Pleading—Sufficiency of Negligence Plead Generally

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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 Com-
pany. 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 serv-
ants 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. Plain-
tiff 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 de-
fendant 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 con-
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 with-
out setting out facts constituting negligence, the court held that this was a
sufficient pleading of negligence. Another case, Senate v. Chicago, M. & St.
Paul Railroad 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 neg-
ligence 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.