A TIME-SAVING METHOD OF STATING IN APPELLATE BRIEFS, THE CONTROLLING QUESTIONS FOR DECISION

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Law is a science, but its administration is an art; diligent pursuers of this art devise methods by which they achieve success, and when these successes present developments in practice which may be made of common use, they are as much the concern of others engaged in the same field of endeavor as are advances in the science itself. With these thoughts in mind, it seemed to the writer that, in view of the constant complaints of the law's delay, a plan which has materially aided one of our busiest appellate tribunals in bringing its work up to date[1] may well be considered a subject of general interest. The Supreme Court of Pennsylvania has accomplished this desirable result very largely by confining oral arguments in each case to one-half hour a side; but, to make the short-argument plan effective, additional rules were required, and one of the chief of these provides that a concise statement of the controlling questions for decision, drawn according to strict regulations outlined in the rule, must be included in the brief of every appellant. These regulations have proved so useful in operation that a discussion of their origin, terms and advantages appears to be warranted.

The court had long required a statement of the "history of the case," and, originally, it was intended that this should show, in narrative form, without unnecessary details, not only the nature of the controversy and the steps taken in the court below, but also the points to be determined on appeal. Counsel, however, fell into the habit of inserting so many details as to obscure the controlling questions; as a result, hope of obtaining this information through the medium of the history of the case was abandoned, and, in 1900, new rules were promulgated requiring appellants to insert in their briefs a separate "statement of the questions involved."

At first the regulation on the subject read thus: "The statement of the questions involved is designed to enable the court to obtain an immediate view of the nature of the controversy. It must state the question or questions in the briefest and most general terms, without names, dates, amounts or particulars of any kind whatsoever. It should not

[1] By "bringing its work up to date," I mean that, when the last session of the Supreme Court of Pennsylvania opened, all cases which were ripe for argument and decision had been heard and disposed of by opinions filed, and the lists are now in such condition that, where desired, cases can be, and many are, set for argument within seven weeks from the perfection of the appeal, or in less time where both sides are prepared and agree to the advancement.

exceed six or eight lines, and must not, under any circumstances, exceed half a page. For any violation of this rule the paper-book will be suppressed and the appeal *non prossed* . . . . This rule is to be regarded as in the highest degree mandatory and admitting of no exception." Realizing the natural tendency to particularize, the court provided further that "It shall be optional with counsel to add such particulars as may be thought necessary in his history of the case."

The rule governing "the statement of questions involved" has been changed twice. In 1911, it was amended to read that the statement "should not ordinarily exceed ten lines," as compared with the "six or eight" at first prescribed, but the maximum allowance was still half a page. In 1923, the rule was made to read "it should not ordinarily exceed fifteen lines," and the maximum was extended to one page. This increase was to cover occasional cases where more space might be needed than was before permitted; not to allow the insertion of details.

The intention is that the statement of questions involved shall be framed in such a manner, that by reading it, the court, without being compelled to examine the argument of counsel or any other part of the brief or record, may quickly see the nature of the legal issue, and in a general way, what points it will be called on to decide. As an aid to this end, the latest rule requires appellant to print the statement on the first page of his brief, and to put nothing else thereon.

If an appellee thinks appellant's statement inaccurate, or that it does not present the points for decision in a proper light, he may submit a counter-statement as well as a counter-history of the case. Counsel for appellees avail themselves of this privilege in about fifty per cent of the appeals, though quite often appellant's statement is so satisfactory that the court, in writing its opinion, takes up the questions involved just as they are stated and follows that order throughout. This is the best proof of their value, for it shows that they have served as an aid both on oral argument and in reaching the final decision of the case.

The rule is now firmly established to the satisfaction of all concerned, and there have been so many decisions explaining its meaning that the profession in Pennsylvania has come thoroughly to understand it; for the benefit of those outside the state, who may desire further information than is given in this article, some of the leading authorities on the subject are mentioned in the foot-notes. These cases and others of their kind have now reached the point where they form a body of constructions representing an established system, which may be taken advantage of in other jurisdictions.

The cases show a steadfast determination that the new requirement shall not be frittered away, as the old one concerning the history of the case had been; accordingly, from the beginning, the rule was rigidly enforced. The first year following its adoption, an appellant's

brief was presented which contained no statement of the questions involved, and the appeal was *non prossed*.[2] Many other appeals, for the same reason, suffered a similar fate.

It was likewise insisted that the statement be kept within the prescribed limits. In an early case, appellant's brief contained a statement exceeding the permitted length; this was condemned as being "worthless for the purpose for which it was intended, viz., to enable the court to obtain an immediate view of the nature of the controversy," and the profession generally was admonished to adhere strictly to the rule.[3] In keeping with this admonition, later appeals were *non prossed* because of the undue length of the statement of questions involved;[4] and some appeals were quashed at bar.[5] One opinion goes so far as to say that this penalty may be inflicted for violations of the rule "even in murder cases."[6]

The decisions have made it plain that counsel assume great risks to their clients either in disregarding the requirements of the rule or in permitting printers to do so. Thus, in one case where the statement took up a page and a half, but was printed in large type and double spaced, suppression of the brief was avoided solely on the ground that the matter would not have exceeded half a page had it been printed in the ordinary way.[7]

A too lengthy statement is invariably due to the insertion of unnecessary details; it is attributable almost never to the fact that the questions involved could not be set out satisfactorily within the prescribed limits.

A recent case in the Superior Court of Pennsylvania, having the same rule as the Supreme Court, furnishes an excellent example of a statement of the questions involved which could have been materially condensed and made more clear by omitting details of dates, etc. As prepared by counsel, it read: "The question involved is, whether the plaintiff, who signed an application for a policy of insurance upon his dwelling house, in the Mutual Life Insurance Company of Annville, Lebanon County, Pa., about five o'clock P.M., Saturday, June 10, 1905, and paying simply the application fee of $2.50, and there being no mail from that community by which the said application could be sent to the company for its acceptance or rejection until about eight o'clock A. M. of June 12, 1905, and before the application could be sent the premises for which the application had been made was destroyed by fire, of which the agent who was authorized simply to receive applications for insurance, was duly notified, can recover for the loss? Was

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[2] *Fifth Ward B. & L. Assn. v. Boylan* (1901) 198 Pa. 250.

[3] *Van Sciver Co. v. McPherson* (1901) 199 Pa. 331, 335, 49 Atl. 73.

[4] *Green v. Sumby* (1915) 248 Pa. 120, 93 Atl. 868; *Duffee v. Bankers' Surety Co.* (1915) 247 Pa. 17, 93 Atl. 17.

[5] *H———— v. T————* (1904) 208 Pa. 233, 57 Atl. 562.

[6] *Com. v. Strail* (1908) 220 Pa. 483, 484, 69 Atl. 866.

[7] *Buckman v. Phila. & Reading Ry. Co.* (1911) 232 Pa. 351, 354, 81 Atl. 332.

there any negligence on the part of the company, on its agent, because the agent did not forward the application, after he had knowledge of the destruction of the premises by fire, before it was possible to have forwarded the application by mail, simply to have the company reject the application *pro forma,* as would bind the company and make it liable?"

Some such statement as the following, omitting all particulars which do not aid in outlining the legal question involved, would permit a readier grasp of the problem: Request for insurance against fire was signed by applicant and insurance company's agent, who accepted application fee. Agent had authority only to receive and not to pass upon applications. Before the request could be mailed to company for approval or rejection, the premises were burned down. On receiving notice of the fire, agent tendered return of the fee and did not forward the application to company. Approval of application was later refused. Was there a contract of insurance on which company is liable?

From the rule that, in the absence of a statement of the questions involved no part of the appeal will be considered, it was but a logical step to say that, where a particular point urged on appeal is not included in or suggested by the statement of questions involved, the point will not be determined; this is now the established practice.[8] It has been held in several cases that such matters are not properly raised[9] and, therefore, are not before the court,[10] the authorities saying that only those questions which are in the statement,[11] or are relevant to and suggested by it,[12] will be reviewed. The court does not go beyond the statement of questions involved,[13] for by it counsel limit the matters

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[8] *Murphy v. Ahlberg* (1916) 252 Pa. 267, 270, 97 Atl. 406; *Spang v. Mattes* (1916) 253 Pa. 101, 103, 97 Atl. 1026; *Hopkins v. Tate* (1916) 255 Pa. 56, 62, 99 Atl. 210; *Yeager v. Anthracite Brewing Co.* (1917) 259 Pa. 123, 130, 102 Atl. 418; *Huntington v. Supreme Commandery* (1918) 261 Pa. 168, 172, 104 Atl. 498; *Silver v. Edelstein* (1920) 266 Pa. 531, 532, 109 Atl. 679; *Garvey v. Thompson* (1920) 268 Pa. 353, 355, 112 Atl. 82; *Haughney v. Gannon* (1922) 274 Pa. 443, 447, 118 Atl. 427; *Friedline v. Friedline* (1923) 275 Pa. 463, 467, 119 Atl. 545; *Lane v. Dickson* (1923) 276 Pa. 306, 309, 120 Atl. 264.

[9] *Lenox Coal Co. v. Duncan-Spangler Coal Co.* (1920) 265 Pa. 572, 576, 109 Atl. 282.

[10] *Bethlehem Steel Co. v. Topliss* (1915) 249 Pa. 417, 423, 94 Atl. 1099; *Pramuk's Appeal* (1915) 250 Pa. 45, 51, 95 Atl. 326; *Kennedy v. Rothrock Co.* (1918) 261 Pa. 580, 588, 104 Atl. 746; *Knobeloch v. P. H. B. & N. C. Ry. Co.* (1920) 266 Pa. 140, 143, 109 Atl. 619.

[11] *Kanawell v. Miller* (1918) 262 Pa. 9, 14, 104 Atl. 861; *Philadelphia v. Ray* (1920) 266 Pa. 345, 347-48, 109 Atl. 689; *Blough v. Lochrie* (1923) 275 Pa. 491, 496, 119 Atl. 654.

[12] *Felin v. Philadelphia* (1913) 241 Pa. 164, 170; *Collingdale Boro v. Phila. Rapid Transit Co.* (1922) 274 Pa. 124, 129, 117 Atl. 909.

[13] *Furman v. Broscious* (1920) 268 Pa. 119, 121, 110 Atl. 736.

to be considered,[14] and this limitation is binding on appellant.[15] Questions which could be raised should be included if counsel want them decided,[16] for the court has held that, by his statement, appellant "specifies all matters [he] desires to have reviewed,"[17] and that those so contained are the only ones "on which [he] is entitled to be heard,"[18] the theory being that counsel does not deem questions omitted worthy of attention.[19] The court has said also that, to call for consideration, a question not expressly set forth must be plainly suggested[20] or clearly comprehended by reference or direct implication[21] in the statement of the questions involved.

The above pronouncements are from cases construing the rule as at first written; the present rule, following previous decisions, expressly provides that "ordinarily no point will be considered which is not set forth in the statement of questions involved or suggested thereby." The authorities have always held, however, that it is within the discretion of the court to pass on issues which rightly belong to the case, though not brought forward by the statement of questions involved, and this is done when deemed proper.[22]

Although each point appellant desires determined ought to be included in the statement of questions involved, yet every one so included is not necessarily entitled to consideration; again, the declaration that a particular question is involved does not cure defects or omissions in other parts of the appellate procedure. For example, the legal issue urged by an appellant must ordinarily have been raised in the trial court, or it will not be reviewed on appeal;[23] and a case will not be considered on a theory different from that advanced in the court below,[24] even though the point or new theory is put forth in the statement of questions involved. Exceptions to the rulings complained of on appeal must have been taken in the court below, for, unless the

[14] *Keck v. P. H. B. & N. C. Ry. Co.* (1922) 271 Pa. 479, 482, 115 Atl. 824; *Etnier v. Pascoe* (1923) 275 Pa. 308, 310, 119 Atl. 406.

[15] *McIlvaine v. Powers* (1921) 270 Pa. 341, 343, 113 Atl. 365.

[16] *Lincoln v. Wakefield* (1912) 237 Pa. 97, 107.

[17] *Hanlon v. Davis* (1923) 276 Pa. 113, 118, 119 Atl. 822.

[18] *Stephens-Adamson Mfg. Co. v. Armstrong* (1914) 245 Pa. 552, 553.

[19] *Yeager v. Gateley & Fitzgerald* (1919) 262 Pa. 466, 471, 106 Atl. 76.

[20] *Sullivan v. Baltimore & Ohio R. R.* (1922) 272 Pa. 429, 436, 116 Atl. 369.

[21] *Vulcanite Paving Co. v. Philadelphia* (1916) 252 Pa. 600, 602, 97 Atl. 928.

[22] *Ferguson v. Pittsburgh & Shawmut R. R. Co.* (1916) 253 Pa. 581, 585 98 Atl. 732; *Clark v. Butler Junct. Coal Co.* (1918) 259 Pa. 262, 267, 102 Atl. 952; *Compton v. Hoffman* (1919) 265 Pa. 257, 264, 108 Atl. 626; *Palkovitz v. American Sheet & Tin P. Co.* (1920) 266 Pa. 176, 182, 109 Atl. 789; *Com. v. Smith* (1920) 266 Pa. 511, 517, 109 Atl. 786; *Opening of Parkway* (1920) 267 Pa. 219, 227, 110 Atl. 144; *Crumley v. Penna. R. R. Co.* (1922) 272 Pa. 226, 231, 116 Atl. 152; *Pittston Twp. School Dist. v. Dupont Boro. School Dist.* (1922) 275 Pa. 183, 191, 118 Atl. 308; *Clapp v. Hunt* (1923) 276 Pa. 127, 129, 119 Atl. 818.

[23] *Woodward & Williamson's Assessment* (1922) 274 Pa. 567, 570, 118 Atl. 501; *Maisel v. Patrick Corr & Sons* (1923) 277 Pa. 331, 333, 121 Atl. 61.

[24] *Saxman v. McCormick* (1923) 278 Pa. 268, 273, 122 Atl. 296.

trial judge's attention has been called to such matter, the appellate courts, if the error is not basic and fundamental, will not consider it[25] even when included in the statement of questions involved.

The rule requiring a statement of questions involved does not relieve appellant from filing formal assignments of error;[26] though assignments which are not in effect comprehended by the statement will ordinarily be dismissed.[27] Alleged errors not specified in the assignments or not otherwise properly before the court have no place in the statement of the questions involved,[28] and will not be determined even though found there.[29] The questions stated should not be in form "merely a repetition of the specifications of error;"[30] if that only were desired, there would be no necessity for this extra part of the brief. Several assignments of error may involve only one question of law, because there may have been many alleged errors committed, in different ways and at different times, as a result of a supposed misapprehension of one legal principle; all such assignments must be embraced by one question. Where the main questions have been stated and other subordinate ones are assigned for error, these lesser questions, if they directly relate to the main ones, may be stated in an abstract way which ordinarily would be insufficient if they stood alone and unconnected with other questions involved. Thus, following the statement of the main questions, "Correctness of instructions as to the effect of non-production of certain testimony, and concerning the condition and conduct of plaintiff after accident; rulings on admission and rejection of testimony," will indicate sufficiently the nature of the other points raised. If, however, these minor questions are "necessarily involved in or suggested by the principal questions stated," then their recital as separate questions is "not required or desired."[31]

When the statement contains practically self-evident propositions to which a negative answer would be immediately given, unless those propositions really control the case, appellant has done nothing to advance his cause or to assist the court.[32] If self-evident propositions are involved, they must have some application to the facts of the particular case, and, if the dispute concerns their application, then the statement should show the question of applicability.

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[25] *Rahm's Est.* (1912) 233 Pa. 602, 608; *Stone v. Stone* (1923) 277 Pa. 277, 278, 121 Atl. 500; *Saxman v. McCormick* (1923) 278 Pa. 268, 273, 122 Atl. 296.

[26] *Thompson's Est.* (1916) 253 Pa. 394; *Schuylkill Ry. Co. v. Pub. Serv. Com.* (1919) 265 Pa. 451, 452, 109 Atl. 151.

[27] *Smith v. Lehigh Valley R. R. Co.* (1911) 232 Pa. 456, 462; *Garvey v. Thompson* (1920) 268 Pa. 353, 355, 112 Atl. 82.

[28] *Com. v. Snyder* (1918) 261 Pa. 57, 61.

[29] *Haddock v. Plymouth Coal Co.* (1912) 237 Pa. 37, 40; *Citizens Bank v. Lesko* (1923) 277 Pa. 174, 180, 120 Atl. 808.

[30] *Creachen v. Bromley Bros. Carpet Co.* (1906) 214 Pa. 15, 17.

[31] *Smith v. Lehigh Valley R. R. Co.* (1911) 232 Pa. 456, 462.

[32] *Swisher v. Sipps* (1902) 19 Pa. Super. Ct. 43, 47.

Framing a statement of the questions involved requires the cultivation of the art of eliminating immaterial details; but, after a lawyer has gone over the case with his client and witnesses, prepared his pleadings, and tried it in the court below, he should be able to state in a very few words the points which will control the decision on appeal, and this is all that the rule requires. If in writing a brief, one focuses his attention on the controlling points, it should be easy to state them within narrow bounds; should there be failure in this respect, however, and the error be discovered only after the briefs are prepared, it may be remedied by inserting a corrected page in the printed books. If the briefs have been filed already, counsel may ask leave to amend accordingly; attempts to rectify prolix or indefinite statements by filing typewritten corrected ones have been held to be bad practice.[33]

While the rule requires that the statement be in the "most general terms," this means that the particular question should be stated in terms of generality, not that the statement may be vague, indefinite or uncertain. For example, to say that a question involved is the "charge of the court," does not suggest what legal proposition is in dispute;[34] nor does "the correctness of answers to certain of defendant's points," or "portions of charge specially assigned as error."[35] The statement of the questions involved must show the precise point of substantive law at issue and its applicability to the facts in hand. Statements such as, "sufficiency of the affidavit of defense,"[36] "Did the affidavit of defense raise questions of fact which should have been submitted to a jury?" and "Did the court below err in the entry of judgment,"[37] are too indefinite to comply with the rule. Again, merely raising a question of power does not ask the court to determine whether there has been an exercise of it. Thus, "Can a husband transfer his personal estate in payment of his debts, regardless of coverture?" does not put the question of whether or not he did so in the particular case.[38]

The following examples of badly stated questions involved, taken from briefs in recent cases, are illustrative of inadequate attempts to comply with the rule:

"Should the court below have entered a nonsuit?" This fails even to suggest what questions are involved.

"Whether the gift to Danforth Phipps Wight lapsed by reason of his death before death of testatrix, and whether Barrington Wight was not entitled to three-eighths of the residue instead of one-fourth?" This statement suggests that the construction of a will is involved, but little else.

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[33] *Rowan v. Com.* (1918) 261 Pa. 88, 90, 104 Atl. 502.
[34] *Com. v. Coccodralli* (1920) 74 Pa. Super. Ct. 324, 328.
[35] *Jones v. Matheis* (1901) 17 Pa. Super. Ct., 220, 221.
[36] *Devers v. Sollenberger* (1904) 25 Pa. Super. Ct., 64, 69.
[37] *Internat'l Sav. & Tr. Co. v. Kleber* (1905) 29 Pa. Super. Ct., 200, 202.
[38] *Duncan v. Duncan* (1920) 265 Pa. 471, 473, 109 Atl. 222.

"Is there sufficient competent and relevant testimony in this record upon which to base an award for compensation?" Such a question as this is involved in every workmen's compensation case; to put it forward as the point in a particular controversy is useless for the purpose intended to be accomplished by the rule under consideration.

"Action prematurely brought; misjoinder of parties defendant; vacation of street on city plan by action of municipality; absence of allegations of acts by defendant which would constitute an interference with public use of a street; negotiations inducing plaintiffs to purchase are merged in their deeds; absence of any averments of facts constituting a violation of any covenant entered into by defendant with plaintiffs; absence of privity of contract between plaintiffs and defendant; restrictions must run with the land to bind defendant; effect of failure to record plan of which defendant had no record or actual knowledge or notice; laches of plaintiffs in failing to have plan recorded; plaintiffs' cause of complaint not cognizable in equity; plaintiffs have adequate remedy at law." This rambling statement presents no intelligible problems, only argumentative suggestions.

"(1) Does the evidence disclose such breach of contract on the part of defendant as to justify binding instructions for plaintiff for the amount of damages claimed? (2) In plaintiff's defense to defendant's counter-claim, was the testimony offered by plaintiff as to market value of steel ingots, competent and properly admitted?" No judge could understand the true meaning of these questions without reading the notes of trial or history of the case; the statement is faulty in that it does not take specific questions from a field of possible ones and state them for decision.

The following properly stated questions involved, from briefs in recent cases, are good examples of compliance with the rule:

"Where a court of equity has entered a decree ordering a husband to pay a certain sum of money under the terms of a separation agreement and he fails to make payment, has the court power to attach the person of the husband?"

"The liability of a subscriber to telephone service to pay at the rate prescribed in the company's schedule of tariffs filed with the Public Service Commission for service actually received, when the contract between the company and the subscriber provides that it is to be effective only in the event of a certain number of telephones being installed in a community and the required number never were installed."

"Is the process of making roasted coffee from green coffee a manufacturing process which exempts the proceeds of the sale of roasted coffee, delivered from the place where the process is carried on, from a mercantile license tax, under the terms of section 11 of the Act of April 22, 1846 (P. L. 489)?"

"Where a testator provides as follows: 'Item. I give . . . unto my beloved wife . . . the house in which I may reside at the time of my

decease, should said house belong to me, but in case said house should not belong to me then I give . . . to my said wife the house I now reside in, she to have, hold and enjoy the same during all the term of her natural life, and upon her decease, I order and direct that the same shall go into and form a part of my residuary estate to be disposed of as is hereinafter directed,' and at the time of his death the house in which he resides does belong to him, does his widow take a life estate or a fee simple title in and to said property?"

"Does the conversion of private dwellings into apartment houses by additions thereto violate a restriction that there shall not be erected on the ground a building or buildings designed for any purposes other than a private dwelling house and that no such building erected thereon shall be occupied or used for any purpose other than a private dwelling?"

"Is the cleaning and sprinkling of streets and collection of refuse by a municipality a governmental function exempting it from liability for the negligence of its employees in the performance of such work?"

"(1) Whether a widow living separate and apart from her husband at and before his death, not being supported by him, and not dependent on him, is entitled to compensation as his widow under the Workmen's Compensation Act; (2) Whether step-children, not part of decedent's household at time of his death and not dependent on him, are entitled to such compensation."

"(1) Has execution defendant who claims no ownership in goods sold, power to petition to set aside sheriff's sale? (2) Should the court permit actual owner of goods to intervene to set aside sale? (3) Should sheriff's sales be set aside because of gross inadequacy of price, where prospective bidders on premises leave scene of advertised sale, on suggestion of sheriff's auctioneer, because of failure of sheriff to appear at the hour fixed for sale?"

"Should a juror be withdrawn and the cause continued on the application of defendant, where members of the trial jury were present in another court room, during a recess in the trial, listening to the delivery of forcible arguments, and to the reading of newspaper articles, referring to the particular offense for which the defendant is on trial?"

"(1) Where a son, not a member of his father's family, who has a family of his own, renders services to his father, at the latter's request, of such a character as would not ordinarily be rendered gratuitously by a son so situated for a parent, what is the measure of proof required to establish a contract to pay for such services? (2) Where a son has been emancipated and has engaged in business for himself, living at a remote distance from his father's residence, is there a presumption of gratuitous service where the son leaves his family at this father's request, goes to his father's home and takes care of his father and mother, where the father is able to pay?"

"If A, a manufacturing corporation, and B, an individual, make

a parol agreement that, in consideration of B doing certain things, A will furnish B with a certain commodity as long as A does business in its then present location; B carries out his part of the contract; A also, for a period of seven years, carries out its part of the contract, when, without any reason except that B has had 'service long enough,' A refuses further to furnish B with the commodity; what is the measure of damages?"

"Where a partnership doing a general banking business hires a safe deposit box to two of its patrons who leave a key thereto with the cashier, a partner, and he enters their box; removes bonds therefrom; sells the same; deposits the proceeds, with other funds, to the credit of the partnership bank in a bank where it kept a general account, and made deposits almost daily, which were mingled generally with other funds; and thereafter the partnership bank makes a general assignment for the benefit of creditors, can the said patrons treat the fund realized from the sale of their securities as a distinctive trust fund and compel the assignee to pay the said amount to them in preference to general creditors?"

In the beginning of this article, it is stated that one of the things chiefly responsible for the success of the system of restricted, or half-hour, arguments, which has enabled the Supreme Court of Pennsylvania to bring and keep its business up to date, is the rule here discussed, requiring a concise statement of the controlling questions to appear on the first page of the appellant's brief in every case. The above examples of properly stated questions involved, show at once the value of this requirement, both to the court and to the barrister, When the rule is efficiently followed, as it is in the great majority of cases, the court can, at a glance, perceive, at least in a general way, the points for determination, and, with this accomplished, the judicial mind can better concentrate on the argument; while the advantages to the barrister are equally as great, for the obligation to formulate a statement of questions involved[39] compels concentration on the main or controlling points in the case both in the preparation and delivery of the argument, so that in most instances lawyers brought up under the rule are able to present even complicated cases within the limited time allowed for oral argument,[40] depending, of course, on the printed

[39] Rules of the Supreme Court of Pennsylvania, 42 and 43, require appellants' briefs to contain statements of the questions involved and expressly permit counter-statements by appellees.

[40] *Ibid.* Rule 72 provides that appellant and appellee shall each be allowed thirty minutes in which to present his side of the case, and reads: "If two or more appeals are from the same judgment or decree, but raise different and unrelated questions, counsel for each appellant will be allowed thirty minutes and counsel for all the appellees thirty minutes, to be divided between them as they may decide, and subject to an extension if the presiding justice shall consider more time necessary."

history of the case[41] and the argument in their briefs for the detailing of noncontrolling facts, discussion of minor matters, elaboration of legal points, and application of cited authorities. Thus the oral argument performs its true function of briefly introducing the case to the court and affording the judges who are to decide it an opportunity to make inquiry of counsel, and the latter to enlighten the court, on points which may suggest themselves in course of the presentation. Another advantage is that this enforced segregation of and concentration on the main points in the case enables counsel, in preparing their briefs, readily to eliminate from the record and testimony matter not relevant to the actual questions involved on the appeal as required by another very useful rule of court.[42]

[41] *Ibid.* Rule 51 provides: "The history of the case must begin with a statement of the form of action, followed by a brief reference to the pleadings, or papers in the nature thereof, upon which the case was tried or heard in the court below, and to any other pleadings or papers which were passed upon by it, if its order or judgment thereon is assigned as error or they are pertinent to the questions raised on the appeal; must include a brief statement of any prior decision of this court, or of the Superior Court, in the same case or estate, and a reference to the place where it is reported; must give the names of the judges whose rulings are to be reviewed; must contain a closely condensed chronological statement, in narrative form, of all the facts which are necessary to be known in order to determine the points in controversy; and must briefly state the verdict and judgment, order or decree appealed from; but must not contain any argument, or quotations from the testimony"; and *Ibid.* Rule 47 permits appellee to print a counter-history of the case, providing that, if he fails to do so, or, in his brief, otherwise to challenge the statement of facts in appellant's history, "it will be assumed he is satisfied with them."

[42] *Ibid.* Rule 55 provides that: "Evidence which has no relation to or connection with the questions raised by the assignments of error, must not be printed; nor must deeds or long documents, the construction or validity of which are not in issue, but only such parts thereof as are necessary for a proper consideration of the case. In order effectually to carry out the foregoing requirement, appellant shall file in the court below, before he commences the printing of the Record, a brief statement of the questions he intends to argue on the appeal and of the evidence he does not intend to print, and shall serve copies thereof on appellee, together with a written notice that consent will be presumed if no objections are made within ten days thereafter, unless the court below, on cause shown, shall grant an extension of time. If objections are made, the court below shall forthwith fix a time for hearing them, and shall then decide the dispute in accordance with, and subject to the provisions of the Act of May 11, 1911, P. L. 279 [legislation permitting. and setting up judicial machinery to carry out what this rule requires]. In passing on the materiality of evidence, the inquiry shall not be whether the court below deems the evidence substantial, but whether it refers to the particular contentions made by the litigant."