

**IN THE
SUPREME COURT OF PENNSYLVANIA**

IN RE: Amendment of Rule of Civil	:	No. 352
Procedure Governing Motions for	:	Civil Procedural Rules
Compulsory Nonsuit	:	Docket No. 5

O R D E R

PER CURIAM:

AND NOW, this 30th day of May, 2001, the Pennsylvania Rules of Civil Procedure are amended as follows:

I. Rule 230.1 is rescinded and new Rule 230.1 is promulgated to read as attached hereto.

II. Subdivisions (f), (g) and (h) of Rule 2231 are rescinded and notes are added to read as attached hereto.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2001.

NOTE: Underscored material is added.
New Rules are not underscored.
Bracketed material is deleted.

Rule 230.1. Compulsory Nonsuit at Trial

(a)(1) In an action involving only one plaintiff and one defendant, the court, on oral motion of the defendant, may enter a nonsuit on any and all causes of action if, at the close of the plaintiff's case on liability, the plaintiff has failed to establish a right to relief.

(2) The court in deciding the motion shall consider only evidence which was introduced by the plaintiff and any evidence favorable to the plaintiff introduced by the defendant prior to the close of the plaintiff's case.

NOTE: Subdivision (a) changes the prior practice whereby the entry of a compulsory nonsuit was precluded when any evidence had been presented by the defendant.

If a motion for compulsory nonsuit is granted, the plaintiff may file a written motion to remove the nonsuit. See Rule 227.1

(b) In an action involving more than one plaintiff, the court may not enter a compulsory nonsuit as to any plaintiff until the close of the case of all the plaintiffs.

(c) In an action involving more than one defendant, the court may not enter a nonsuit of any plaintiff prior to the close of the case of all plaintiffs against all defendants.

The nonsuit may be entered in favor of

(1) all of the defendants, or

(2) any of the defendants who have moved for nonsuit if all of the defendants stipulate on the record that no evidence will be presented that would establish liability of the defendant who has moved for the nonsuit.

NOTE: The term "defendants" includes additional defendants.

Rule 2231. Effect of Joinder. Practice in General.

(f) [A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded.] Rescinded.

(g) [In an action in which plaintiffs have been joined in the alternative

(1) a compulsory nonsuit shall not be entered against any plaintiff until the close of the case of all the plaintiffs;

(2) unless a compulsory nonsuit is entered against all plaintiffs, the court, upon the conclusion of the trial as to all parties, but not before, may direct a verdict for any defendant against any plaintiff who, upon all the evidence, regardless of the party by whom offered, is not entitled to recover.] Rescinded.

NOTE: See Rule 226(b) for the entry of a directed verdict and Rule 230.1(b) for the entry of a compulsory nonsuit.

(h) [In an action in which defendants have been joined in the alternative

(1) a compulsory nonsuit of any plaintiff in favor of any or all of the defendants shall not be entered prior to the close of the case of all plaintiffs against all defendants;

(2) unless a compulsory nonsuit is entered against all plaintiffs as to all defendants, the court upon the conclusion of the trial as to all parties, but not before, may direct a verdict in favor of each defendant as to whom the evidence, regardless of the party by whom offered, does not warrant a finding by the jury that such defendant is liable jointly, severally or separately to any plaintiff.] Rescinded.

NOTE: See Rule 226(b) for the entry of a directed verdict and Rule 230.1(c) for the entry of a compulsory nonsuit.

Explanatory Comment

The amendments revise the rules of civil procedure governing joinder of parties and compulsory nonsuit.

I. Rule 230.1. Compulsory Nonsuit at Trial

1. New Rule 230.1

It is intended that Rule 230.1 becomes a comprehensive rule governing compulsory nonsuits. The provisions of former Rule 230.1 which govern a compulsory nonsuit in an action involving only one plaintiff and one defendant are now included in subdivision (a) of new Rule 230.1.

The provisions of subdivisions (g) and (h) of Rule 2231 govern a compulsory nonsuit in “an action in which plaintiffs have been joined in the alternative” and “an action in which defendants have been joined in the alternative”. These provisions are transferred to new Rule 230.1 as subdivisions (b) and (c) but with the deletion of the reference to parties joined in the alternative. Rather, the new provisions apply to “an action involving more than one plaintiff” and “an action involving more than one defendant”. The new rule is of broader general application

The final two sentences of former Rule 230.1, “If the motion is not granted, the trial shall proceed. If the motion is granted, the plaintiff may file a written motion for the removal of the nonsuit”, are not retained in the new rule. However, this does not represent a change in practice. The first sentence has been not been retained since it is a statement of an obvious principle. The provision contained in the second sentence is already governed by Rule 227.1 and a cross-reference to Rule 227.1 is included in the Note following subdivision (a)(2) of new Rule 230.1.

2. Effect of Introduction of Evidence by Defendant

Former Rule 230.1 permits the entry of a compulsory nonsuit “before any evidence on behalf of the defendant has been introduced”. The situation arises in which a defense witness, of necessity, must be taken out of sequence and heard prior to the close of the plaintiff's case because of the witness' unavailability to testify during the defendant's case. If a defense witness is heard during the plaintiff's case, the rule prohibits the court from entering a compulsory nonsuit.

The Supreme Court of Pennsylvania in *Harnish v. School District of Philadelphia*, 557 Pa. 160, 732 A.2d 596 (1999) recently observed that the rule might have been written differently, 557 Pa. at 165, 732 A.2d at 599:

If the rule had been intended to permit a court to consider a nonsuit even after the defendant has introduced evidence, presumably the rule could have expressed that although a nonsuit may be granted after defendant has introduced evidence, the court must consider only plaintiff's evidence as if no evidence had been introduced by the defendant.

The amendment adopts this supposition by the Supreme Court.

Quoting from *Atlantic Richfield Co. v. Razumic*, 480 Pa. 366, 390 A.2d 736 (Pa. 1978), the Supreme Court stated the rationale for the former rule:

"A motion for compulsory nonsuit allows a defendant to test the sufficiency of a plaintiff's evidence. . . . To assure that the trial court considers the motion only on the basis of evidence favorable to the plaintiff, the Act expressly limits the court's authority to grant a nonsuit to those instances where a defendant has "offered no evidence."

However, as the Supreme Court noted in the *Harnish* case, "[t]here are many situations in which reviewing courts simply rely on trial courts to ignore improper evidence and accept the trial court's statement that such evidence was not considered." 557 Pa. at

165, 732 A.2d at 599. Consequently, new Rule 230.1(a) provides that if the defendant presents evidence prior to the close of the plaintiff's case, the court shall consider, in addition to the plaintiff's evidence, only that defense evidence which is "favorable to the plaintiff."

The amendments do not change the nature of the motion for compulsory nonsuit. It remains a means of testing the sufficiency of the plaintiff's evidence at the close of the plaintiff's case. The new Rule does, however, ameliorate the problem set forth above. Otherwise, once the plaintiff's case has ended and the defendant's case has begun, the defendant's remedy will continue to be a motion for a directed verdict.

3. Defendants entitled to nonsuit

Rule 2231(h) provides for the entry of a nonsuit "in favor of any or all of the defendants". This language was inappropriate since under the former rule, as Goodrich-Amram 2d § 2231(h):1 points out that a nonsuit may be entered only in favor of all defendants and not in favor of fewer than all defendants:

But if the plaintiff makes out a prima facie case against one or more of the defendants, then, as a practical matter, there will be no nonsuit proceedings at all. No motion can be made by the defendants until all their evidence is in. This is, of course not a nonsuit, but a motion for a directed verdict.

New Rule 230.1(c) reflects this situation by continuing to provide that the court can enter a nonsuit in favor of all defendants. However, the rule adds the innovation that the court can enter judgment in favor of fewer than all defendants only "if all of the defendants stipulate on the record that no evidence will be presented that would establish liability of the defendant who has moved for the nonsuit."

II Rule 2231. Effect of Joinder. Practice in General

The amendments affect Rule 2231 in three respects:

First, subdivision (f) of Rule 2231 provides that "A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded". The subdivision has been described in Goodrich Amram §2231(f):1 as "an unnecessary statement of an obvious rule" and is rescinded.

Second, as noted above, the substance of subdivisions (g)(1) and (h)(1) governing compulsory nonsuits has been transferred to new subdivisions (b) and (c) of new Rule 230.1.

Third, subdivisions (g)(2) and (h)(2) of Rule 2231 which govern directed verdicts in cases involving plaintiffs and defendants joined in the alternative are rescinded as well. However, unlike the nonsuit provisions, they are not carried over to Rule 226 (b) governing directed verdicts generally. These provisions, which permit the court to direct a verdict "upon conclusion of the trial as to all parties, but not before," are unnecessary in light of the existing language of Rule 226(b) which provides "At the close of all the evidence, the trial judge may direct a verdict upon the oral or written motion of any party."

By the Civil Procedural
Rules Committee

Rea Boylan Thomas
Chair