis Forms FORM 120-192:20.— Complaint in Action Where Child Leaving School Bus Was Struck by Automobile.

LexisNexis Forms FORM 120-196:20.— Complaint in Action Against City and Adjoining Owner Where Plaintiff Tripped Over Water Shutoff Valve in Excavated Area of Sidewalk.

LexisNexis Forms FORM 120-192:21.— Complaint in Action Against School District for Injuries Suffered by Student While Participating in Required Physical Education Activities.

LexisNexis Forms FORM 120-196:21.— Complaint in Action Against Municipality and Contractor for Injuries Resulting From Falling on Temporary Sidewalk Over Construction Excavation.

LexisNexis Forms FORM 120-192:22.— Complaint in Action Against University for Injuries Caused by Defective Glass Door Installed on Defendant's Premises.

LexisNexis Forms FORM 120-196:22.— Complaint in Action Against Contractors and Municipal Corporation for Injuries Sustained by Falling Into Open Construction Trench in Sidewalk.

LexisNexis Forms FORM 120-192:23.— Complaint in Action by College Student Against College and Private Security Company For Injuries Sustained During Snowball Fight.

LexisNexis Forms FORM 120-192:24.— Claim by Infant Injured by Power Saw at High School.

LexisNexis Forms FORM 120-196:24.— Complaint in Action by Pedestrian Injured in Slip and Fall on Sidewalk Incline.

LexisNexis Forms FORM 120-192:25.— Complaint in Action by Kindergarten Student Against City and Board of Education For Sexual Assault in School Bathroom.

LexisNexis Forms FORM 120-192:26.— Complaint in Action Against School District, Board of Education and Others for Lack of Supervision in Art Class.

LexisNexis Forms FORM 120-192:27.— Complaint in Action Against University and Fraternity Alleging Negligent Supervision of Party.

LexisNexis Forms FORM 120-196:27.— Complaint in Action by Administrator of Pedestrian Killed by Motorcycle When Defendant Contractors Blocked Sidewalk During Construction.

LexisNexis Forms FORM 120-192:28.— Complaint in Action by Member of High School Track Team Injured During Indoor Practice.

LexisNexis Forms FORM 120-192:29.— Complaint in Action by High School Student Attacked by Other Students.

LexisNexis Forms FORM 120-192:30.— Complaint in Action Against School District for Injuries Sustained by Middle School Student While Roughhousing.

LexisNexis Forms FORM 120-192:31.— Complaint in Action Against School District by Student Injured During Unsupervised Study Hall.

LexisNexis Forms FORM 120-208:10.— Complaint in Action Against Business Owner Where Plaintiff Fell Through Trap Door in Warehouse.

LexisNexis Forms FORM 120-202:12.— Complaint in Action by Injured Pedestrian Against Owner of Property Abutting Public Sidewalk; City Ordinance.

LexisNexis Forms FORM 120-218:10.— Complaint in Action When Passenger in Taxicab Injured by Sudden Stop.

LexisNexis Forms FORM 120-218:11.— Complaint in Action Where Plaintiff Injured When Cab Suddenly Started as He Was About to Enter It.

LexisNexis Forms FORM 120-218:12.— Complaint in Action Where Passenger Injured in Taxicab by Door Slamming Against His Hand.

LexisNexis Forms FORM 120-218:13.— Complaint in Action Against Owner of Taxicab and Bus Company Where Plaintiff Struck by Cab and While Lying in Street Is Struck by Bus.

LexisNexis Forms FORM 120-218:14.— Complaint in Action by Infant Pedestrian for Personal Injuries and by Mother for Loss of Services Against Corporate Taxi Owner and Driver.

LexisNexis Forms FORM 120-218:15.— Complaint in Action for Injuries Sustained When Taxi Passenger Struck in Airport Loading Zone.

LexisNexis Forms FORM 120-225:10.— Complaint in Action Where Plaintiff's Car Collided With Truck Parked on Highway Without Lights or Flares.

LexisNexis Forms FORM 120-225:11.— Complaint in Action by Infant Struck by Automobile After Purchasing Ice Cream at Defendant's Truck.

LexisNexis Forms FORM 120-225:12.— Complaint in Action Against Permissive User of Truck and His Employer for Negligent Operation of Truck.

LexisNexis Forms FORM 120-225:13.— Complaint in Action Against Driver of Tractor-Trailer That Struck Infant Crossing Intersection.

LexisNexis Forms FORM 120-225:14.— Complaint in Action for Personal Injuries Against Municipal Corporation for Failure of Its Tow Truck Driver to Set Cones and Alert Traffic that Tow Truck Had Stopped.

LexisNexis Forms FORM 120-225:15.— Complaint in Action by Passenger in Automobile Involved in Collision With Tractor.

LexisNexis Forms FORM 120-225:16.— Complaint in Action by Passenger Injured as the Result of Fall From Defendant Driver's Open Tailgate While Changing Lightbulbs at Cooperative Housing Association.

LexisNexis Forms FORM 120-225:17.— Complaint in Action by Motorist Injured in Accident with Tractor Trailer Against Truck Driver and Driver's Employer.

LexisNexis Forms FORM 120-225:18.— Complaint in Action Against Towing Company and Owner of Towed Vehicle for Injuries Sustained by Pedestrian When Towed Vehicle Became Detached.

LexisNexis Forms FORM 521-22-10.— Punitive Damage Allegation.

LexisNexis Forms FORM 521-22-11.— Demand for Punitive Damages.

LexisNexis Forms FORM 521-22-12.— General Form of Allegations of Personal Injuries.

LexisNexis Forms FORM 521-22-13.— Allegations of Head, Skull, and Brain Injury.

LexisNexis Forms FORM 521-22-14.— Allegations of Cerebral Concussion and Skull Fracture.

LexisNexis Forms FORM 521-22-15.— Allegations of Fracture of Forehead.

LexisNexis Forms FORM 521-22-16.— Allegations of Lacerations and Disfigurement of the Face and Speech Impediment.

LexisNexis Forms FORM 521-22-17.— Allegations of Eye Injury.

LexisNexis Forms FORM 521-22-18.— Allegations of Loss of Hearing.

LexisNexis Forms FORM 521-22-19.— Allegations of Injury to Tongue.

LexisNexis Forms FORM 521-22-20.— Allegations of Injuries to Mouth and Teeth.

LexisNexis Forms FORM 521-22-21.— Allegations of Injury Causing Fracture and Dislocation of Collarbone.

LexisNexis Forms FORM 521-22-22.— Allegations of Injuries to Shoulder Requiring Amputation.

LexisNexis Forms FORM 521-22-23.— Allegations of Injuries to Arm, Shoulder, and Wrist.

LexisNexis Forms FORM 521-22-24.— Allegations of Loss of Arm.

LexisNexis Forms FORM 521-22-25.— Allegations of Injuries Causing Effusion of Spine.

LexisNexis Forms FORM 521-22-26.— Allegations of Injuries Causing Spinal Shock and Malfunctions of Organs.

LexisNexis Forms FORM 521-22-27.— Allegations of Injuries to Spinal Cord and Vertebrae Causing Paralysis.

LexisNexis Forms FORM 521-22-28.— Allegations of Injuries to Back, Spine, Pelvis, and Legs.

LexisNexis Forms FORM 521-22-29.— Allegations of Injuries Causing Permanent Damage to the Physical and Nervous System.

LexisNexis Forms FORM 521-22-30.— Allegations of Injuries Causing Heart Disorder.

LexisNexis Forms FORM 521-22-31.— Allegations of Aggravation of Heart Condition.

LexisNexis Forms FORM 521-22-32.— Allegations of Leg Fractures.

LexisNexis Forms FORM 521-22-33.— Allegation of Injuries Requiring Amputation of Leg Above the Knee.

LexisNexis Forms FORM 521-22-34.— Allegations of Lacerations Requiring Skin Grafting to Leg.

LexisNexis Forms FORM 521-22-35.— Allegations of Diseases Resulting From Injuries.

LexisNexis Forms FORM 521-22-36.— Wife's Allegations of Damages in Wrongful Death and Survival Actions.

LexisNexis Forms FORM 521-22-37.— Wife's Allegations of Damages in Death Action Where Decedent Operated His Own Business.

LexisNexis Forms FORM 521-22-38.— Allegations in Death Action by Sisters Who Were Dependent Upon the Deceased for Support.

LexisNexis Forms FORM 521-22-39.— Parent's Allegations in Death Action.

LexisNexis Forms FORM 521-22-40.— Allegations of Damage by Fire.

LexisNexis Forms FORM 521-22-41.— Allegations of Injury to Trees and Crops.

LexisNexis Forms FORM 521-22-42.— Allegations of Water Damage.

LexisNexis Forms FORM 521-22-43.— Allegations of Injuries to Building Caused by Negligent Excavations and Construction Work.

LexisNexis Forms FORM 521-22-44.— Allegations of Damage to House by Blasting.

LexisNexis Forms FORM 521-22-45.— Allegations of Damages to Automobile.

LexisNexis Forms FORM 521-22-46.— Allegations of Damages Where Plaintiff's Automobile Destroyed.

LexisNexis Forms FORM 521-29-17.— Checklist for Deposition of Expert Witness; Defective Product.

LexisNexis Forms FORM 521-29-18.— Checklist for Deposition of Employee of Defendant Manufacturer; Defective Product.

LexisNexis Forms FORM 521-29-19.— Checklist for Deposition of Treating Physician.

LexisNexis Forms FORM 521-31-51.— Checklist of Deposition Objections.

LexisNexis Forms FORM 521-31-52.— Instructions to Clients for Discovery Depositions.

LexisNexis Forms FORM 521-31-53.— Deposition of Driver: Pre-Accident Events.

LexisNexis Forms FORM 521-35-16.— Deposition of the Plaintiff.

LexisNexis Forms FORM 521-37-20.— Deposition of Architect.

LexisNexis Forms FORM 521-22-1.— General Form of Demand for Relief in Complaint.

LexisNexis Forms FORM 521-22-2.— General Form of Demand for Relief in Medical Malpractice Action and Action Against Municipality.

LexisNexis Forms FORM 521-22-3.— Notice of Motion to Fix Date From Which Interest Is to Be Computed in Judgment.

LexisNexis Forms FORM 521-22-4.— Affirmation in Support of Motion to Fix Date From Which Interest is to be Computed in Judgment.

LexisNexis Forms FORM 521-22-5.— Order of Appellate Division Increasing or Reducing Amount of Judgment Where Verdict Reduced or Increased by Trial Court.

LexisNexis Forms FORM 521-22-6.— Allegation of Expenses for Medical, Surgical, and Nursing Care.

LexisNexis Forms FORM 521-22-7.— Allegations of Impairment of Earning Capacity.

LexisNexis Forms FORM 521-22-8.— Allegations of Injuries Requiring the Hiring of Someone to Perform Plaintiff's Job.

LexisNexis Forms FORM 521-22-9.— Allegations of Injuries to Plaintiff's Wife and Resulting Damages.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 14:101 et seq .(remedies and pleadings).

Texts:

Gerrard, Ruzow, Weinberg, Environmental Impact Review in New York (Matthew Bender) § 7.03[1].

1 New York Trial Guide (Matthew Bender) § 2.30.

Hierarchy Notes:

NY CLS CPLR, Art. 30

Forms

Forms

Form 1

Prayer—General Form

WHEREFORE the plaintiff prays judgment against the defendant [state relief asked], for costs of suit, and for such other and further relief as to the court may seem proper.

Form 2

Prayer—General Relief

WHEREFORE, premises considered, plaintiff prays that he have judgment against the defendants, and each of them, jointly and severally, for such general relief as he may be entitled to receive either at law or in equity.

Form 3

Prayer—General and Special Damages

WHEREFORE plaintiff prays that she may have and recover judgment against defendants, and each of them, as follows:

1. General damages in the sum of \$_____;
2. Special damages in the sum of \$_____, and such further special damages as may be hereafter ascertained or sustained;
3. Her costs of suit incurred herein, and such other, further and additional relief as may be appropriated in the premises.

Form 4

Prayer—Money Judgment and Costs

WHEREFORE, premises considered, plaintiff prays that she have judgment against the defendant for the full amount of her damages in the sum of \$_____, together with all costs and disbursements.

Form 5

Prayer—Money Judgment and Interest

WHEREFORE the plaintiff prays judgment against the defendant in the sum of \$_____, with interest from _____, 20_____.

Form 6

Prayer—Money Judgment, Interest and Costs

WHEREFORE plaintiff prays judgment against the defendant for the sum of \$_____, with interest thereon at the rate of _____ per cent per annum from _____, 20_____, for costs of suit, and for such other and further relief as to the court might seem proper.

Form 7

Prayer—Money Judgment, Interest and Costs—Another Form

WHEREFORE, premises considered, plaintiff, demands judgment for his damages and for interest thereon at the rate of _____% per annum from the date of judgment, and that he recover his costs herein incurred and for such other and further relief at law or in equity to which plaintiff may be entitled.

Form 8

Prayer—Money Judgment, Interest and Costs—Another Form

WHEREFORE the plaintiff prays judgment against the defendant for the sum of \$_____, together with interest thereon from _____, 20_____, and costs of suit.

Form 9

Prayer—Double Damages

WHEREFORE plaintiffs demand judgment against said defendants and each of them in the sum of \$_____, and for costs and disbursements herein, and that said judgment so recovered be doubled in accordance with the statute in such cases made and provided, and as may be proper herein.

Form 10

Prayer—Treble Damages

WHEREFORE plaintiff prays judgment against the defendant for the sum of \$_____, which sum is treble the amount of the damages suffered by this plaintiff, together with costs of suit, and for such other and further relief as to the court may seem proper.

Form 11

Prayer—Compensatory and Punitive Damages

WHEREFORE plaintiff prays judgment against said defendant as follows:

- 1.For the sum of \$_____ as compensatory damages;
- 2.For the sum of \$_____ as exemplary and punitive damages;
- 3.For costs of suit; and
- 4.For such other and further relief as to the court may seem proper in the premises.

Form 12

Prayer—Compensatory and Punitive Damages—Another Form

WHEREFORE plaintiff prays for judgment against defendants, and each of them, for the sum of \$_____, as general damages; and for the still further sum of \$_____, as punitive damages; and for costs and disbursements herein incurred.

Form 13

Prayer—Compensatory and Punitive Damages—Another Form

WHEREFORE plaintiff prays that he have judgment for his actual damages in the sum of \$_____ as above alleged and for the further sum of \$_____ exemplary damages on account of the malice of the defendant, and costs of suit and general and equitable relief.

Form 14

Prayer—Compensatory and Punitive Damages for Conversion

WHEREFORE the plaintiff prays that he may have judgment for his actual damages, for the value of _____ with interest thereon from the date of their conversion, and for the further sum of \$_____ exemplary damages, and for costs of suit, and for such other relief as the plaintiff may be shown entitled to recover.

Form 15

Prayer—Relief Against Several Defendants for Debt

WHEREFORE plaintiff prays that it have judgment against the defendants jointly and severally for its debt, principal, interest and attorney's fees, and for cost of suit; and for such other and further relief, general and special, in law and equity, as it may show itself justly entitled to receive.

Form 16

Prayer—Money Judgment for Two Plaintiffs

WHEREFORE plaintiffs demand judgment as follows:

For plaintiff _____ in the sum of \$_____.

For plaintiff _____ in the sum of \$_____.

And for such other and further relief as to the court may seem proper.

Form 17

Prayer—Supplemental Complaint

WHEREFORE plaintiff prays judgment as asked for in the original complaint herein, and for such additional relief as to the court may seem just and equitable in the premises, and for costs.

Form 18

Prayer—Damages Not Yet Ascertainable

For all reasonable medical, hospital and nursing expenses, the exact amount of which is unknown to plaintiff at this time and leave of court will be asked to insert the true amount when the amount has been ascertained.

Form 19

Prayer—Alternative Relief

In the alternative, plaintiff prays judgment against the defendant for _____
[state alternative relief sought] and for such other and further relief to which he may be entitled, either at law or in equity.

Form 20

Prayer—Accounts and Accounting—Complaint To Open Account Stated

WHEREFORE plaintiff prays for judgment as follows:

1. That said account stated between plaintiff and defendant be adjudged fraudulent and of no effect.
2. That an accounting be had between plaintiff and defendant of the various transactions had between them, and that if upon such accounting it shall be found that there is any sum due to the plaintiff from the defendant or vice versa that the amount be directed to be paid.
3. That plaintiff have such other and further relief as may be just, and costs of this action.

Form 21

Prayer—Accounts and Accounting—Correction of Account Stated

WHEREFORE the plaintiff prays judgment as follows:

1. That plaintiff may be let in to prove the said errors in the stating of the said account, and that the errors be corrected.

2. That judgment may be rendered against the defendant for the balance of \$_____, on the corrected account, with interest thereon from _____, 20_____.

Form 22

Prayer—Accounts and Accounting—Accounting With Appointment of Referee

WHEREFORE plaintiff prays judgment against the defendant for the sum of \$_____, and for such further or other sums that the court may find due as may be ascertained from an accounting between said parties; and that an accounting be ordered from the defendant to the plaintiff, and for that purpose that a referee be appointed for the purpose of inspecting the books and records of the defendant and obtaining an accounting herein; that the plaintiff have such other and further relief, including costs herein expended, as the court may deem just and proper.

Form 23

Prayer—Accounts and Accounting—Accounting of Profits From Fraudulent Sale

WHEREFORE the plaintiff prays judgment against the defendants, and each of them, as follows:

1. For an accounting of all the profits of said fraudulent sale.
2. For any amount or amounts so found to be due the plaintiff from the defendants.
3. For costs of suit; and
4. For such other and further relief as to the court may seem just in the premises.

Form 24

Prayer—Adjoining Landowners—Removal of Overhang of Abutting Building

WHEREFORE plaintiff prays that by a decree of this court the overhanging upon plaintiff's property by defendants' said building be adjudged and decreed a nuisance; that the exact measurements of the overhang be ascertained and decreed; that the defendants be required to abate the overhang by the removal thereof; that plaintiff have a judgment and decree forever enjoining defendants from the construction and reconstruction of said building and said windows, or any of them, which, when open, shall in any manner tip, project or extend out beyond and over or into plaintiff's said property, or any space above the defendant's property beyond the true boundary line thereof as alleged herein; and for all costs herein and for such other and further relief as this court may deem best under all the facts of the case.

Form 25

Prayer—Adjoining Landowners—Ejectment

WHEREFORE plaintiffs pray judgment against the defendants for the restitution of said lands and premises, and for costs of suit and for such other and further relief as may seem meet and proper to the court.

Form 26

Prayer—Adjoining Landowners—Lateral support—Injunction

WHEREFORE plaintiff prays judgment against the defendants and their workers, servants and agents, commanding and enjoining them henceforth to desist from digging and removing the soil and gravel between the plaintiff's said tract of land and a line drawn in an angle of forty-five degrees from the west line of the said tract of land owned by the plaintiff, at the surface, into the said tract of land owned by the defendant; and that plaintiff recover his costs in this action and for such other and further relief as to the court seems proper.

Form 27

Prayer—Adverse Claims to Realty—Relief Against

WHEREFORE plaintiff prays that said defendants and also all other persons unknown, claiming any right, title, estate, lien or interest in the real property described in the complaint adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, may be required to set forth the nature of their several claims, and that all adverse claims of the said defendants or any of them may be determined by a decree of this court; and that by said decree it be declared and adjudged that said plaintiff is the owner of said premises and that the defendants, or any of them, has no estate or interest whatever in or to said land and premises; and also that the said defendants, and each and every of them, be forever debarred from asserting any claim whatever in or to said land and premises adverse to the plaintiff, and for such other and further relief as to equity shall seem meet.

Form 28

Prayer—Agency—Accounting for Proceeds From Sales

WHEREFORE plaintiff prays judgment against the defendant as follows:

1. For an accounting, to include the names and addresses of the purchasers of said property, the date of said purchases, and the amount paid in each instance.
2. For a judgment against the defendant for such amount as the defendant realized from the actual sale of said property over and above the amount remitted to the plaintiff.
3. For cost of this action; and
4. For such other and further relief as to the court may seem just and equitable in the premises.

Form 29

Prayer—Arbitration and Award—Damages for Violation of Arbitration Contract

WHEREFORE plaintiff alleges that because of defendant's revocation of said submission to arbitration he has been damaged in the sum of \$_____, for which he demands judgment and costs of this action.

Form 30

Prayer—To Quash Assessment

WHEREFORE relator prays for a decree of this court annulling, vacating and setting aside the said assessment made by respondents and the levy thereunder, and for such other relief as may be just.

Form 31

Prayer—To Review of Assessment

WHEREFORE petitioner respectfully prays,

1. that said assessment roll be reviewed and corrected, and that said assessment of petitioner's said real property be stricken from the roll, or be reduced to a proper amount and properly equalized with the assessments of other real property on the same roll;
2. that this court take evidence or cause same to be taken to enable petitioner to show the illegality, overvaluation, inequality, and error of said assessment of said real property of petitioner; and
3. that this court grant such other and further relief as may be just and as the nature of the case requires, together with the costs and disbursements of this proceeding.

Form 32

Prayer—Assignment for Benefit of Creditors—Action by Assignee

WHEREFORE plaintiff, as assignee for the benefit of the creditors of _____, prays judgment against the defendant for the sum of \$_____, costs of suit, and such other and further relief as to the court seems proper.

Form 33

Prayer—Assignment for Benefit of Creditors—Action by Creditors Against Assignee

WHEREFORE plaintiffs pray the court that plaintiffs each have judgment establishing their said claims against the estate of _____ for the several amounts as herein shown, and now in the hands of said assignee, and that he be required to pay the said claims pro rata with all other valid claims against said estate which have been presented and allowed by him, as the law requires, and for general relief.

Form 34

Prayer—Bailment—For Restitution or Damages

WHEREFORE plaintiff prays judgment against defendant for the recovery of the possession of said goods and chattels, or for the sum of \$_____, the value thereof, in case a delivery cannot be had; together with \$_____ damages, and for the costs of this action.

Form 35

Prayer—Bailment—For Restitution or Damages—Rental

WHEREFORE plaintiff, prays for judgment as follows:

1. That the defendant be required to return said personal property and all thereof to plaintiff in the condition in which they were and each item thereof was delivered to defendant and that in the event such return cannot be had that the defendant pay to plaintiff the sum of \$_____ and in proportion for such items as cannot be returned.

2. For the sum of \$_____ balance of rental as per prior contract and for the sum of \$_____ rental as per later contract.
3. That the court fix and allow a reasonable compensation to plaintiff for the detention of said property subsequent to _____, 20_____.
4. For costs of suit herein and for all other relief which may be just and meet.

Form 36

Prayer—Bankruptcy—Trustee's Action to Set Aside Conveyances

WHEREFORE plaintiff prays:

1. That said transfer and conveyance, as above set forth, be declared by this court to be void, and that plaintiff recover of the defendant, said property, as assets of the estate of the said bankrupt.
2. That said defendant by decree of this court be prohibited from exceeding any act of control over said property.
3. That said defendant be decreed by this court to make, execute and deliver to plaintiff a sufficient conveyance of said property.
4. That an account is taken of the rents and profits which said defendant has received from said property so transferred and conveyed to him, and that he may be ordered to pay over such rents and profits to plaintiff.
5. That such further orders and decrees may be made as the nature of this case may require.

Form 37

Prayer—Banks—To Enjoin Receiver From Collecting Notes

WHEREFORE plaintiff prays that the defendant, and his servants and agents, be forever enjoined from collecting said notes from the makers thereof, and that said defendant return said notes to this plaintiff, and that the amount thereof, to-wit, the sum of \$_____, be charged against the deposit which plaintiff had in said bank at the time of its failure, and that plaintiff recover his costs of suit, and such other and further relief as to the court may seem proper.

Form 38

Prayer—Bills and Notes—Payee Against Maker

WHEREFORE the plaintiff prays judgment against the defendant for the sum of \$_____, principal of said note, together with interest thereon from _____, 20_____ at the rate of _____ per cent per annum, and his costs of suit, and for such other and further relief as to the court seems proper.

Form 39

Prayer—Bonds—To Reform Bond

WHEREFORE plaintiff prays the judgment of this court:

1. That the bond set forth in this complaint be reformed in the particulars set forth in said complaint; namely, _____.
2. That plaintiff have and recover from the defendants herein the sum of \$_____, with interest thereon from _____, 20_____, at the rate of _____ per cent per annum, with costs of suits, and for such other and further relief herein as the plaintiff may be entitled to.

Form 40

Prayer—For Reduction of Bond

WHEREFORE your petitioner prays that judgment may be granted permitting the filing by him of a new bond in a reduced amount with new surety [or sureties] and discharging the former bond and the surety [or sureties] thereon of all liability for matters subsequent to the filing of the new bond.

Form 41

Prayer—For Discharge of Bond

WHEREFORE your petitioner prays that a judgment may be granted certifying that the whole obligation or liability on the bond or undertaking aforesaid of your petitioner is discharged.

Form 42

Prayer—Boundaries—To Determine Boundary

WHEREFORE the plaintiff prays that this court determine the external boundaries of said entire tract and the boundaries of the respective subdivisions thereof.

Form 43

Prayer—Boundaries—To Determine Boundary—Another Form

WHEREFORE plaintiff prays that this court ascertain and permanently establish said boundary line dividing said premises, and that this court order and decree that the true location of the boundary line between the plaintiff's and the defendant's lands and premises, is as in this complaint described, and for such other and further relief as to the court may seem meet and proper, and for costs of suit.

Form 44

Prayer—Boundaries—To Determine Boundary—Injunction Against Destruction of Trees

WHEREFORE plaintiffs pray judgment:

1. That the defendant be perpetually enjoined from cutting down or destroying said row of trees, or any of them; and that a decree of this court be entered fixing and determining the boundary line between the lands of the plaintiff and defendant herein described, as the center line of said row of trees.
2. That the plaintiff have such other and further relief in the premises as may be equitable.
3. That plaintiff recover from defendant said sum of \$_____ damages as herein claimed.
4. For costs of suit.

Form 45

Prayer—Boundaries—For Survey

WHEREFORE petitioner prays judgment of this court granting him together with the necessary surveyors and assistants, permission to enter upon said real property and to make the necessary examination and survey thereof.

Form 46

Prayer—Brokers—Accounting Against Real Estate Broker

WHEREFORE plaintiffs pray that the defendants be required to account to the plaintiffs for all and singular the rents, issues, profits, commissions, and purchase money received and to be received from the property hereinbefore described; that plaintiffs may have judgment against the defendants, and each of them, for the amounts so found to be due from defendants to plaintiffs; and that plaintiffs may have such other and further relief as may be meet in the premises, together with their costs and disbursements herein.

Form 47

Prayer—Cancellation—Note

WHEREFORE plaintiff prays that it be adjudged and decreed that said note is void and of no effect; that defendant be required to produce the note in court; that said note be canceled; that the plaintiff have judgment against the defendant for the sum of \$_____ paid to him as interest as aforesaid; and for such other and further relief as to the court may seem meet and proper.

Form 48

Prayer—Cancellation—Deed

WHEREFORE plaintiff prays judgment: That said deed be delivered up by the defendant; that the deed, together with the record thereof, be adjudged to be void and be cancelled; that defendant, or, in the event of the refusal so to do, some competent officer or person appointed by the court herein, convey to plaintiff the legal title acquired by the defendant as hereinbefore alleged; that the court grant such other and further relief as the equity of the case may require; and that plaintiff be given costs of suit herein incurred.

Form 49

Prayer—Cancellation—Deed—Another Form

WHEREFORE plaintiff prays judgment that said deed be delivered up and cancelled; that defendant be adjudged to have no right, title or interest in or to said premises; for costs of suit, and for such other and further relief as may to the court seem proper.

Form 50

Prayer—Cancellation—Contract

WHEREFORE plaintiff prays judgment and decree of this court:

That said agreement between the plaintiff and defendants be cancelled and set aside;

That defendants, or either of them in whom the title now exists, be required to execute and deliver to plaintiff herein a good and sufficient deed reconveying to the plaintiff the said property, and for such other and further relief as may be equitable, and for costs of this action.

Form 51

Prayer—Cemeteries—To Enjoin Burial

WHEREFORE the plaintiffs pray that the said defendant be enjoined from from interring the body of said _____ in the lot in the cemetery of the congregation of _____ purchased by the said defendant, and for all other proper relief as to the court seems proper.

Form 52

Prayer—Cemeteries—Mandamus to Issue Burial Permit

WHEREFORE petitioners pray this honorable court for a judgment directing the _____ Cemetery Association and each of its officers, to accept and at once permit the body of _____ to be interred in lot No. _____ in said cemetery.

Form 53

Prayer—Cemeteries—Injunction Against Disinterment

WHEREFORE plaintiff prays judgment of this court directed to said defendants and each of them, and to their and each of their agents and servants, restraining them and each of them from objecting to, opposing or hindering or in any way interfering with plaintiff in removing the said casket, clothes, remains, stones and monuments in _____ Cemetery to said lot in _____ Cemetery, for costs of suit, and for such other and further relief as to the court seems meet and equitable.

Form 54

Prayer–Certiorari–Another Form

WHEREFORE petitioner prays for judgment that the proceedings and judgment of the _____ court be quashed.

Form 55

Prayer–Certiorari–Review of Removal From Office

WHEREFORE petitioner prays that the matter of the charges made against your petitioner and his removal from office be reviewed by this court, and such action upon said proceedings be taken as of right and according to law ought to be had and done.

Form 56

Prayer–Chattel Mortgages–Injunction Against Interference With Mortgaged Property

WHEREFORE plaintiff prays judgment:

That the defendant be restrained by injunction from appropriating, selling or otherwise disposing of or in anywise interfering with the said mortgaged property. That the court make an order appointing a receiver to hold the said mortgaged property and preserve the property, to answer to the lien of said mortgage, and for such other and further relief as to this court may seem just in the premises, together with the costs of this action.

Form 57

Prayer–Chattel Mortgages–Foreclosure

WHEREFORE the plaintiff prays judgment:

That the said mortgaged property be sold, and that the proceeds thereof be applied to the payments of the costs and expenses of this action and of the amount due on said note and

mortgage, with interest thereon up to the time of payment, at the rate of _____ per cent per month;

That the said defendant be adjudged to pay any deficiency that may remain after applying all said money as aforesaid, and for such other and further relief as to this court may seem just in the premises.

Form 58

Prayer—Chattel Mortgages—Foreclosure—Bill of Sale Given as Mortgage

WHEREFORE plaintiff prays judgment against the said defendant for the sum of \$_____, with interest from _____, 20_____, with costs, and that the said bill of sale be adjudged to be a chattel mortgage upon said property; that the said property be sold according to law, and the proceeds thereof be applied to pay plaintiff's demands.

Form 59

Prayer—Civil Service—Reinstatement

WHEREFORE plaintiff respectfully prays:

(a) That this court adjudge and decree that defendant was not entitled to discharge petitioner and that plaintiff is entitled to be reinstated to his position as _____ at the rate of \$_____ per hour for each seven day week.

(b) That defendant be ordered, directed, and required to restore plaintiff to his said position as _____.

(c) That defendant be directed, ordered and required to compensate plaintiff's loss of wages from _____ 20_____ [date of alleged wrongful discharge], until plaintiff is so restored to his position at the rate of \$_____ per hour for weekly work week of seven days.

(d) That plaintiff have such other and further relief as may be just and proper in the premises.

Form 60

Prayer–Compromise–To Enforce Compromise

WHEREFORE plaintiff prays that defendant be required by a decree of this court specifically to perform said compromise agreement, and that the defendant be ordered to pay to plaintiff \$_____, at the rate of of \$_____ per week, and continue said payments weekly until _____, in addition to any payments heretofore made, and for costs of suit and for such other and further relief as to the court may seem proper.

Form 61

Prayer–Compromise–To Annul Compromise

WHEREFORE plaintiff prays:

1. That the said compromise and settlement between the plaintiff and the defendant be rescinded, vacated, and set aside.
2. That plaintiff may have judgment against the defendant in the sum of \$_____, for costs of suit, and for such other and further relief as to the court may seem proper.

Form 62

Prayer–Consideration–Accord Made Without Consideration

WHEREFORE, plaintiff prays that the court decree that the alleged accord and satisfaction was made without consideration and that plaintiff may have judgment as prayed for in his complaint herein.

Form 63

Prayer–Contracts–Rescission

WHEREFORE the plaintiff demands judgment that said contract be rescinded and decreed to be null and void for the fraud described above, and that upon such rescission the plaintiff have judgment against the defendant for the sum of _____ Dollars, being the money paid by the plaintiff on the said contract, with interest thereon, and for such other and further and different relief as to the court may seem just and proper in the premises.

Form 64

Prayer—Contribution—Between Co-makers of Note

WHEREFORE plaintiff prays the judgment of this court against the solvent defendants respectively for such amounts as may be computed as the respective contributions to be paid by said defendants on account of said sum of \$_____ disbursed by plaintiff as hereinbefore set forth; plus interest at the legal rate on all amounts paid by plaintiff in excess of total amount paid by defendants; that by its judgment, decree and order herein this court will determine and adjudge the solvency of the defendants respectively and the ability of each to pay his proportion of the contribution herein prayed for, and that the amount of contribution to be paid by said defendants or any of them respectively shall then be computed according to the number of solvent and responsible defendants and judgments against said defendants respectively entered accordingly; and that in and by its said judgment, decree and order this court will adjudge defendants _____ and _____ to be insolvent and unable to pay the contribution herein prayed for, and that this court will accordingly, render judgment in favor of plaintiff against defendant _____ for \$_____, for costs of this action and for any other and further relief which may be just and proper.

Form 65

Prayer—Contribution—Between Partners

WHEREFORE plaintiff prays for judgment against the defendant in the sum of \$_____, which is one-half of the amount that plaintiff was required to pay out in liquidating the obligations of the partnership business over and above the total amount he received from the disposal of its assets, for costs of suit and for such other and further relief as to the court may seem proper.

Form 66

Prayer—Corporations—To Compel Issuance of Stock

WHEREFORE plaintiff prays judgment that the defendant be required to make and issue to the plaintiff certificates for _____ shares of the capital stock of the said defendant corporation, and that he have such further and other relief as may be just and proper in the premises, with costs of suit.

Form 67

Prayer—Corporations—Payment of Dividend

WHEREFORE plaintiff demands judgment (a) requiring the Corporation to set aside \$_____ or _____ cents per share for Class A stock out of its consolidated net earnings for the fiscal year 20_____ and to pay said sum into court, to be distributed to the holders of voting trust certificates for or shares of Class A stock in a manner to be directed by the Court.

Granting plaintiff, out of any recovery herein, the reasonable costs and expenses incident to the prosecution of this action, including a reasonable fee to plaintiff's attorney.

Granting plaintiff such other and further relief as to the Court may seem proper.

Form 68

Prayer—Corporations—To Forfeit Franchise

WHEREFORE plaintiff prays that the defendant's corporate existence shall be declared forfeited, void, and of no effect, as well as its right and privilege to do business in this state, and that plaintiff have and recover judgment against the said defendant in the sum of \$_____, and for costs of suit, and for such other and further relief as to the court seems just and proper.

Form 69

Prayer—Corporations—To Restrain Use of Name

WHEREFORE the plaintiff company prays that an injunction may be issued by this court, restraining the defendant company from carrying on the business as aforesaid in this state under its present name, and for such other relief as to the court may seem fit.

Form 70

Prayer—Corporations—By Receiver to Set Aside Conveyance of Property

WHEREFORE the plaintiff prays judgment as follows:

1. That the said payments and transfers, and each of them, made as aforesaid by the defendant corporation to the defendants, _____ and _____, be declared to be unlawful and null and void as in fraud of the creditors of such corporation.
2. That the defendant _____ be compelled to account for the moneys so paid by the defendant corporation.
3. That the defendant _____ be directed to turn over the property transferred as aforesaid or its money equivalent to the plaintiff as receiver as aforesaid.
4. That the defendants and each of them, their or either of their attorneys, servants or agents be enjoined and restrained from making any disposition pending this action of the moneys and

property so paid and transferred to them or either of them, except to surrender the amount to the plaintiff as such receiver.

5. That the plaintiff as such receiver hold these moneys and assets subject to the further order of this court.

6. That the plaintiff have such other and further relief as may be just.

Form 71

Prayer–Cotenancy–Accounting

WHEREFORE the plaintiff prays that the court may decree:

1. The proportionate interest of each of said cotenants in said leasehold and in the _____ produced from said leased premises.

2. To account between the parties.

3. That a division order may be made in accordance with the proportionate share of each owner, and such other and further relief as may be just.

Form 72

Prayer–Covenants–To Prevent Violation of Building Restriction

WHEREFORE plaintiff prays judgment that defendant be enjoined from constructing said or any building in violation of said covenants and restrictions [or, otherwise specify relief desired], for costs of suit and such other and further relief as may be just.

Form 73

Prayer–Creditor’s Bill–Representative Suit

WHEREFORE, plaintiff prays judgment that the aforesaid conveyance [transfer, or, assignment] be adjudged fraudulent and void as against the plaintiff and such other judgment creditors of

_____ whose executions have been returned unsatisfied, and who shall have elected to come in and share the expenses of this action.

Form 74

Prayer—Creditors' Bill—To Set Aside Fraudulent Assignment

WHEREFORE plaintiff prays judgment:

1. That the said assignment is fraudulent and void as against the plaintiff.
2. That _____ account, under the direction of the court, for all the property received by her as aforesaid.
3. That the defendants be restrained by injunction from interfering with the said property or its proceeds, except under the direction of the court.
4. That plaintiff's judgment be satisfied out of the proceeds.

Form 75

Prayer—Crops—Injunction Against Interfering With Harvest

WHEREFORE plaintiff prays that he be granted damages against the defendant in the amount of \$_____ with interest thereon at the rate of _____ per annum from this date and for the costs of this action.

Plaintiff further prays that until final hearing can be had defendant be temporarily restrained from refusing plaintiff ingress and egress to and from said farm for the purpose of harvesting, baling and storing said _____; be temporarily enjoined from in any manner molesting this plaintiff in the cutting, harvesting, baling and storing of said _____; and be enjoined henceforth from cutting, raking, baling or threshing said _____ without the consent of this plaintiff, during the crop years of 20_____ and 20_____; and upon final hearing said defendant be permanently

restrained from cutting, raking, baling or threshing said _____ without the consent of this plaintiff during the crop years of 20_____ and 20_____, and in molesting plaintiff in the harvesting of said crop.

Plaintiff further prays that he be granted judgment for such other and further relief to which he may be entitled in the premises.

Form 76

Prayer–Death–Wrongful Death Action

WHEREFORE plaintiff prays judgment against defendant,

1. For the sum of \$_____ damages for the wrongful death of his minor son as above alleged.

2. For the further sum of \$_____ or such other sum as the court deems proper by way of exemplary or punitive damages, for costs of suit and such other and further relief as the court deems proper in the premises.

Form 77

Prayer–Death–To Establish Death

WHEREFORE your plaintiff prays that the presumed death of said _____, be judicially ascertained and established by the court.

Form 78

Prayer–Declaratory Judgment–Construction of Contract

WHEREFORE plaintiff demands judgment against the defendants as follows:

1. That the court declare the rights and other legal relations of the plaintiff and the defendant created by reason of the written instrument dated _____,

20_____, and annexed to the complaint herein and marked Exhibit _____.

2. That the court declare that the defendant has no rights whatever in and to _____ by reason of said written instrument.

3. That in the event that this court declare that the written instrument constitutes a binding and enforceable agreement between the plaintiff and the defendant, that this court order and direct the defendant to account to the plaintiff and to pay to the plaintiff for _____.

4. For the costs and disbursements of this action.

5. That plaintiff have such other and further relief as to this court may seem just and proper.

Form 79

Prayer–Declaratory Judgment–Construction of Lease

WHEREFORE plaintiff prays for judgment declaring the rights and duties of the plaintiff and the defendant with respect to said lease and to whether plaintiff may demolish the building upon the leased premises and erect a new one, and for costs of suit, and for such other and further relief as to the court may seem proper.

Form 80

Prayer–Declaratory Judgment–Construction of Lease–Another Form

WHEREFORE plaintiff prays judgment as follows:

1. That a declaratory judgment be rendered and entered declaring and adjudicating the respective rights and duties of the plaintiff and defendant under the above described provision of said lease; and further declaring that defendant does not have the sole and exclusive right to _____ [whatever right is claimed].

2. For plaintiff's costs and disbursements necessarily incurred herein.

3.For such other and further relief as to the court may seem meet and just.

Form 81

Prayer–Declaratory Judgment–Construction of Trust

WHEREFORE plaintiff prays:

1. For a judgment of this court declaring his rights and duties under said trust indenture and a determination of the validity thereof;
- 2.For a judgment compelling the defendants and each of them to _____;
- 3.For costs of suit; and
- 4.For such other and further relief as to the court may seem meet and proper.

Form 82

Prayer–Declaratory Judgment–Construction of Insurance Policy

WHEREFORE plaintiff prays for a declaration of its rights and duties under its policy of insurance, for costs of suit and for such other and further relief as to the court seems proper in the premises.

Form 83

Prayer–Declaratory Judgment–Determination of Plaintiff’s Status as Child or Defendant

WHEREFORE, plaintiff prays judgment:

1. That a declaratory judgment be made and entered that plaintiff is the child of defendant.
2. That the defendant be directed by the judgment of this court to duly execute and deliver to plaintiff a certificate of plaintiff’s birth.

Form 84

Prayer–Declaratory Judgment–Effect of Foreign Divorce

WHEREFORE the plaintiff prays the judgment of this court:

1. That a declaratory judgment be made and entered that the plaintiff is the lawful wife of the defendant, _____ [Charles Doe].
2. That a declaratory judgment be made and entered that the defendants, _____ [Charles Doe and Rose Jones] are not husband and wife.
3. That a declaratory judgment be made and entered that the colorable _____ [foreign] decree of divorce is invalid and of no force or effect in law.
4. Such other and further relief and declaration of the rights and legal relations of the parties to this action as shall be necessary and proper in the premises.

No further or consequential relief is claimed or can be claimed otherwise than herein demanded under the judgment now sought.

Form 85

Prayer–Declaratory Judgment–Rights With Respect to Administration of Trust

The plaintiff therefore prays the Court for its declaratory judgment as to the duty, rights and other legal relations of _____ so that he may proceed in the administration of the trust as herein set forth, and for other relief as may be proper.

Form 86

Prayer–Declaratory Judgment–To Determine Right Under Insurance Policy–In Federal Court

WHEREFORE plaintiff demands that the court adjudge:

1. That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.
2. That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.
3. That, if the court shall determine that said policy was in force at the death of _____ [the insured], the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.
4. That plaintiff recover its costs.

Form 87

Prayer–Declaratory Judgment–To Determine Validity of Statute

WHEREFORE, plaintiff prays for a declaratory judgment declaring that such statute, L 20_____, ch _____, is not applicable to plaintiff, or that the statute is void, unconstitutional and ineffective, and without force of law, and that plaintiff thereby is not required to comply with the terms and provisions thereof; that the defendants and each of them, their agents and servants, be permanently restrained and enjoined from exercising any of the powers, rights or duties respecting the enforcement of said statute against plaintiff insofar as it purports to confer such rights, powers and duties upon said defendants and each of them; and that plaintiff may have her costs and such other and further relief as the court may deem equitable.

Form 88

Prayer for Declaration as to Application of Statute

Wherefore plaintiff prays judgment that the court declare the legal rights, relations, and duties of the parties with respect to the following matters:

(1) Whether pursuant to Article VI, section 13, of the Constitution of the state of New York, plaintiff above named was elected _____ of the county of _____ at the general election of the year 20_____ for a term of _____ years, expiring _____, 20_____, or for a term of _____ years expiring _____, 20_____.

(2) Whether pursuant to section 4-110 of the Election Law of the state of New York, it is the duty of defendant, as _____ of the state of New York, at least _____ days before the general election, to be held on the _____ day of _____, 20_____, to make and transmit to the _____ of the city of _____, a certificate stating that the _____ of _____ County is one of the officers who lawfully may be voted for at such election by the voters of the county of _____.

That the court make such other and further declaration of the legal rights, relations and duties of the parties to this action as shall be necessary and proper in the premises.

That no further or consequential relief is or could be claimed.

[Adapted from the records in *Wingate v Flynn*, 139 Misc 779, 249 NYS 351, affd 233 AD 785, 250 NYS 917, affd 256 NY 690, 177 NE 195.]

Form 89

Prayer–Declaratory Judgment–To Determine Validity of Zoning Ordinance

WHEREFORE plaintiff asks for a judgment of this court declaring:

1. That the said resolution is unconstitutional and ineffective to prevent the plaintiff or any devisee of the plaintiff from erecting an apartment house or other building for the use of more than two families, or any building for the use and purpose of business, according to the original intention of the plaintiff;

2. That the zoning ordinance above referred to is also ineffective as to the use of the said property of the plaintiff, his executors, administrators, devisees, or assigns, and is not binding upon the plaintiff, and that he or his devisee may use said property for any apartment or business purposes, for which he may have used it on or before the _____ day of _____, 20_____;

3. That the defendant, as president, and the defendants as trustees of the village of _____, and their successors in the office, the village of _____ and all officers thereof, be restrained from maintaining or entertaining any application in any court based upon the use of said premises described in this complaint, contrary to the terms of said resolution or of the said zoning ordinance.

4. That the plaintiff have the costs of this action against any defense hereto and that plaintiff have such other and further relief as to the court shall seem just and proper.

Form 90

Prayer–Descent and Distribution–To Determine Heirs

WHEREFORE your petitioner prays that a decree be made and entered herein determining and establishing the identity of _____ and _____ heirs of _____, deceased.

Form 91

Prayer–Descent and Distribution–To Determine Heirs–Another Form

WHEREFORE _____ prays that the court determine that he is entitled to share in said property and estate and in the manner and to the extent herein set out.

Form 92

Prayer–Descent and Distribution–For Probate of Heirship

WHEREFORE your petitioner prays for a decree of this court establishing the right of inheritance of your petitioner and of the other persons entitled thereto in the real property above described, and that all the heirs of the said decedent may be cited to show cause why the prayer of this petition should not be granted.

Form 93

Prayer–Disorderly Houses–Restraint

WHEREFORE plaintiff prays judgment that defendant be restrained from maintaining or using said premises and the building thereon as a house of prostitution or for other immoral purposes, and from permitting them to be so used; that plaintiff recover from defendant the sum of \$_____; and for such further relief as may be just.

Form 94

Prayer–Disorderly Houses–Abatement as Nuisance

WHEREFORE plaintiffs pray that the court will restrain, enjoin, and abate, said tenement as a common nuisance, and restrain and enjoin said owners, and occupant, their servants and agents, from continuing or permitting the continuance of said illegal keeping and sale of intoxicating liquors in said building.

Form 95

Prayer–Divorce and Separation–Divorce

WHEREFORE plaintiff prays judgment as follows:

1. That the bonds of matrimony heretofore and now existing between plaintiff and defendant be forever dissolved and set aside.
2. That the plaintiff be awarded the exclusive care, custody, control, and education of said minor.
3. That the defendant pay to the plaintiff the sum of \$_____ per month for her support and maintenance and _____ per month for the support and maintenance of said minor child.
4. For costs and disbursements of this action.
5. For such other and further relief as to the Court may seem just and proper.

Form 96

Prayer—Divorce and Separation—Divorce—Another Form

WHEREFORE plaintiff prays judgment that the bonds of matrimony now existing between plaintiff and defendant be dissolved and that said defendant shall pay to plaintiff for her permanent support and maintenance the sum of \$_____ per month, and that she have and recover of said defendant her costs and disbursements herein incurred or expended, and for such other and further relief as to the court may seem just.

Form 97

Prayer—Divorce and Separation—Separate Maintenance

WHEREFORE plaintiff prays permanent alimony in the sum of \$_____ per month, to be paid and secured to her for the separate maintenance of herself and child, and that the custody of said child be awarded to her.

Form 98

Prayer—Divorce and Separation—Counterclaim for Divorce

WHEREFORE defendant demands judgment against plaintiff as follows:

1. That plaintiff take nothing by her complaint.
2. That the bonds of matrimony now existing between defendant and plaintiff be severed and that defendant be granted a divorce from plaintiff.
3. That defendant have such other and further relief as to the court may seem proper.

Form 99

Prayer—Divorce and Separation—To Enjoin Foreign Divorce

WHEREFORE the plaintiff prays judgment that a decree may be made permanently and perpetually restraining and enjoining the defendant, _____, and his agents, attorneys, solicitors, counsel and all other persons acting for or in his behalf from prosecuting, going forward, seeking to serve by publication or otherwise taking or procuring to be taken any further steps or procuring any act to be done or accomplished in, or in furtherance of the aforesaid original bill in the nature of an action for divorce, filed by the defendant herein, as plaintiff, against the plaintiff herein as defendant, for a divorce in the _____ Court in _____, _____, _____, together with the costs and disbursements of this action.

Form 100

Prayer—Easements—Injunction Against Obstruction of Street

WHEREFORE plaintiff prays judgment in this action that said defendant be perpetually enjoined and restrained from continuing to obstruct said street of _____ feet in width by said fence and from otherwise or further obstructing the street and that plaintiff have such other or further relief as to the court may seem just in the premises and that plaintiff recover of said defendant said plaintiff's costs and disbursements in this action incurred.

Form 101

Prayer–Easements–For Way of Necessity

WHEREFORE plaintiff prays judgment:

1. That plaintiff be given a way of necessity from that portion of lot _____, deeded to plaintiff by defendants over the land of said defendants to the said public highways.
2. That said public highways to _____ and _____ be decreed to be such, and open to the use of the public.
3. That said defendants, and each of them, their agents and employees, and all persons claiming under them, or either of them, be restrained and permanently enjoined from maintaining locked gates, or any obstruction to the use of said public highways and from preventing plaintiff and the public from using said public highways.
4. That order be issued authorizing plaintiff to make an accurate survey of said roads.
5. And for all other relief, as to the court seems meet and proper.

Form 102

Prayer–Ejectment

WHEREFORE the plaintiff prays judgment against the defendant for the delivery of the possession of the premises to him.

Form 103

Prayer–Ejectment–Another Form

WHEREFORE the plaintiff prays judgment against the said defendant for the restitution of said land and premises, and for the sum of \$_____ damages for the withholding thereof, and \$_____ damages caused by the loss of the value of the rents and profits thereof, together with his costs of suit.

Form 104

Prayer–Eminent Domain–Public User

WHEREFORE plaintiff prays that said lands be condemned for said proposed public use, to-wit, for the use of the plaintiff for _____ [specify public use]; that the damages of the defendant be assessed for the taking of the said lands for such proposed use.

Form 105

Prayer–Eminent Domain–Irrigation District

WHEREFORE plaintiff prays a decree of condemnation over the aforesaid lands owned by the defendants for a right of way for an irrigation ditch; that said decree fix the compensation to be paid by plaintiff to defendants for such right of way and for such other and further relief as may to the court seem proper.

Form 106

Prayer–Executors and Administrators–Action by Administrator

WHEREFORE plaintiff, as administrator de bonis non of the estate of _____, deceased, prays judgment against the defendant for the sum of \$_____, costs of suit, and for such other and further relief as to the court may seem proper.

Form 107

Prayer–Executors and Administrators–Action Against Executor

WHEREFORE plaintiff prays judgment against the defendant, as executor of the estate of _____, deceased, in the sum of \$_____ and for costs of suit, payable out of said estate in due course of administration.

Form 108

Prayer–Explosions–To Enjoin Blasting

WHEREFORE plaintiff prays judgment as follows:

1. That the defendants, their agents, attorneys, employees, servants and assigns be perpetually restrained and enjoined from using explosives and blasting on said premises hereinbefore described.
2. That a temporary restraining order or injunction issue out of this court upon the filing of this complaint, and that said defendants be cited forthwith to show cause, if any they have, why said temporary injunction or restraining order should not continue in force pending the hearing of this action.
3. For costs of suit; and,
4. For such other and further relief as to the court seems just and proper in the premises.

Form 109

Prayer–Forcible Entry and Detainer

WHEREFORE the plaintiff prays judgment against the defendant for the restitution of said premises, and for treble the amount of his damages as aforesaid, and for the costs of this action.

Form 110

Prayer–Forfeitures and Penalties–For Penalty

WHEREFORE plaintiff prays judgment against the defendant for the sum of \$_____ [amount of the penalty], for costs of suit, and for such other and further relief as to the court may seem proper.

Form 111

Prayer–Forcible Entry and Detainer–Another Form

WHEREFORE plaintiffs pray for judgment of this court against defendant for the sum of \$_____, which is treble their damages sustained as aforesaid, and that said defendant be required to vacate said premises and surrender the possession thereof to plaintiffs, for their costs of suit, and for such other relief as to the court may seem meet and equitable.

Form 112

Prayer–To Declare Sale To Be Fraudulent

WHEREFORE the plaintiff demands judgment against the defendants that said transfer of assets by the defendant _____, to the _____ Corporation, be adjudged fraudulent and void as against the plaintiff; and that the plaintiff have such other and further relief as may be just, together with the costs and disbursements of this action.

Form 113

Prayer–Habeas Corpus

WHEREFORE petitioner prays that a writ of habeas corpus may issue, directed to the said _____, commanding him that he have the body of the said _____, by him imprisoned and detained, together with the time and cause of imprisonment and detention, before the said court [or an officer, naming him], to do and receive what shall then and there be considered concerning the said _____ in pursuance of the statute in such case made and provided.

Form 114

Prayer–Habeas Corpus–Another Form

WHEREFORE your petitioner prays that a writ of habeas corpus directed to _____ [name of officer or person by whom petitioner is detained], issue for the purpose of inquiring into the cause of the imprisonment and restraint of your petitioner, and of delivering him therefrom, pursuant to law, and to the statute in such case made and provided.

Form 115

Prayer–Habeas Corpus–Custody of Infant

WHEREFORE your petitioner prays that a writ of habeas corpus issue, directed to the said _____, commanding him to bring the body of the said _____, Infant, before this court, and that the custody of the said _____, Infant, be awarded to your petitioner.

Form 116

Prayer–Habeas Corpus–To Secure Bail

WHEREFORE your petitioner prays that a writ of habeas corpus may be granted to bring him before this honorable court, to the end that he may be bailed or discharged from custody.

Form 117

Prayer–Highways–To Establish Public Highway

WHEREFORE plaintiff prays judgment against the defendant for the sum of \$_____; that said highway be adjudged a legal highway, and that the highway be opened to the public for public travel, for costs of suit, and for such other and further relief as to the court seems just and proper in the premises.

Form 118

Prayer–Husband and Wife–To Restrain Interference With Wife’s Separate Property

WHEREFORE plaintiff prays judgment that the said defendant be enjoined from exercising any control or authority over the separate property of plaintiff, or the rents, issues, and profits thereof;

For the costs of this suit.

Form 119

Prayer–Injunction–General Form

WHEREFORE plaintiff prays the decree of the court forever enjoining defendant from the commission of said acts complained of, and for judgment for damages in the sum of \$_____, and his cost of suit, and such other relief as the court may find to be proper.

Form 120

Prayer–Injunction–Against Breach of Contract

WHEREFORE plaintiff prays that defendant be restrained from breaching or violating or failing on his part to perform that certain contract dated the _____ day of _____, 20_____, between the said _____ and plaintiff herein, relating to _____ [state what], by failing or declining to _____ [state what], or in any other manner or form whatsoever, directly or indirectly, declining or failing to recognize the obligations and duties by said contract imposed in such respects.

Form 121

Prayer–Injunction–Against Bringing or Prosecuting Suit–Action on Bond or Contract

WHEREFORE plaintiff prays that defendant be restrained from proceeding further in his action at law against _____, above named, upon the bond of the said _____, dated the _____ day of _____; and from instituting, or proceeding in, any other action at law upon such bond; and from commencing

any action or actions against the plaintiff for the recovery of _____
[designate the debt or demand].

Form 122

Prayer–Injunction–Against Bringing or Prosecuting Suit–Violation of Agreement of Compromise and Settlement

WHEREFORE plaintiff prays that defendant be restrained from taking any step or proceeding whatsoever in the action of _____ against _____ pending in this court and from in any manner prosecuting, harassing, annoying or communicating with the plaintiff herein personally or by procurement or otherwise by virtue of the matters set forth in the complaint in said action of _____ against _____ and the affidavits and moving papers herein [While this is the form approved, it may be wise to here set forth the matters alleged in the complaint, affidavits, etc., rather than refer to them. If they are referred to, these papers should be attached to the injunction when served.], and from suing or prosecuting said _____ at law or in equity, or any other action or actions, proceeding or proceedings, by virtue of any alleged right, claim, or demand whatsoever accruing or accrued, or so claimed by him to be due and owing by plaintiff to said defendant _____ prior to the _____ day of _____, 20_____, the date of said agreement of compromise and settlement and of the confirmation of the said general release of the _____ day of _____, 20_____.

Form 123

Prayer–Injunction–Against Bringing or Prosecuting Suit–Action in Other State

WHEREFORE plaintiff prays that defendant be restrained from bringing or further prosecuting or carrying on by himself or by any counselor, attorney, or agent any suit or action for _____ [specify character of action] commenced or attempted to be

commenced by him against _____, above-named plaintiff, in any court of competent jurisdiction in the State of _____ or in any state other than this state; and from taking any steps or proceedings by action or otherwise to recover any sum claimed to be due the said defendant from plaintiff by reason of _____ [set forth nature of claim] other than by bringing action [or by prosecuting the action which has been commenced] in the courts of this state.

Form 124

Prayer–Injunction–Against Bringing or Prosecuting Suit–Proceeding to Dispossess

WHEREFORE plaintiff prays that defendant be restrained from taking any proceedings to dispossess plaintiff from the house and lot, No. _____ street in the city of _____, and particularly from issuing any warrant of removal, or taking possession under proceedings commenced before Judge _____ of the county of _____, on the ground that the demised premises were deserted by the tenant [or that rent was unpaid].

Form 125

Prayer–Injunction–Against Bringing or Prosecuting Suit–Ejectment

WHEREFORE plaintiff prays that defendant be restrained from proceeding further against the plaintiff in the action commenced against him in the _____ court of the state for the recovery of the possession of _____ [designate the premises], with their respective appurtenances; and also from instituting or proceeding in any new or other action at law for the recovery of the possession of said premises, or any part thereof.

Form 126

Prayer–Injunction–Against Alienation of Property Not Exempt from Execution

WHEREFORE plaintiff prays that defendant be restrained from selling, assigning, transferring, pledging, or otherwise disposing of any property, except what is by law exempt from execution; or from in any manner interfering therewith until the further order of the court.

Form 127

Prayer–Injunction–To Protect Exclusive Franchise

WHEREFORE plaintiff prays that a temporary restraining order do issue out of and under the seal of this honorable court against the said defendant company, its officers, agents and employees, enjoining and restraining them and each of them from permitting or authorizing any of the inhabitants or citizens of the said town of _____ to connect their water-pipes with the said main of the said defendant company so constructed through the said town of _____, or from supplying any of such citizens or inhabitants of the said town of _____ with water from the said water-mains, either under contract to pay therefor, or gratuitously, or otherwise, until such day as the court appoint for a hearing thereat, and that upon the final hearing hereof the said injunction may be made perpetual, and for the costs of this action.

Form 128

Prayer–Injunction–Practice of Law

WHEREFORE plaintiff respectfully prays that it be adjudged that the defendant be restrained and enjoined by this court from assuming to practice law and from directly or indirectly committing, performing or carrying out or continuing to commit, perform or carry out any of the acts or practices hereinbefore set forth, and described and, in particular, that he be enjoined and restrained from committing, performing or carrying out any of the following services and acts:

1. Consulting with any person and, in connection therewith, or by means of correspondence, giving him legal advice with respect to any matter or thing, affecting his business, practices or

policies, or to advise him with respect to any action to be taken or to be avoided under any laws, statutes, court decisions, rules or regulations or otherwise.

2. Rendering legal opinions to any person and making recommendations for changing his business policies or practices to enable him to comply with or to avoid any laws, statutes, court decisions, rules or regulations applicable to his business.

3. Giving legal advice or rendering legal services of any kind or nature to any person.

4. From claiming or representing to any person or to the general public that he is legally qualified to engage in the business or vocation of advising and rendering services as to how to effect tax savings in a legal manner pursuant to and in conformity with various tax laws, and from making specific recommendations based on such legal advice and services.

5. From directly or indirectly performing or carrying out or continuing to perform or carry out any of the acts or practices hereinabove set forth, and for such other and further relief as to this court may seem just and proper.

Form 129

Prayer—Injunction—Against Violating Agreement Not to Compete

WHEREFORE plaintiff demands judgment restraining and enjoining the said defendants and each of them, their and each of their agents and servants from in any manner continuing, engaging or becoming interested or employed in, either as owner, part owner, manager or employee, in any capacity, in any business which shall wholly or partly consist in the purchase or sale of _____ products in the said village of _____, unless in the business and interest of the plaintiff, and also from injuring, impairing or destroying the good will transferred by them, with others, to this plaintiff, and from personally soliciting or interfering with the customers dealing with said plaintiff, transferred to it by the defendants and others, and also enjoining and restraining said defendants and each of them, their and each of their agents and servants from infringing the rights of said plaintiff, under the instruments of

transfer herein set forth. That the damages that plaintiff has already suffered be ascertained and that plaintiff have judgment against the defendants for the amount thereof, and for such other and further relief in the action as may be consistent with equity and good conscience, with the costs of this action.

Form 130

Prayer–Injunction–Against Violating Agreement Not to Engage in Similar Business

WHEREFORE plaintiff prays that defendant be restrained from at any time hereafter, in the city of _____, or within _____ miles thereof, engaging in or in any manner becoming interested in any kind of business the same as or similar to the business now carried on by the plaintiff, or through its officers, agents, or employees in said city, described as follows: _____ [state the nature of plaintiff's business]; and further restrained from soliciting and inviting other persons to buy from, or sell to, or otherwise deal with, a person, corporation, partnership or other business association engaged in a business in the city of _____, or within _____ miles thereof, the same as or similar to that conducted by the plaintiff as aforesaid, and from interfering with the business formerly belonging to _____ Company and by it sold, assigned and transferred to the plaintiff on the _____ day of _____, 20_____, with good will, trade, and customers.

Form 131

Prayer–Injunction–Against Unfair Competition–by Imitation

WHEREFORE, the plaintiff demands judgment against the defendant that the defendant be restrained and perpetually enjoined from advertising or offering for sale, or selling any cartoons in imitation of the said _____ cartoons of the characters known as “_____” and “_____” and from using either the word “_____” or the word “_____” as applying to or in

connection with cartoons sold or advertised and offered for sale by the defendant; and from drawing, publishing or selling any cartoons under the title or designation “_____”; and from in any manner unlawfully interfering with the plaintiff’s exclusive right to use the words “_____” as a title or designation for cartoons; and that the plaintiff may have such other and further relief in the premises as may be just and equitable.

Form 132

Prayer–Injunction–Against Unfair Competition–Use of Trade Name

WHEREFORE plaintiff prays that defendant be restrained from selling, or offering for sale, or procuring to be sold, or otherwise disposing of any article of merchandise described as, or purporting to be _____ [insert trade name], and from advertising in the newspapers, magazines, or otherwise, and in any other manner representing that such article of merchandise so sold by the defendant is _____ [insert trade name], and from so using the word [trade name] in connection with the word “genuine,” or any other word, or words, and from advertising, or representing, the said article of merchandise by any designation containing the words _____ [trade name] alone, or in combination with other words, and from selling or offering for sale, or procuring to be sold any such article of merchandise having affixed thereto, or bearing upon them, or the package in which the articles of merchandise are put up, any label, a copy of which is hereto annexed, and from selling any such article of merchandise bearing labels which shall imitate, or resemble the labels, copies of which are hereto annexed.

Form 133

Prayer–Injunction–Against Unfair Competition–Use of Label

WHEREFORE plaintiff prays that defendant be restrained from selling or exposing for sale, or procuring to be sold any _____ described as, or purporting to be

_____ manufactured by _____ in bottles having affixed thereto such labels as are mentioned in the complaint, or any other labels, so contrived or expressed as, by colorable imitation or otherwise, to represent the product sold by defendants to be the same as that manufactured and sold by plaintiff; and from using any trade cards, so contrived or expressed as to represent that any _____ sold, or proposed to be sold by defendant is the same as that manufactured or sold by plaintiff.

Form 134

Prayer–Injunction–Against Publication of Book Without Permission

WHEREFORE plaintiff prays that defendant be restrained from printing, publishing, or causing, or being in any way concerned in the printing, publishing, or selling, or exposing to sale, or otherwise disposing of any copies of _____ [designate book], or any other book, purporting to be or resembling the book so printed, published and sold by or for the plaintiff, other than and except by plaintiff's own selection, printed and published by plaintiff's order and for plaintiff's use and benefit.

Form 135

Prayer–Injunction–Against Unauthorized Performance of Dramatic work

WHEREFORE plaintiff prays that the defendant be restrained from performing, exhibiting or representing, or causing to be performed, exhibited or represented, the play or drama, known as _____, or the scenes, incidents, stage business, stage appurtenances, cast of characters, the individualities thereof or the dress or deportment of the dramatis personae and the stage setting of the said play or drama, and from performing, exhibiting or representing, or causing to be performed, exhibited or represented, any play or drama under the title of the plaintiff's play or drama hereinbefore mentioned, or any simulation thereof, or from performing, exhibiting or representing, or causing to be performed, exhibited or represented any play or drama, or the scenes, incidents, stage appurtenances, cast of characters, the

individualities thereof or the dress or deportment of the dramatis personae similar to the plaintiff's said play or drama, or the scenes, incidents, stage business, stage appurtenances, cast of characters, the individualities thereof or the dress or deportment of the dramatis personae of the plaintiff's said play or drama.

Form 136

Prayer—Injunction—Against Use of Partnership Name After Dissolution

WHEREFORE plaintiff prays that defendant be restrained from doing business under, or using the firm name and style of _____; from purchasing or attempting to purchase goods, wares, and merchandise under the name, or on credit of said partnership; from selling or offering for sale, or from exposing to the public any and all signs and cards and from advertising in any manner, or offering any written or printed matter containing the partnership name; and from signing the partnership name to any letter, bill, contract, receipt, check, note, draft, bill of exchange, or other written instrument or document.

Form 137

Prayer—Injunction—Against Use of Processes by Former Employee

WHEREFORE plaintiff prays that defendant be restrained from disclosing to any person or persons information concerning the various following secret processes; _____ [specify in exact detail secret processes, the use of which is sought to be enjoined], all of which are secret processes which the defendant learned while in plaintiff's employ and from the plaintiff and his employees, and from manufacturing or in any way aiding in the manufacture of any or all of the articles above mentioned, or from using in any manner any of the processes above set forth in manufacturing or in aiding in the manufacture of any article or articles.

Form 138

Prayer–Injunction–Against Suspension or Expulsion From Organization

WHEREFORE plaintiff prays that defendant be restrained from suspending, or expelling the plaintiff from the said _____ Association; and from denying to him any of the benefits of membership therein; from taking further steps for the prosecution of the plaintiff for an alleged violation of article _____, section _____, of the bylaws of the said association; from preventing or attempting to prevent members of the said association by threats, persuasion, speech, writing, or otherwise from working with or for the plaintiff in his profession; from preventing or attempting to prevent the plaintiff from obtaining work in his profession; from threatening other members of the said association with expulsion, suspension, or fine if they work for or with the plaintiff.

Form 139

Prayer–Injunction–Against Discontinuance of Service–Water Company

WHEREFORE plaintiff prays that defendant be restrained from cutting off or disconnecting the pipes supplying water to the house and premises of the plaintiff at _____ street in the city of _____, County of _____, State of _____, from the water system of the said defendant and from shutting off water from the plaintiff's house and premises at said address.

Form 140

Prayer–Injunction–Against Discontinuance of Service–Gas and Electric Company

WHEREFORE plaintiff prays that defendant be restrained from removing from the house and premises owned by the plaintiff at _____ street in the city of _____ County of _____, and State of _____, the meter now maintained by the defendant for the purpose of registering the amount of gas [or electricity], used by the plaintiff and from cutting off or disconnecting the pipes [or wires] supplying gas [or electricity] to the said house and premises of

the plaintiff, and from refusing or neglecting to supply gas [or electricity] to the said house and premises of the plaintiff.

Form 141

Prayer–Injunction–To Enforce Restrictive Covenant

WHEREFORE plaintiff prays judgment that the defendant and all persons holding under him or aiding or assisting him be enjoined and restrained from constructing or erecting upon his said premises the building now being or intended to be erected by him, or any building other than the kind permitted by the said agreement, and that plaintiff have such other and further relief as may be just.

Form 142

Prayer–Injunction–To Restrain Enforcement of Judgment

WHEREFORE plaintiff prays that said defendants may be enjoined from collecting said judgment, and for all other and further relief as shall in equity seem proper to the court.

Form 143

Prayer–Injunction–Against Trespass

WHEREFORE plaintiff prays that defendant be restrained from taking, or attempting to take, or holding possession of the following described lands and premises of the plaintiff herein, or any portion thereof; to wit, _____ [insert description]; and from doing, or causing, or permitting to be done any act or thing whereby the rights of the plaintiff to the possession of the said lands may in any manner be impaired.

Form 144

Prayer–Injunction–Against Surveillance and Trespass by Police

WHEREFORE plaintiff prays that defendants and each of them individually and _____ as police commissioner of the City of _____, and _____ as captain of the _____ police precinct in the Police Department of the City of _____, respectively, the police officers under the command of each of the said defendants, their and each of their agents, servants and employees, be enjoined and restrained from maintaining and stationing policemen or police officers within premises leased and occupied by the plaintiff herein at No. _____ Street in the City of _____, and also from keeping, stationing and maintaining within the said premises any of the officers under the command of either of the said defendants against the will of this plaintiff, or otherwise to unlawfully oppress this plaintiff, or persons in his employ and customers and persons desiring to do business with this plaintiff, and persons lawfully entering upon said premises leased and occupied by the plaintiff herein, or from unlawfully trespassing upon the said premises.

Form 145

Prayer–Injunction–Against Undermining Land

WHEREFORE plaintiff prays that defendant be restrained from excavating or removing any soil from any land adjoining the plaintiff's premises at _____ [designating them] which shall or may cause the plaintiff's land, by reason of the withdrawal of its lateral support, to fall away or subside.

Form 146

Prayer–Injunction–In Labor Dispute

WHEREFORE plaintiffs pray that until the final hearing of this action a temporary injunction issue out of the court restraining and enjoining said defendants, and each of them, and each and all of the members of the said defendant associations, their respective officers, agents,

servants, employees and successors, and all other persons in concert and participation with them, from:

1. Using violence, coercion, or intimidation by force of numbers or otherwise, or other unlawful means upon the employees of the plaintiff company or those seeking employment with the plaintiff company, or others lawfully entering the plaintiff company's plant.

2. Visiting the homes of the individual plaintiffs or other employees of the plaintiff company or persons seeking employment with the plaintiff company, or approaching any of said persons at any place whatsoever in an offensive or disorderly manner, or in such a manner as to provoke a breach of the peace.

3. Picketing the homes of the individual plaintiffs or other employees of the plaintiff company or persons seeking employment with the plaintiff company.

4. Making, uttering or circulating any false, deceitful or untrue statements with reference to the individual plaintiffs, the plant of the plaintiff company, and its employees working therein or persons seeking employment therein.

5. Interfering with the ingress to and egress from the plaintiff company's plant located at _____, _____ by the plaintiff company, its employees, or any other person or persons who may have lawful occasion to enter or leave said premises.

6. Congregating in crowds on or near the premises of the plaintiff company in _____, _____.

That the court fix a proper number of pickets and restrain the defendants from picketing the said plant with more than the number so fixed by the court, such pickets to wear badges reading, "Authorized Picket."

That the court grant such other and further relief as the plaintiffs may be entitled to in equity, and that upon a final hearing said injunction may be made permanent, and that the plaintiffs may have at that time such other and further relief as they may be entitled to.

Form 147

Prayer–Injunction–In Labor Dispute–For Temporary Restraint Against Picketing

WHEREFORE, your deponent prays that an order be made restraining the said pickets and granting to the plaintiff a temporary injunction during the pendency of this action so that your deponent may continue his business during that time and not be compelled by reason of the maliciousness of the defendants to vacate the premises.

Form 148

Prayer–Injunction–In Labor Dispute–Against Picketing

WHEREFORE, plaintiff demands judgment against the defendants:

(1) That these defendants, and each of them, their agents, servants, employees, successors and those acting under their direction and control, be enjoined permanently and during the pendency of this suit from stationing any pickets at or near the plaintiff's theater, and using signs whether carried by pickets or otherwise, calculated falsely to arouse any comment by the plaintiff's actual and prospective patrons, and from interfering with the conduct of the plaintiff's business, and from attempting by intimidation, coercion and enticement to compel the plaintiff to enter into any contract with the defendants.

(2) That the defendants pay to the plaintiff the sum of _____ dollars.

(3) That the plaintiff may have such other and further relief as to this court may be just and proper, together with the costs and disbursements of this action.

Form 149

Prayer–Injunction–To Restrain Nuisance

WHEREFORE plaintiff prays judgment:

- 1.For an injunction against the continuance of said nuisance;
- 2.For \$_____ damages;
- 3.For costs of suit; and,
- 4.For such other and further relief as to the court seems meet and just in the premises.

Form 150

Prayer–Injunction–Against Nuisance–Brick Kiln

WHEREFORE plaintiff prays that defendant be restrained from burning or manufacturing, or causing to be burned or manufactured, bricks on a piece of land or premises in the defendant's possession _____ [describe the premises], situated in the town of _____, in the county of _____, and whereon is erected a brick kiln so as to occasion damage or annoyance to the plaintiff as owner, or to his tenants, respectively as occupiers of a dwelling house of the plaintiff _____ [describe the plaintiff's premises], situate in _____ aforesaid.

Form 151

Prayer–Injunction–Against Nuisance–Noise From Adjoining Premises

WHEREFORE plaintiff demands judgment against the defendant:

1. That the defendant, its officers, servants, and agents, and all persons under its authority and control, be enjoined and restrained from committing and continuing such nuisance and from causing, permitting, and transmitting any noise, jar, or vibration into or through the plaintiff's premises.

2. For the sum of _____ Dollars damage.

3. For the costs and disbursements of this action.

4. For such other and further relief as may be just.

Form 152

Prayer—Injunction—Against Nuisance—Slaughterhouse

WHEREFORE plaintiff prays that defendant be restrained from occupying a building erected by the defendant at No. _____ street, in the city of _____, as a slaughterhouse, and from slaughtering any animals in such building, and from permitting the building to be used as a slaughterhouse.

Form 153

Prayer—Injunction—Against Nuisance—Demolition and Blasting

WHEREFORE plaintiff prays that defendant be restrained from destroying, injuring, or demolishing the building known as number _____ Street, in the City of _____ in any way and from blasting the rock adjacent to the wall thereof in such manner and by the use of such powerful explosives as to throw fragments of rock on defendant's premises and to cause the building thereon erected to shake and the walls to crack and to endanger these said premises and the walls thereof.

Form 154

Prayer—Injunction—Against Obstructing Highway

WHEREFORE plaintiff prays that defendant be restrained from entering into or upon _____ and _____ streets for the purpose of laying or establishing a railroad therein, and from digging up or subverting the soil, or doing any other act in those streets tending to encumber them or to prevent the free and common use thereof, as

the streets have been heretofore enjoyed [until compensation shall have been made therefor pursuant to the provisions of the statute].

Form 155

Prayer–Injunction–Against Obstructing Highway–Another Form

WHEREFORE the plaintiff demands judgment that the defendant, and his and each of his agents, servants, attorneys, and employees, and each and every one of them be perpetually enjoined and restrained from obstructing the said highway and from interfering in any manner with the plaintiff in her use thereof and her rights therein, and from building and erecting any fence or other obstruction in or upon or along said highway so as to interfere with the plaintiff's access thereto; that the said fence so commenced to be erected in front of the plaintiff's said premises may be removed and the defendant required to restore said highway to its former condition as it was used prior to the time the defendant commenced to build said fence as aforesaid; and for such other and further relief in the premises as to the court shall seem just, with costs.

Form 156

Prayer–Injunction–Against Closing Right of Way

WHEREFORE plaintiff prays that defendant be restrained from closing, obstructing, stopping up, or injuring or from continuing to close, obstruct, stop up, or injure the right of way owned by plaintiff across the premises of defendant, which right of way is described as follows: _____, and from in any manner preventing, or attempting to prevent the plaintiff, his family, agents, servants, or assignees from passing over or using said right of way.

Form 157

Prayer–Injunction–Against Violation of Right of Privacy by Use of Picture

WHEREFORE, plaintiff demands judgment:

1. That the defendant, its officers, agents and servants be forever restrained and enjoined from using, in any manner, a photograph, portrait, or pictures of the plaintiff in any form whatever, and from using photographs, portraits, or pictures purporting to be and represented to be the photographs, portraits or pictures of the plaintiff in any form whatever, for the purposes of trade or for advertising or any other purpose.

2. That the defendant, its officers, agents and servants be forever restrained and enjoined from using the name of the plaintiff in any form whatsoever for the purposes of trade or for advertising, or for any other purpose.

3. That the defendant be ordered to deliver to the plaintiff any and all films or parts of films containing said pictures, photographs or portraits in its possession, together with the original plates or negatives from which copies are produced.

4. For the sum of _____ Dollars damages, and for such other and further relief as to the court may seem just and proper, together with the costs and disbursements of this action.

Form 158

Prayer—Injunction—Against Trespass

WHEREFORE plaintiff prays that the defendant and its agents, servants, employees, laborers, and constructors be enjoined from entering upon the lands of the plaintiff as described in the complaint herein and from digging out, removing, or carrying away any sand from said premises and that the plaintiff may have such other and further relief as to the court may seem equitable, just, and proper, together with the costs of this action.

Form 159

Prayer—Injunction—To Restrain Waste

WHEREFORE plaintiff prays that an order be made restraining the commission of any waste or further waste or damage to the premises described in the complaint in this action.

Form 160

Prayer—Injunction—Against Diversion of Watercourse

WHEREFORE plaintiff prays that defendant be restrained from diverting the said stream or watercourse and the water therein running in a _____ direction across the land of defendant the following courses and distances; to wit, _____ [specify], and from diverting the water from said lands through any artificial ditch, channel, or otherwise on to the land of plaintiff, and from interfering with plaintiff in her lawful and proper efforts to cause said water to run through its natural channel and course through the said land of defendant and off plaintiff's land and to confine the said water to the original channel on and over defendant's land, and from obstructing said original channel, and from keeping the channel obstructed and from so plowing or ditching her land as to cause the said water to leave the said original channel and flow upon or across the said lands of plaintiff.

Form 161

Prayer—Injunction—Against Pollution of Stream

WHEREFORE the plaintiff demands judgment against the defendant, that the defendant be enjoined from throwing dyestuffs, oil, grease, waste, woolen and shoddy fiber and all other poisonous, noxious, deleterious and offensive substances into said _____ Creek above the plaintiff's mill; that the plaintiff recover of the defendant the sum of _____ Dollars, damages already sustained, and such damages as plaintiff hereafter sustains before the determination of this action, to the amount of at least _____ Dollars per day for each day that the defendant continues to pollute said stream, besides the costs and disbursements of this action, and that the plaintiff have such other, further and different relief as to the court shall seem just and proper.

Form 162

Prayer—Injunction—Against Pollution of Stream—Another Form

WHEREFORE the plaintiff demands judgment that the defendant, its officers and servants, be restrained and enjoined from continuing said wrongful acts or either of them, and be enjoined by the judgment and decree of this court from emptying or discharging any of the contents of any of its sewers or drains into _____ Creek; that the plaintiff recover from the defendant the sum of _____ Dollars damages, together with the costs of this action; and that plaintiff have such other and further relief as to the court may seem just.

Form 163

Prayer–Injunction–Against Obstruction of Watercourse

WHEREFORE plaintiff prays that defendant be restrained from obstructing and diverting the said river, stream, or watercourse and the water therein from its natural course running in a _____ direction, across the land of plaintiff, the following courses and distances; to wit, _____ [specify], and from turning the water from the said watercourse through any artificial channel or otherwise upon the land of defendant and away from the land of plaintiff, and from interfering with plaintiff in her lawful and proper efforts to return said water to its natural channel and course through the said lands of plaintiff and to confine said water to the original channel, and from obstructing said original channel and from keeping the channel obstructed and from causing the said water to leave the said original channel and flow away from the lands of plaintiff and upon or across the lands of defendant.

Form 164

Prayer–Injunction–Against Violating Building Restriction

WHEREFORE plaintiff prays judgment that the defendant be restrained from erecting any building on said lot, as laid out on said map or plan of _____ except in accordance with the special covenants contained in the deeds made by said _____ and especially from erecting or permitting the erection of any outhouse on said lot which shall extend or be more than 50 feet from the rear or southerly

boundary thereof, as the lot was laid out on said plan of _____, and that the defendant be enjoined from filing said map of _____ as the map or plan of said _____ and from withdrawing or amending subsequent maps inconsistent therewith and for such other relief as shall be just, including her costs hereof.

Form 165

Prayer–Injunction–Against Removal of Property From Building

WHEREFORE plaintiff prays that defendant be restrained from taking or removing any of the following described property of the plaintiff; to wit, _____, from the building or premises known as number _____ street, in the city of _____, or in any way interfering with the peaceful enjoyment and possession of the said premises by the plaintiff.

Form 166

Prayer–Injunction–Against Removal of Fixtures

WHEREFORE plaintiff prays that defendant be restrained from removing or causing to be removed from the premises hereinafter described any bricks, timber, building materials, copper pans or fixtures. Said premises are known as _____, at _____, and are described as follows: _____
[description].

Form 167

Prayer–Injunction–Against Violation of Provision of Lease as to Permissible Use

WHEREFORE plaintiff prays that defendant be restrained from carrying on the auction business or selling goods at public auction in the store No. _____ Street, in the city of _____, and from conducting therein any business other than the regular dry-goods jobbing business.

Form 168

Prayer–Injunction–Against Assignment of Lease or Subletting

WHEREFORE plaintiff prays that defendant be restrained from leasing or subletting the premises or any part thereof demised by _____ to _____ by a lease dated the _____ day of _____, 20_____, to wit, _____ [describe premises leased], or from assigning said lease or from making, executing, or delivering any lease, sublease, or assignment thereof.

Form 169

**Prayer–Injunction–Against Erection of Building–Requiring Removal of Building
Previously Erected**

WHEREFORE plaintiff prays that the defendant be restrained from continuing the projected buildings, or commencing any other buildings whatever on the garden or plot of ground described as follows: _____ or any part thereof; and also from permitting such part of the said buildings as have been already erected on the said plot from remaining thereon.

Form 170

Prayer–Injunction–Against Violation of Restrictive Covenant or Building-line Agreement

WHEREFORE plaintiff prays that defendant be restrained from erecting or causing to be erected on the lands and premises hereinafter described any dwelling or other building which, in violation of the restrictive covenants and agreements contained in a certain deed made and executed by _____ to _____, dated the _____ day of _____, and recorded in the office of the clerk of the County of _____ on the _____ day of _____

in liber _____, page _____, shall be built and erected nearer to the front line of the said lands and premises than _____ feet; or shall be of a character known as a tenement, apartment, or flat-roof house.

The said lands and premises hereinbefore mentioned are bounded and described as follows:

_____.

Form 171

Prayer–Injunction–Against Taking Possession Before Payment of Purchase Price

WHEREFORE plaintiff prays that defendant be restrained from entering upon any part of the lands hereinafter described, until the said defendants shall have paid the plaintiff _____ Dollars; and that if the said defendants do not pay the said sum of _____ Dollars, being the residue of the purchase money of said lands, by the said _____ day of _____, then, and in such case, the said defendants are hereby restrained from in any wise proceeding with the building of _____ in, upon, or over any part of the said lands. The said premises are known as _____, and described as follows: _____.

Form 172

Prayer–Injunction–Against Collection of Rents and Profits

WHEREFORE plaintiff prays that defendant be restrained from collecting, receiving, or intermeddling with the rents and profits of the premises known as _____, at _____, and described as follows: _____.

Form 173

Prayer–Injunction–Against Alienation, Encumbrance, or Transfer–Negotiable Instrument

WHEREFORE plaintiff prays that defendant be restrained from indorsing, assigning, or in any way transferring or negotiating _____ [for example: a bill of exchange

drawn by M. N. upon the above-named A. B. for _____ Dollars, bearing date on or about the _____ day of _____, 20_____, and payable _____ months after said date, and accepted by said A. B.].

Form 174

Prayer—Injunction—Against Alienation, Encumbrance, or Transfer—Corporate Stock

WHEREFORE plaintiff prays that defendant be restrained from transferring, assigning, hypothecating, pledging, encumbering, or in any manner disposing of or interfering with the _____ shares of stock in the corporation known as _____, mentioned in the complaint herein, or the certificate of ownership thereof numbered _____, and from making or causing to be made any transfers thereof on the books of said corporation, or otherwise, or from collecting or receiving any dividends thereon.

From selling, or transferring, or encumbering _____ shares of stock of the _____ company, standing on the books of the said company, in the name of _____; and the said company is in like manner restrained from permitting such sale, transfer, or encumbering (and from paying any dividend thereon), without the order and direction of this court.

Form 175

Prayer—Injunction—Against Sports Arena in Residential District

WHEREFORE the plaintiffs demand judgment against the defendant enjoining and restraining the defendant, its officers, agents, servants and employees, and all others claiming under or through the defendant from maintaining, operating or holding, or causing or permitting to be maintained, operated or held, on the premises aforesaid, any prize fight, boxing exhibition, boxing contests, wrestling contests, or any other similar activity, in the nighttime and that the plaintiffs have such other and further relief as to the court may seem just.

Form 176

Prayer—Insurance—Declaratory Relief by Insurance Company

WHEREFORE plaintiff prays that the declaration of the respective rights and duties of plaintiff and defendant with respect one to the other under and by virtue of said contract of insurance and the claim asserted and denied by plaintiff and defendant, respectively, be made, and for such other and further relief as to the Court may seem proper.

Form 177

Prayer—Insurance—For Rescission of Policy

Plaintiff prays the judgment and order of this court as follows:

(1) That said insurance policy, numbered _____, be declared void and that the policy be rescinded as of _____.

(2) That the defendants, or such of them as may have possession of said policy, be required to deliver into this court for cancellation said policy of insurance, and that the policy be cancelled and declared to be void and of no force or effect;

(3) That plaintiff have and recover its costs of suit herein incurred; and

(4) That plaintiff have such other and further relief as to this court may seem just and proper in the premises.

Form 178

Prayer—Insurance—To Have Policy Cancelled

WHEREFORE plaintiff prays that the defendant be ordered to surrender said policies to the plaintiff to be canceled.

Form 179

Prayer–Interference–To Prevent Inducement of Breach of Contract

WHEREFORE plaintiff prays judgment that the said defendants and each of them be perpetually enjoined and restrained from interfering, attempting to induce, or inducing _____ to break his contract with plaintiff; for costs in this suit, and for such other and further relief as may be equitable.

Form 180

Prayer–Interpleader–Insurance Company and Rival Claimants

WHEREFORE plaintiff prays:

1. That the rights of the defendants in and to the above-mentioned \$_____ be determined, and that the plaintiff be relieved from any and all liability on account of the beneficiary certificate issued to the said _____, deceased;
2. That the plaintiff be absolved and adjudged free from all costs in this action; and
3. For such other and further relief as to the court may seem meet and proper, and that plaintiff be allowed its just costs, disbursements and allowances herein out of said fund.

Form 181

Prayer–Interpleader

WHEREFORE plaintiff demands judgment:

1. That defendants be restrained, by injunction, from taking any proceedings against plaintiff in relation thereto.
2. That they be required to interplead together concerning their claims to the said property.
3. That some person be authorized to receive the said property pending such litigation.

4. That upon delivering the property to such receiver plaintiff be discharged from all liability to either of defendants in relation thereto.

5. And that plaintiff's costs be paid out of the proceeds.

Form 182

Prayer–Interpleader–Another Form

WHEREFORE plaintiff demands judgment as follows:

1. That during the pendency of this suit, and until the further order of the court, the defendants, and each of them, their agents and attorneys, be enjoined and restrained from commencing or prosecuting any action or proceeding in any court against plaintiff for the recovery of said moneys and property, or any part thereof.

2. That plaintiff may deposit said moneys and property in court, or deliver possession thereof to such person as the court directs, and that thereupon plaintiff may be discharged from any and all claims of defendants, or either of them, by reason of said moneys and property, and that defendants and each of them, their agents and attorneys, may be forever enjoined and restrained from commencing or prosecuting any action or proceeding in any court against plaintiff upon their said claims or for the recovery of said moneys and property, or any part thereof.

3. That defendants interplead each with the other to determine their respective rights in said moneys and property, and that it be adjudicated to whom the property belong.

4. That plaintiff be allowed its just costs, disbursements and allowances herein out of said moneys and property, and have such other and further relief in the premises as shall seem just and equitable.

Form 183

Prayer–Interpleader–Warehouseman and Rival Claimants

WHEREFORE the plaintiff prays judgment:

1. That the defendants be restrained by injunction from taking any proceedings against the plaintiff in relation to the said property.
2. That the defendants be required to interplead together concerning their claims to the said property.
3. That some person be authorized to receive said property pending this litigation and that upon delivering the property to such person the plaintiff be discharged from all liability to either of the defendants in relation thereto.
4. That the plaintiff have such other and further relief as may be just, with costs of this action.

Form 184

Prayer–Joint Adventurers–Accounting and Termination

WHEREFORE plaintiff prays judgment terminating said joint adventure and that a sale of the assets of said joint adventure be had according to law, and that the proceeds therefrom be divided in accordance with said agreement; for the appointment of a receiver pending final determination of this cause; for costs of suit and for such other and further relief as to the court seems just and proper.

Form 185

Prayer–Judgments–To Establish Foreign Judgment

WHEREFORE plaintiff prays that the said judgment so rendered by the _____ Court of the State of _____, in and for the County of _____, be established as a foreign judgment, and that the judgment be enforced in this action in the manner provided by law; that it be adjudged and decreed that there is now due and owing to the plaintiff from the defendant the said sum of

\$_____, and that plaintiff may have such other and further relief as may seem to the court just and equitable.

Form 186

Prayer–Landlord and Tenant–For Removal of Tenant for Nonpayment of Rent

WHEREFORE your petitioner prays for a judgment awarding to the landlord the possession of said premises together with costs of these proceedings, and for a warrant to remove said tenant and undertenant from the possession of said premises; [add, if recovery for rent desired: and for a judgment for said rent in arrears for the sum of \$_____, with interest from the _____ day of _____, 20_____, together with costs and disbursements].

Form 187

Prayer–Landlord and Tenant–For Breach of Covenant

WHEREFORE plaintiff prays: that said lease be declared void, ordered delivered up and cancelled; that he recover damages against defendant in the sum of \$_____; that defendant be enjoined from proceeding in the _____ court of the county of _____, with said action for rent based upon said lease and more particularly described as action No. _____ in said _____ Court; for costs of suit incurred herein, and for such other and further relief as to this court may seem meet in the premises.

Form 188

Prayer–Liens–For Foreclosure of Attorney’s Lien

WHEREFORE plaintiff demands judgment that his lien as attorney upon the amount of said settlement be ascertained and foreclosed against the defendants, and each of them, and that

the defendants be adjudged to pay to plaintiff the amount thereof, and that plaintiff have such other and further relief as may be just, with the costs of this action.

Form 189

Prayer—Liens—For Foreclosure of Conditional Sales Contract

WHEREFORE plaintiff demands judgment against the defendants and that the defendants be barred and foreclosed of all right, title, and interest in or lien upon the goods and chattels described in the agreements aforesaid; that the plaintiff's lien on such goods and chattels be fixed at the sum of \$_____ with interest thereon from the _____ day of _____, 20_____, together with costs of this action; that the defendants _____ and _____ above-named be adjudged to be personally liable for the amount of said lien; that said chattels be sold according to law and that out of the proceeds of such sale the plaintiff be paid the amount of its lien, together with the interest thereon and said costs, and that if there be any deficiency, plaintiff have judgment therefor.

Form 190

Prayer—Liens—Foreclosure on Personal Property

WHEREFORE plaintiff prays judgment against the defendant as follows:

1. That it be decreed that plaintiff has a lien on said personal property for the said sum of \$_____.
2. That the said personal property be sold according to law and that the proceeds from said sale be applied to satisfy plaintiff's said lien, together with the expenses of sale and the costs and disbursements of this action.
3. That plaintiff have judgment against the defendant for any deficiency remaining.
4. For such other and further relief as to the court may seem proper.

Form 191

Prayer—Liens—Equitable Foreclosure on Real Property

WHEREFORE plaintiff prays for a decree decreeing that the liens of the judgments above described constitute a first lien upon the real property above described, and ordering a sale of said property at public auction and directing that the proceeds of the sale, after deducting therefrom all costs of the sale, be applied to the payment of plaintiff's liens above described, and that the plaintiff or any of the defendants be allowed to become purchasers at such sale, and that the defendants be required to deliver the possession to the purchaser at said sale on the production of the deed therefor, and also that the defendants, and each of them, or any of them, subsequent to the commencement of this action, and all persons having liens upon or conveyances to the property subsequent to the commencement of this action be forever debarred and foreclosed of and from all right, title, and interest in said property, and the plaintiff have such other and further relief as to the court shall seem proper in the premises.

Form 192

Prayer—Life Estates—To Establish Termination

WHEREFORE your petitioner prays for a decree of this court to the effect that the life estate formerly held by _____ in the real property above described absolutely terminated at his death on _____, 20_____.

Form 193

Prayer—Logs and Timber—To Recover Possession of Lumber

WHEREFORE plaintiff prays judgment against defendants for the recovery of the possession of said lumber or for the value thereof in case delivery cannot be had, together with damages for the detention thereof, and for interest and costs of suit.

Form 194

Prayer—Lost Papers—To Establish Lost Deed

WHEREFORE plaintiff prays that said lost deed be re-established, that said purported conveyance of the property to defendant be adjudged fraudulent and as of no effect as against plaintiff, and that defendant be enjoined from prosecuting his said suit of ejectment, and that plaintiff may have such other and further relief in the premises as his case requires and as seems meet.

Form 195

Prayer—Lost Papers—To Establish Destroyed Court Record

WHEREFORE petitioner prays for a judgment reciting the substance and effect of said lost judgment and that said judgment when entered of record in said court may have the same force and effect that the original judgment would have had if it had not been lost or destroyed.

Form 196

Prayer—Lost Papers—For Replacement of Lost Certificate

WHEREFORE plaintiff prays for a judgment of this court directing the issuance of a new certificate and the cancellation of the one lost [or, destroyed] and for such other and further relief as to the court may seem meet and proper in the premises.

Form 197

Prayer—Mandamus—To Compel Election

WHEREFORE your petitioner prays this Honorable Court to command said City Council of the city of _____ to forthwith fix a date for the holding of said election, as provided by the charter of said city.

Form 198

Prayer—Marriage—Annulment

WHEREFORE, plaintiff demands judgment that the said marriage between plaintiff and said defendant be declared null and void; that it be adjudged to have been contracted by plaintiff with said defendant in good faith; that the said children of said marriage be adjudged legitimate, and entitled to succeed to plaintiff's real and personal property as though said marriage had been valid, and that plaintiff be awarded the care and custody of said children, and that plaintiff have such other or further relief as may be just and equitable, with the costs of this action.

Form 199

Prayer—Marriage—Annulment—Where Offspring Born

WHEREFORE plaintiff prays:

1. That said marriage may be by a decree of this court declared null and void for the reasons hereinbefore set forth;
2. That the plaintiff have the custody of said minor children of the plaintiff and the defendant;
3. That this court award to the plaintiff \$_____ a month for the support and maintenance of the minor children of the plaintiff and the defendant;
4. For such other and further relief as to the court may seem proper.

Form 200

Prayer—Marshalling Assets—Complaint, Petition, or Declaration

WHEREFORE plaintiff prays that inasmuch as the defendant has a security upon two funds, she may be required to apply said personal property so secured by mortgage and said notes to the payment of her claim, and that said real estate be subjected to plaintiff's lien alone and applied to satisfy the lien, for costs of suit, and for such other and further relief as she may justly be entitled to.

Form 201

Prayer–Mechanic’s Lien–Foreclosure

WHEREFORE the plaintiff prays judgment against the defendant for the sum of \$_____ remaining unpaid for said labor and materials; that said sum of \$_____ and the costs herein, be adjudged a lien upon the lands and premises hereinbefore described; that said land and premises be sold under the order and decree of this court, and the proceeds thereof be applied to the payment of the costs of this suit and the sum so found due to the plaintiff; and that he have execution for any deficiency; and for such other relief as to the court seems proper.

Form 202

Prayer–Mines–To Determine Adverse Mining Claims

WHEREFORE plaintiff prays judgment against defendant for the possession of said parcel of said _____ mining claim above described, which is withheld by defendant from plaintiff as aforesaid; for the sum of \$_____, the plaintiff’s damages aforesaid; for costs of this action, and for such other and further relief as to the court shall seem meet.

Form 203

Prayer–Mines–To Determine Adverse Mining Claims–Another Form

WHEREFORE plaintiff prays judgment against the defendants as follows:

- 1.For the recovery of the possession of said tunnel, tunnel site, and claim;
- 2.For the sum of \$_____ damages for the wrongful withholding thereof;
- 3.For costs of suit; and
- 4.For such other and further relief as to the court may seem proper.

Form 204

Prayer–Monopolies–To Restrain Competition by Former Associates

WHEREFORE the plaintiff prays that the defendant be restrained by injunction from carrying on or in anywise engaging in said business in said city, and that the plaintiff have his costs of this suit.

Form 205

Prayer–Mortgages–Foreclosure

WHEREFORE the plaintiff demands judgment:

1. That each of the defendants, and all persons claiming under any of them, subsequently to the commencement of this action, be foreclosed of all equity of redemption or other interest in the said real property.
2. That the property may be sold, and the proceeds applied to the payment of the amount due on the said note and mortgage, with interest.
3. That if there be any deficiency, the defendants _____ pay the deficiency.
4. For the costs of this action.
5. For such other, further and different relief as to the court may seem just and proper.

Form 206

Prayer–Mortgages–Foreclosure–Another Form

WHEREFORE plaintiff prays personal judgment against defendants _____ and _____ for \$_____ principal, plus \$_____ interest, or a total of \$_____, together with interest upon said principal sum of \$_____ at the rate of _____% per annum, payable semi-

annually, from _____, 20_____, until paid, and the costs of this action, and accruing costs.

Plaintiff further prays that its said mortgage be decreed to be a valid and subsisting lien upon said real estate, paramount to the rights, claims, and interests of each and all defendants.

Plaintiff further prays that said mortgage be foreclosed, that special execution issue and said premises be sold to make the foregoing sums, that general execution issue for the deficiency, if any, and the defendants' right and equities of redemption in said premises be forever foreclosed, barred, and cut off.

Plaintiff further prays that a receiver be appointed forthwith and that she be authorized to take and hold possession of said premises and to rent the premises, collect the rents and profits therefrom for the benefit of plaintiff, pay the taxes levied against said premises, and keep the premises in repair.

And plaintiff further prays for such other and further relief as is equitable.

Form 207

Prayer—Mortgages—Cancellation and Satisfaction of Record

WHEREFORE the plaintiff demands judgment:

- 1.That the defendant give up said mortgage to be canceled;
- 2.That the mortgage be satisfied of record;
- 3.And for the costs of this action.

Form 208

Prayer—Municipal Corporations—To Restrain Payment of Illegal Claim

WHEREFORE defendant prays for a judgment declaring the resolution of said common council of the defendant city to be illegal and void, and enjoining and restraining defendants and each of them from issuing, receiving, or in any manner paying said warrant, and that the plaintiff recover his costs in this action, and for such other and further relief as to this court may seem just and equitable.

Form 209

Prayer—Municipal Corporations—To Restrain Enforcement of Ordinance

WHEREFORE plaintiff prays for judgment and decree of the court annulling said proceedings and restraining defendant from any further proceedings or acts subject or pursuant to said purported ordinance; for general equitable relief and for his costs.

Form 210

Prayer—Municipal Corporations—For Refund of Invalid Tax

WHEREFORE plaintiff prays a declaration of rights as to whether or not the City of _____ had the right, power, and authority to charge and collect from him for the years of 20_____, 20_____, and 20_____, a privilege tax of \$_____ per year for the operation of _____ within the limitations and confines of defendant city herein, and plaintiff prays judgment of this court as to whether or not the ordinance referred to previously herein and incorporated and made a part hereof was a valid and legal ordinance, and plaintiff further prays that in case said ordinance is held to be invalid and the payment of the privilege license and tax herein was contrary to law and illegal that this court adjudge that the defendant pay unto this plaintiff and refund unto this plaintiff the amount in whole that this plaintiff paid unto defendant for the privilege to operate _____ within the city limits of _____, for the said years, and plaintiff further prays for all proper relief.

Form 211

Prayer–Mutual Benefit Societies–Action on Endowment Policy

WHEREFORE plaintiff prays judgment against the said defendant association for the sum of \$_____ with interest and costs of suit, and that by said judgment the defendant association be directed to pay the amount out of the said “endowment fund,” and for such other, further or different relief as may be just.

Form 212

Prayer–Mutual Benefit Societies–Action on Insurance Policy

WHEREFORE plaintiff prays that this court declare that plaintiff is entitled to the proceeds of the policy and that _____ [name of benefit society] be directed to make payment thereof to plaintiff; or that it declare a lien on the proceeds in favor of plaintiff senior to any right of _____ therein to the extent of the payments made by plaintiff with interest thereon from the dates of payment, and that it direct _____ [name of benefit society] to pay plaintiff the proceeds of said policy in satisfaction of the lien; and for such other relief as may be equitable.

Form 213

Prayer–Name–For Change of Name

WHEREFORE your petitioner prays that a judgment of this court may be entered granting leave to him to assume the name of _____ in place of that of _____ on a day to be specified therein not less than thirty days after the entry of such order, and for such other and further relief as may be proper.

Form 214

Prayer–Nuisances–For Damages and Abatement

WHEREFORE plaintiff prays judgment as follows:

1. That said defendant be restrained by injunction from maintaining or using said premises as a _____, or otherwise to the nuisance of the plaintiff, or permitting it so to be used;

2. For the sum of \$_____ damages;

3. For costs of suit; and,

4. For such other and further relief as to the court seems just and proper.

Form 215

Prayer–Nuisances–To Restrain Use of Property

WHEREFORE the plaintiff prays judgment:

1. That the defendant, and all persons claiming or acting under him, be perpetually enjoined and restrained from using or permitting the use of said lot and premises for the purposes and uses aforesaid;

2. For the costs and disbursements of this action;

3. For such other or further relief as may be equitable.

Form 216

Prayer–Nuisances–Spite Fence

WHEREFORE plaintiff prays for a judgment of this court declaring that said fence erected and maintained by the defendants constitutes a private nuisance to this plaintiff and that said defendants be compelled to remove said fence, for costs of suit, and for such other and further relief as to the court may seem proper in the premises.

Form 217

Prayer–Parent and Child–To Compel Father To Support Child

WHEREFORE plaintiff prays judgment as follows:

1. That the court make an order directing said defendant to pay to the plaintiff for the care, education, maintenance and support of said minor a reasonable sum of money at such times as the court shall deem proper.
2. That the court make an order directing said defendant to pay into court the expenses and fees for the prosecution of this action including an attorney's fee in a reasonable sum.
3. That the court make an order directing said defendant to pay a reasonable sum for the maintenance, support and education of said child during the pendency of this action; and that said defendant be restrained from disposing of any of his property until the further order of the court.
4. That the plaintiff be awarded the care, custody and control of said minor until the further order of the court.
5. That plaintiff have judgment for costs of suit, and for such other and further relief as to the court seems just and proper.

Form 218

Prayer–Parent and Child–To Establish Relationship

WHEREFORE plaintiff prays that the court make an order adjudging and declaring the existence of the relationship of parent and child between plaintiff and defendant and that it decree such other relief as may be meet in the circumstances.

Form 219

Prayer–Partition

WHEREFORE the plaintiff prays judgment for the partition of said property, according to the respective rights of the parties aforesaid; or, if partition cannot be had without material injury to

those rights, then for a sale of the said property, and a division of the proceeds between the parties according to their rights, and for the costs and disbursements of this action.

Form 220

Prayer–Partnership–Accounting Against Surviving Partners

WHEREFORE the plaintiffs pray judgment against the defendants, and each of them, as follows:

1. That the defendants, and each of them, may be ordered to make discovery and disclosure of the true condition and state of the transactions in which the plaintiffs have an interest.
2. That an accounting be taken of all the dealings and transactions between the plaintiffs and defendants.
3. That any amount found to be due the plaintiffs may be directed to be paid to them, and that judgment therefor be entered against the defendants and each of them therefor.
4. That a sale may be directed by the court to be made of all the property, real or personal, in which the plaintiffs, decedent and the defendants, or each of them, were joint adventurers or partners.

Form 221

Prayer–Partnership–Accounting and Dissolution

WHEREFORE plaintiff prays judgment for the dissolution of the partnership, for the settlement of the business and accounts of the firm, for the division of the assets that may remain after the payment of the firm debts, and for other proper relief.

Form 222

Prayer–Partnership–Action Against Partnership

WHEREFORE, premises considered, plaintiff prays judgment against the defendants jointly and severally, and as partners under the trade name of _____ for the sum of \$_____, and for costs of suit, and such other and further relief, general and special, to which it may show itself justly entitled.

Form 223

Prayer–Patents–To Compel Assignment

WHEREFORE plaintiff prays judgment:

1. That defendant be ordered and required by this court to duly execute and deliver to plaintiff in due and proper form an instrument of assignment transferring the entire right, title and interest in and to said invention to this plaintiff, together with an authorization therein requesting that the commissioner of patents issue letters patent, which may be granted upon such application to plaintiff as the assignee of the entire right, title and interest in and to the invention;
2. That defendant be restrained and enjoined both preliminarily and permanently from selling, assigning, or transferring, to any person other than plaintiff herein, or from licensing or encumbering the whole or any part of said invention in any manner whatsoever and from assigning, transferring or licensing or disposing of (except by order of this court to plaintiff herein) in any manner, any rights under any letters patent which may be granted upon such application;
3. For the costs of this action; and,
4. For such other and further relief as to the court may seem meet.

Form 224

Prayer–Physicians and Surgeons–Damages for Disfigurement

WHEREFORE plaintiff prays judgment against defendant for the sum of \$_____ damages for disfigurement of plaintiff's face, \$_____ paid to defendant for

the said operation, \$_____ for loss of time during recuperation, \$_____ expended by plaintiff for hospital care and treatment, and for her costs in this action expended.

Form 225

Prayer–Pledge–Foreclosure

WHEREFORE plaintiff prays judgment against the said defendant for the sum of \$_____, with interest from _____, and costs, and that the pledge be adjudged a chattel mortgage upon said property; that said property be sold according to law, and the proceeds of said sale applied to the payment of costs and expenses and the demands of plaintiff herein.

Form 226

Prayer–Pledge–To Restrain Sale of Pledged Property

WHEREFORE plaintiff prays judgment: That said bill of sale be declared to be collateral to the debt due to the defendant. That an accounting be had to settle the amount of said debt. That upon payment of said amount the defendant be required to restore the goods. That an injunction issue forthwith restraining the sale and for such other and further relief as to the court may seem just.

Form 227

Prayer–Prohibition–To Restrain Proceedings by Disqualified Judge

WHEREFORE petitioner prays judgment directing the _____ Court of _____ County and the judge thereof, to desist and refrain from further, and all, proceedings with respect to the trial of this action.

Form 228

Prayer–Prohibition–Against Court

WHEREFORE your petitioner prays judgment commanding said court to desist from any further proceedings in said action.

Form 229

Prayer–Prohibition–Against Administrative Agency

WHEREFORE your petitioner prays that the above entitled court issue its judgment commanding the said Board of _____ of the State of _____ to desist from any further proceeding in said action, and for such other and further relief as the court may deem proper.

Form 230

Prayer–Quo Warranto–To Oust Corporate Officer

WHEREFORE the relators pray that due process of law may be awarded against the said defendant to compel her to answer and show by what authority she claims to hold and exercise the offices aforesaid, and that she, the said defendant, be ousted from usurping the office, for costs of this action, and for such other and further relief as to the court seems just and proper.

Form 231

Prayer–Quo Warranto–To Annul Corporate Franchise

WHEREFORE the said attorney general prays the advice and judgment of the _____ Court in the premises and due process of law against the defendant corporation aforesaid, in this behalf, to be made to answer to the state of _____, by what warrant it claims to have, use and enjoy the liberty, privilege and franchise aforesaid.

Form 232

Prayer—Quo Warranto—To Oust Person Holding Public Office

WHEREFORE the plaintiff prays judgment that the said defendants be ousted from said offices so by them respectively unlawfully held and occupied.

Form 233

Prayer—Public Lands—Contest of Purchase

WHEREFORE plaintiff prays judgment that the said defendant be not entitled to a duplicate certificate of purchase in or for the said lands; that this plaintiff be adjudged to be the rightful owner of said certificate of purchase together with all the rights thereunder; for costs of this action, and for such other and further relief as to the court seems just and proper.

Form 234

Prayer—Public Utilities—To Establish Water Company as Public Utility

WHEREFORE complainant prays that the Public Service Commission of the State of New York declare defendants to be public utilities, engaged as such in the development, ownership, distribution and sale of water for irrigation purposes; that said defendants be required to file with this Commission rules, regulations and rates under which they shall sell, distribute and serve water to the lands entitled thereto; that said defendants be required and directed by this Commission to sell and distribute water to all persons entitled thereto, including this complainant for the benefit and irrigation of all lands situated under their works and systems of ditches hereinabove referred to, and entitled to such water service, including the said lands of this complainant; and for such other and further relief as may be meet in the premises.

Form 235

Prayer—Public Utilities—To Recover Excessive Charges

WHEREFORE plaintiff prays judgment against the defendant for the sum of \$_____, with interest at the rate of _____ per cent per annum from the date of the payment of

the excessive charge to date; for costs of suit, and for such other and further relief as to the court seems just and proper in the premises.

Form 236

Prayer—Quieting Title—General Form

WHEREFORE plaintiff prays that said defendants be required to set forth the nature of their several claims, and that all adverse claims of the said defendants, or either of them, may be determined by a decree of this court; and that by said decree, it be declared and adjudged that said plaintiff is the owner of said premises, and that the said defendants, and each and every one of them, be forever debarred from asserting any claim whatever in or to said land and premises adverse to the plaintiff, and for such other and further relief as to equity shall seem meet.

Form 237

Prayer—Quieting Title—General Form—Another Form

WHEREFORE the plaintiff demands judgment against said defendants, that they be barred of all right, title, interest or claim in said lands, or any part thereof, and for the costs and disbursements of this action.

Form 238

Prayer—Reformation of Contract

WHEREFORE the plaintiff demands judgment:

(1) That the said contract of the _____ day of _____,
20_____, be reformed and corrected by adding thereto the provision omitted therefrom
and so as to express the true intent of the parties by having inserted therein the following
provision: _____.

(2) That the plaintiff may have judgment against the defendants in the sum of \$_____, with interest thereon from the _____ day of _____, 20_____, together with the costs of this action.

(3) That the plaintiff may have such other, further and different relief as to this Court may seem just and proper.

Form 239

Prayer–Reformation of Accounting

WHEREFORE the plaintiff prays judgment as follows:

That said written agreement of account may be reformed to conform to the true facts of said accounting, for costs of suit, and for such other and further relief as may to the court seem proper.

Form 240

Prayer–Release–To Set Aside Release

WHEREFORE plaintiff prays:

1. That the said release and settlement between the plaintiff and the defendant be rescinded, vacated and set aside;

2. That the plaintiff may have judgment against the defendant in the sum of \$_____, and for his costs herein.

Form 241

Prayer–Replevin (Claim and Delivery)

WHEREFORE the plaintiff prays judgment against the defendant for the recovery of the possession of said personal property, or for the sum of \$_____, the value thereof, in case a delivery cannot be had, together with \$_____, damages, and for costs of suit.

Form 242

Prayer–Sales–Return of Goods Sold

WHEREFORE plaintiff prays:

1. That defendant be restrained and enjoined from disposing of any of the hereinabove described goods;
2. That said goods be decreed to be the property of plaintiff and that the goods be returned into the possession of plaintiff;
3. That plaintiff have judgment against defendant for \$_____ damages and for the costs of this action.

Form 243

Prayer–Sales–Breach of Contract to Sell

WHEREFORE plaintiff prays judgment against the defendant for the value of the said _____ retained and undelivered by the defendant as aforesaid, amounting to \$_____, and for interest thereon from the date of the demand, for costs of suit, and for such other and further relief as to the court seems just and proper.

Form 244

Prayer–Schools–To Compel Reinstatement of Teacher

WHEREFORE plaintiff prays that a judgment issue out of this court directed to the Board of Trustees of the _____ School District; that the said Board of Education immediately reinstate your petitioner in her position as a permanent teacher in the schools of the

said district, and draw warrants in the sum of \$_____ per month from the month of _____, 20_____, to date of reinstatement, and that your petitioner recover her costs, and for such other relief as may be proper.

Form 245

Prayer–Schools–To Compel Correction of Minutes of Board

WHEREFORE, the premises considered, plaintiffs pray judgment commanding defendants, as Directors of said _____ District No. _____ to rewrite or cause to be rewritten by their officers the said minutes of said annual meeting of said School District held on _____, 20_____, as aforesaid, so that minutes will correctly state and set forth what actually transpired at said meeting, and for such other judgment as may be proper.

Form 246

Prayer–Shipping–For Damages Against Individual and Vessel

WHEREFORE plaintiff prays for judgment against defendants and against said vessel _____ for the said sum of \$_____, for the costs of this action, and for all proper relief.

Form 247

Prayer–Specific Performance–Assignment of Patent

WHEREFORE plaintiff demands judgment that the defendant, his agents, attorneys and servants be enjoined and restrained from manufacturing, selling or controlling any machine or apparatus made by or by virtue of said letters patent, and from selling or assigning any interest in or title to said letters patent to any person other than the plaintiff, and that this plaintiff be adjudged to be entitled to and the owner of said one-fourth interest in and to said letters patent and all the rents and profits of the machines or apparatus made under them; that defendant be

ordered and directed to convey and assign all his one-fourth interest in and to said letters patent to this plaintiff, and that this plaintiff may have such other and further relief in the premises as may be just and equitable, together with the costs of this action.

Form 248

Prayer—Specific Performance—To Lease Property

WHEREFORE plaintiff demands judgment against the defendant:

1. That he is entitled to a specific performance of the contract herein set forth; that the defendant be directed to execute and deliver to the plaintiff a duly executed lease of the premises mentioned and described in the complaint, and upon the terms of the said agreement therein set forth.

2. That the plaintiff have such other and further relief as may be just, with the costs of this action.

Form 249

Prayer—Specific Performance—Of Purchase Contract

WHEREFORE the plaintiff demands judgment:

That the defendant perform said agreement, and pay to the plaintiff \$_____, the remainder of said purchase money, with interest from _____, 20_____.

Form 250

Prayer—Specific Performance—Of Lease

WHEREFORE plaintiff demands judgment that the said defendant be required to specifically perform said agreement and execute and deliver the said lease, and that plaintiff have such further relief as may be equitable, and for the costs of this action.

Form 251

Prayer–Subrogation–Insurance Company Against Party Causing Loss

WHEREFORE plaintiff prays that it be subrogated to all rights of the said _____ [the assured] as against the defendant, to the extent of \$_____, the amount of the said payments, and for judgment against said defendant for said amount, together with the costs of suit and for such other relief as may be proper.

Form 252

Prayer–Subrogation–To the Rights of Mortgagee

WHEREFORE plaintiff prays for a decree of this court subrogating him to all the rights, interest, and benefits of said mortgagee in and to the said mortgage and for such other and further relief as to this court may seem just and equitable.

Form 253

Prayer–Suretyship–For Release of Surety

WHEREFORE petitioner respectfully requests an appropriate order releasing him from said bond, and requiring said _____ to give a new bond and security for the performance of his offices, and that upon the execution, approval, etc., of such new bond, your petitioner be released from all future liability of his said bond.

Form 254

Prayer–Taxation–For Foreclosure of Lien

WHEREFORE said plaintiff prays judgment against defendants herein for the sum of \$_____, and separate judgment against said real estate and improvements for the sum of \$_____, and that said real estate and improvements be sold to satisfy such separate judgment, and that all the interest and claim of each defendant herein and all persons

claiming any interest in said real estate improvements, be forever barred and foreclosed, and that said taxes, and all costs subsequent to the assessment of said tax, and all costs and expenses of this suit be paid in lawful money of the United States; and plaintiff prays for such other judgment as to justice belongs.

Form 255

Prayer–Taxation–For Recovery of Overpayment

WHEREFORE plaintiff prays that it be decreed by the court that said assessment was erroneously made; that said tax was erroneously collected of this plaintiff by defendant; that plaintiff be awarded judgment against defendant for said sum of \$_____, and for plaintiff's costs of suit herein, and for such other and further relief as may be just and equitable.

Form 256

Prayer–Taxation–For Refund of Tax Paid Under Protest

WHEREFORE plaintiff prays:

1. That this court adjudge and decree that said taxes are void, illegal and unconstitutional;
2. For general relief, and costs of suit.

Form 257

Prayer–Trademarks and Tradenames–To Restrain Infringement of Trademark

WHEREFORE plaintiff prays:

1. That the defendant, and his servants and agents, be forever enjoined from preparing, putting up, selling or offering for sale said imitation of the plaintiff's article, or any article bearing the name of _____, or any such imitation of said name, or said false trademark, or any similar imitation of the label or trademark of the plaintiff;

2. That the defendant, by way of equitable relief, account for and pay over to the plaintiff all the profits realized by him upon sales of said articles, sold by him with any imitation of the plaintiff's trademark;

3. For judgment in the sum of \$_____ against the defendant;

4. For costs of suit, and for such other and further relief as to the court may seem proper.

Form 258

Prayer—Trademarks and Tradenames—To Restrain Infringement of Tradename

WHEREFORE plaintiff prays this Court for a judgment and decree forever enjoining and restraining defendant from making use of, using or causing to be used in his said business or otherwise in the State of _____, said trade name of "_____" and the said design of _____, and that this plaintiff have judgment against said defendant for the amount of damages this court finds said defendant has caused plaintiff by the acts heretofore stated, and for costs of suit and such other and further relief as to this court seems meet and proper in the premises.

Form 259

Prayer—Trespass Arising From Boundary Dispute

WHEREFORE plaintiff demands judgment that the said defendant, his agents and attorneys, and all persons claiming by or under him subsequent to the filing of a notice of the pendency of this action, be perpetually enjoined, and restrained from taking possession of, or attempting to take possession of, the said strip of land, and from placing any obstruction thereon, or in any manner interfering with the use and occupation thereof by the plaintiff; and that the plaintiff have such other and further relief as may be equitable, together with the costs of this action.

Form 260

Prayer—Trover and Conversion—General Form

WHEREFORE plaintiff prays judgment against the defendant for the sum of \$_____, value of the property together with damages in the sum of \$_____ for detention thereof, and the costs of this suit, and for such other and further relief as to the court may seem just and proper in the premises.

Form 261

Prayer–Trover and Conversion–Of Crop

WHEREFORE plaintiff demands judgment against the defendant for \$_____, the value of said cotton, and for \$_____ damages, for costs of this action and for such other and further relief as to the court may seem just.

Form 262

Prayer–Trusts–By Creditor to Reach Trust Fund

WHEREFORE plaintiff prays judgment that the defendants be enjoined respectively from paying over and from receiving said fund, and that the fund be applied to the satisfaction of the plaintiff's judgment and interest, and the costs of this action.

Form 263

Prayer–Trusts–For Declaration That Property Is Held in Trust

WHEREFORE plaintiff prays the decree and judgment of this court:

- 1.Declaring that defendant holds said real property in trust for plaintiff;
- 2.Requiring defendant to reconvey said real property to plaintiff;
- 3.For the value of the rents and profits of said real property from _____, 20_____, at the rate of \$_____ per month;
- 4.For costs and such other relief as may be equitable or lawful.

Form 264

Prayer—Vendor and Purchaser—For Rescission by Purchaser

WHEREFORE plaintiff prays judgment against the defendant that the contract herein be adjudged rescinded and cancelled, for the sum of \$_____, being the money paid on the said contract by this plaintiff, costs of suit herein expended and for such other and further relief as to the court may seem just and proper.

Form 265

Prayer—Vendor and Purchaser—For Rescission by Vendor

WHEREFORE plaintiff prays for a decree declaring the forfeiture of said contract and quieting title to the property described therein in plaintiff and declaring that the defendants and each and all of them have no right, title or interest herein; for the restitution of said lands and premises and for the sum of \$_____, the damage sustained by this plaintiff on account of the loss of the value of the rents, issues and profits of said property and for his costs herein.

Form 266

Prayer—Waste—For Damages and Injunction

WHEREFORE the plaintiff asks judgment:

1. That defendant pay to the plaintiff \$_____ damages done to and suffered by the premises;
2. That the defendant be required to keep the premises in good repair and condition during the continuance of defendant's interest therein, and to manage and cultivate the farm in a proper and husbandlike manner, according to the term of the lease;
3. That defendant be enjoined from committing any further waste, and particularly from _____ [state particular act to be enjoined];

4. For other proper relief, and for costs of suit.

Form 267

Prayer–Waste–For Damages and Injunction–Another Form

WHEREFORE plaintiff prays judgment as follows:

(1)An injunction to restrain said waste;

(2)\$_____ damages;

(3)Costs of suit, and for such other and further relief as may seem proper to the court.

Form 268

Prayer–Waters–To Enjoin Diversion

WHEREFORE plaintiff prays judgment against defendant, that said ditches and flumes and all other obstructions maintained upon said stream by the defendant whereby said waters are diverted be abated; that the defendant be enjoined from diverting the waters of said stream from plaintiff's power plant; and that plaintiff recover from the defendant \$_____ damages and plaintiff's costs of this action.

Form 269

Prayer–Waters–To Enjoin Diversion–By Prior Appropriator

WHEREFORE, to the end that the plaintiff may have complete and equitable relief, he demands:

1. That the said plaintiff be adjudged and decreed to be the prior appropriator and exclusive owner of all the water that flows in said _____ creek to the extent of the capacity of his ditch herein described.

2. That an injunction be issued enjoining and restraining defendant, his successors, agents, servants and employees, from diverting, turning out, or in any way using any of the water of said creek, to the full capacity of the ditch of the plaintiff, and from in any way interfering with the flow of the amount of water appropriated by the plaintiff to and upon his land, and from in any manner or by any means whatsoever preventing or delaying the plaintiff, his agents, servants and employees, from using any of said water to the full capacity of his said ditch for the purpose of domestic, irrigation and other useful and beneficial purposes upon the land described in this complaint.

3. That the plaintiff may have such other and further relief in the premises as may be equitable and the court may see fit to give.

Form 270

Prayer–Wharves–To Restrain Use of Wharf

WHEREFORE plaintiff prays judgment as follows:

1. That the defendant, his agents, servants, employees and officers, be perpetually enjoined and restrained from using or permitting the use of the said wharf and boats for the purposes and uses aforesaid;

2. For costs of suit; and,

3. For such other and further relief as to the court may see equitable.

Form 271

Prayer–Zoning–To Restrain Construction Under Invalid Zoning Ordinance

WHEREFORE plaintiffs pray the court to enter a judgment declaring the ordinance and building permit aforesaid to be invalid and void and to issue an injunction against the defendants, enjoining them and either of them from constructing upon the premises aforesaid an office

building or any other type of business or commercial building, and enjoining them and either of them from placing said lot to any use inconsistent with the zoning laws of the city.

Plaintiffs further pray that they be permitted to sue for the benefit of all the owners of residential property within the City of _____ and its municipal area. They further pray for their cost herein expended and for all special, general and equitable relief.

Form 272

Prayer–General Form

WHEREFORE defendant prays judgment that plaintiff take nothing and that this defendant go hence with his costs without day.

Form 273

Prayer–General Form–Another Form

WHEREFORE defendant demands that the complaint be dismissed with costs.

Form 274

Prayer–General Relief

WHEREFORE, premises considered, defendant prays that judgment be entered by this court that plaintiff take nothing by his suit and that all costs of suit be taxed and adjudged against him, and defendant further prays for general relief.

Form 275

Prayer–General and Special Relief

WHEREFORE, premises considered, defendant prays that plaintiff take nothing by his suit and that as to plaintiff's suit, defendant go hence with his costs without day, and for special and general relief.

Form 276

Prayer–Subject To Special Plea

WHEREFORE subject to its plea of privilege [or other special plea], which it does not waive but still insists upon, defendant prays that plaintiff take nothing by his suit, and that defendant go hence without day and recover his costs.

Form 277

Prayer–Affirmative Relief

WHEREFORE the defendant prays judgment against said plaintiff for _____ [state the relief sought as in a complaint].

Form 278

Prayer–Judgment on Counterclaim

WHEREFORE this defendant prays that plaintiff take nothing by his action and that this defendant have judgment against said plaintiff for the sum of \$_____, with interest from _____, 20_____, together with costs of suit, and for such other and further relief as to the court may seem proper.

Form 279

Prayer–Judgment on Counterclaim–Another Form

WHEREFORE the defendant demands judgment that this action be dismissed and that the defendant have judgment against the plaintiff for the sum of \$_____, together with costs of this action.

Form 280

Prayer–Judgment on Cross Complaint–Compensatory and Punitive Damages

WHEREFORE, premises considered, defendant demands that plaintiff take nothing against defendant and that defendant have judgment against plaintiff for his actual damages in the sum of \$_____ and for \$_____ as and for punitive or exemplary damages, in all \$_____, for all costs of suit, and such other and further relief, both special and general, at law and in equity, to which he may show himself entitled, and so he will ever pray.

Form 281

Prayer—Relief Against Cross Plaintiff

WHEREFORE, premises considered, defendant prays that plaintiff take nothing as against him, but that he go hence without day with his costs; he further prays that the defendants and each of them who are seeking judgment over and against him by reason of _____ [state nature of cross-claim] take nothing as against him, and that as to such claims he go hence without day with his costs. Defendant further prays all other and further relief, legal or equitable, to which he may be entitled.

Form 282

Prayer—Alternative Relief Against Cross Defendant

WHEREFORE, premises considered, defendant prays that plaintiff take nothing herein as against defendant and that as against the plaintiff herein this defendant go hence without day and recover of and from the plaintiff herein all costs of suit; that, the defendant herein D-1 having been cited to appear and answer, and having answered this defendant's action over against him, in event of recovery of and against this defendant of the title to the mineral interest, or any part thereof, purchased by this defendant as aforesaid from D-1 in the land involved herein, this defendant have judgment against the defendant herein, D-1; that this defendant do have and recover of and from the said D-1 the aforesaid sum of \$_____ with interest thereon at the rate of _____% per annum from _____,

20_____, together with all costs herein; and this defendant further prays for such other and further relief, general and special, as it may appear entitled to in law or in equity.

Form 283

Prayer–Accord and Satisfaction–Counterclaim for Specific Performance of an Accord

WHEREFORE defendant prays that plaintiff take nothing by his complaint and that he be compelled to receive said _____ in full discharge of the obligation referred to in the complaint herein, for costs of suit, and for such other and further relief as the court may seem equitable.

Form 284

Prayer–Adverse Possession–Defense of Adverse Possession

WHEREFORE defendant prays judgment as follows:

1. That plaintiff take nothing by his action;
2. That this defendant is the owner in fee simple of said property as in said complaint described and that it be adjudged and decreed that plaintiff has no estate, right, title, or interest in said property or any part thereof, and that he be forever barred from asserting any right, title, or estate of any nature in or to said property adverse to this defendant.
3. That defendant have and recover his costs of suit herein expended; and
4. For such other and further relief as to this court may seem proper in the premises.

Form 285

Prayer–Arbitration and Award–Plea of Arbitration Contract

WHEREFORE defendant prays that all proceedings in the above-entitled action be stayed until an arbitration has been had in accordance with the terms of the agreement, and for such other and further relief as to the court may seem proper.

Form 286

Prayer–Assault and Battery–Plea of Mitigation

WHEREFORE defendant prays that plaintiff take nothing by his said action, but that if the court find in favor of the plaintiff and against the defendant, that the court take into consideration the defendant's plea in mitigation of damages, and for such other and further relief as to the court may seem proper.

Form 287

Prayer–Attachment–Action of Intervenor

WHEREFORE said intervenor prays for a judgment of the court, releasing and discharging said above described lands and tenements from the lien of attachment of the plaintiff herein as aforesaid, and for costs herein.

Form 288

Prayer–Bankruptcy–Defense of Discharge in Bankruptcy

WHEREFORE defendant prays that all proceedings in the above-entitled action be stayed until such time as said defendant's petition for discharge in his bankruptcy proceedings be granted and allowed, in order that he may be enabled to plead, as a defense to the right of plaintiff to recover in said action, his discharge in bankruptcy.

Form 289

Prayer–Covenants–To Prevent Violation

WHEREFORE defendant prays that the complaint of the plaintiff herein be dismissed with costs to this defendant and that said plaintiff be forever enjoined from bringing any subsequent action to remove said condition and covenant from said deed above set forth prohibiting _____ on said lots as provided in said deed from _____, and on each and any and all of the said lots of said tract, and for such other and further relief as to the court seems just and proper in the premises.

Form 290

Prayer—Injunction—For Dissolution of Temporary Restraining Order

WHEREFORE, defendants and each of them pray that the temporary restraining order now in effect be dissolved; that the prayers for relief as contained in plaintiffs' amended complaint be denied; that the defendants have and recover their costs and disbursements herein, and have such other relief as to the court may be just and equitable.

Form 291

Prayer—Judgments—Defense of Fraud in Procuring Judgment

WHEREFORE defendant prays that said judgment, fraudulently procured as aforesaid, be adjudged to be null and void and that plaintiff be forever restrained from enforcing the judgment, and for the costs of this action.

Form 292

Prayer—Statute of Limitations as Defense

WHEREFORE defendant requests an order dismissing the complaint on the ground that the cause of action alleged therein did not accrue within the time limited by law for the commencement of the action thereon.

Form 293

Prayer–Partition–Defense of Partial Partition

WHEREFORE defendant prays that plaintiffs take nothing by their action and that defendant have judgment that the said partition be confirmed, that a commissioner be appointed to execute to each of the parties a deed for the land set off to him as aforesaid, and that the title of this defendant be quieted, and for his costs.

Form 294

Prayer–In Action to Quiet Title

WHEREFORE said defendant prays judgment as follows:

1. That the court decree that this defendant is the owner in fee simple of said property as in said complaint described;
2. That all other parties to this action be adjudged as having no estate, right, title or interest in said property or any part thereof, and that they be forever debarred from asserting any estate, right, title or interest of any nature in or to said property adverse to this defendant;
3. That said defendant have and recover his costs of suit herein expended;
4. That he have such other and further relief as to this court may seem meet and equitable in the premises.

Form 295

Prayer–Quo Warranto–Answer in Quo Warranto Proceedings

WHEREFORE defendant prays judgment that the complaint in the nature of quo warranto be dismissed, and that he recover of _____ his costs in this behalf expended.

Form 296

Prayer–Receivers–Answer Denying Necessity of Receiver

WHEREFORE defendant says that there was no just ground for the application to this court for the appointment of a receiver herein; and such receiver having been appointed without notice to him, or opportunity afforded to him to make any showing why such receiver should not be appointed, said receiver ought now to be discharged, and all costs made upon said application, and growing out of said appointment, ought to be taxed against the plaintiff, and he prays the judgment of this court accordingly.

Form 297

Prayer–Setoff and Counterclaim–For Money Judgment and Dismissal of Plaintiff’s Claim

WHEREFORE the defendant prays judgment against the plaintiff for the sum of \$_____, with interest thereon from _____, 20_____, together with his costs.

Form 298

**Prayer–Setoff and Counterclaim–For Money Judgment and Dismissal of Plaintiff’s Claim–
Another Form**

WHEREFORE defendant prays that plaintiff take nothing by his complaint and that defendant have judgment against the plaintiff for the sum of \$_____, with interest from _____, 20_____, together with costs of suit, and for such other and further relief as to the court may seem proper.

Form 299

Prayer–Setoff and Counterclaim–For Money Judgment Reducing Plaintiff’s Claim

WHEREFORE defendant prays that the said sum, to-wit, \$_____, be allowed as a counterclaim and so be set off against plaintiff’s demand for damages, if any [or, if the damages be admitted: against plaintiff’s demand for damages in the sum of \$_____].

Form 300

Prayer–Setoff and Counterclaim–For Money Judgment Reducing Plaintiff’s Claim– Another Form

WHEREFORE defendant prays that the sum of \$_____ be allowed as a counterclaim and so be set off against plaintiff’s demand for damages in the sum of \$_____.

Form 301

Prayer–Setoff and Counterclaim–For Recoupment in Alternative to Dismissal

WHEREFORE the defendant prays that plaintiff take nothing by his said action, but that if judgment is rendered in his favor that this defendant be allowed as a credit thereon the sum of \$_____, and for such other relief he may be entitled to.

Form 302

Prayer–Taxation–Defense That Assessment Is Void

WHEREFORE defendant prays that said assessments be adjudged to be invalid and void and defendant’s said premises adjudged to be free from the lien thereof, and plaintiff’s petition be dismissed, and for all other proper relief.

Form 303

Prayer–Tender–As Defense

WHEREFORE defendant prays that judgment be rendered in favor of the plaintiff for no more than the sum of money due on _____, 20_____, when the tender by the defendant to the plaintiff was made, and that defendant have judgment against the plaintiff for his costs in this action.

Form 304

Prayer–Trusts–Answer of Individual and Trustees

WHEREFORE, premises considered, the defendants D-1, individually, and D-1 and D-2, as trustees of _____, and each of them, pray that plaintiff take nothing by its suit against defendants, or any of them, and that they, and each of them, be discharged with their costs.

Form 305

Prayer–Usury

WHEREFORE defendant prays that the plaintiff have and receive of defendant no more than said sum of \$_____, being the balance of said principal debt, without any interest on the debt, and that plaintiff be adjudged to have forfeited said interest because of the usury aforesaid.

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