Washington University Law Review

Volume 7 | Issue 2

January 1922

Pleading—Sufficiency of Negligence Plead Generally

supporting the doctrine of subrogation, but action was not instituted in the name of the owner of the injured goods but in the name of the Insurance Company. A case in point with the main case under consideration is Luke Hart et al. v. The Western Railroad Corporation, 13 Mot. (Mass.) 99 in which it was held that the Insurance Company might bring an action in the name of the owner of the injured goods or property. In Sexton v. Anderson Electric Car Co., 234 S. W. 358, it was possibly due to the stipulation in the policy that action might be brought by the Insurance Company in the name of the owner of the car that influenced the Judge in affirming the decision of the lower court.

PLEADING—SUFFICIENCY OF NEGLIGENCE PLEAD GENERALLY.

In the case of Van Bibber v. Willman Fruit Co., 234 S. W. 356, the servants of defendant company negligently and carelessly ran a large automobile truck into a horse, wagon and harness belonging to plaintiff, destroying the wagon and harness and injuring the horse. Plaintiff brought action alleging that "defendant company, its agents and servants, carelessly and negligently ran a large automobile truck, being then and there used in its business, against and upon the wagon, horse and harness" and praying judgment in the sum of $200. To this petition defendant filed a motion to make definite and certain. Plaintiff failed to do so and the petition was dismissed. In the Supreme Court the view of the lower court was affirmed holding that it was proper for the defendant to ask that the *facts* which plaintiff claimed to constitute negligence should be pleaded. The reason for this being to advise the defendant of the particular acts of negligence which he would be expected to meet in defense. Bliss on Code Pleading (3rd Ed.) Secs. 135-140; Shohoney v. Railroad, 223 Mo. 649. From a review of other authorities it would seem that there might be a difference of opinion upon the point involved in the main case under consideration. In the case of Mack v. St. Louis, K. C. & B. Railway Co., 77 Mo. 232, in which plaintiff's horse was killed by defendant's locomotive, and where it was merely alleged that defendant "negligently killed" plaintiff's horse without setting out *facts* constituting negligence, the court held that this was a sufficient pleading of negligence. Another case, Senate v. Chicago, M. & St. Paul Railway Co., 57 Mo. App. 223, in which plaintiff's horse was killed by defendant railroad, the alleging of negligence generally was held sufficient, the Court saying, "It has been repeatedly declared that a general averment of negligence is sufficient, and that an allegation specifying *the act, the doing of which* caused the injury, and averring that it was *negligently* and *carelessly* done, will suffice." This view is also supported in Sullivan v. Railroad, 97 Mo. 113; Pope v. Cable Railway Co., 99 Mo. 400; and 1 McQuillin's Pleading and Practice.