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Pleading—Certainty—Proximate Cause

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decided, the mines were open, then the grantor was not even committing an enjoinable wrong unless the mining operations impaired the security for the debt. 8

It has been suggested that the first action, in which the note-holders joined, was analogous to a suit for sequestration or a writ of estrepetement, and that they should therefore be entitled to the royalties collected in that action. However, the grantor’s right to the royalties accrued prior to the commencement of that action, and as to the note-holders the royalties should be considered as having been collected when the right to them accrued. Moreover, the fact that the pleadings in the former action showed no intention of the note-holders to accomplish such a result, is fatal to this contention. 9

It is therefore submitted that the case was correctly decided, in accord with the apparently unanimous authority on the point. 10

C. A. P., Jr.

PLEADING — CERTAINTY — PROXIMATE CAUSE.— In an action for injury caused to P’s property in Ohio by D’s blasting operations in West Virginia, 1 P alleged that D owed a duty of care in the use of explosives which he failed to exercise; “that the nitroglycerin, dynamite, and other explosives exploded with such great force and violence that the plate glass of the plaintiff stored in the room occupied by him in Steubenville, Ohio, was destroyed, to the plaintiff’s damage.” D demurred to the declaration. The circuit court overruled the demurrer. Questions certified to the supreme court. Held, that the declaration was defective in that it failed

8 The actual facts do not seem to have been controverted here, but there was a question as to the extent of the mines legally “opened” by the operations begun prior to the deed of trust. This question for the purposes of this comment is one of fact, and was decided in favor of the grantor.
9 Childs v. Hurd, 32 W. Va. 66, 9 S. E. 362 (1889); Higgins v. The York Building Co., 2 Atk. 107 (1840). There is apparently no authority which would construe the prior action as something which it was not.
10 Needless to say, the actual result in the principal case leaves something to be desired. The plaintiffs, holders in due course of the notes for which the trust deed was given, are left without a remedy. It would also seem on principle that if an enjoinable wrong was being committed (which does not appear) then recovery should be had after the fact. The chief difficulty seems to lie in the lack of distinction between the case of an ordinary lease, and that of a mineral lease, when there may be impairment of security. However, the law appears to be settled in both instances, and probably in most cases it is fair to restrict the mortgagee to the exercise of his various other remedies.

1 The court held as to the substantive law that the law of Ohio applied since the injury resulted in that state.
sufficiently to aver that the damage resulted to P from D's breach of duty. *Dallas v. Whitney.*

The court bases its decision on *Ironton Lumber Co. v. Guyandotte Timber Co.* which quotes *Cyc.* "In consequence of the rule that negligence to render a defendant liable must be the proximate cause of the injury, connection between the act or omission and the resultant injury must be shown, and a complaint is insufficient if it fails to show such connection.' This rule carried over into *Corpus Juris* is supported (according to the footnote) by federal and Canadian decisions and by decisions of forty-one states, both code and common law. Of the states applying the rule, West Virginia is perhaps one of the strictest. Some courts recognize a declaration as good although cause and effect are not alleged if it can be inferred from the allegations made. The West Virginia court is not wont to recognize inference as satisfying the rule.

Chitty lays down three purposes of pleading: to give notice to the defendant, to raise an issue for the jury to decide, and to present a statement of fact to which the court may apply the law. Therefore the pleading should be certain enough to be understood by one's opponent, the jury and the court. A declaration alleging that "the defendant so carelessly and negligently conducted himself that the said mare of the plaintiff then and there was greatly torn, kicked," etc., with no other explanation than that the defendant had put his horse into the stable with the mare is as useful

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2 188 S. E. 766 (W. Va. 1936).
3 68 W. Va. 358, 69 S. E. 815 (1909).
4 (1908) 28 Cyc. 572.
5 (1928) 45 C. J. § 666.
7 Gorsuch v. Woolworth Co., 104 W. Va. 98, 139 S. E. 472 (1927); Hannum v. Hill, 52 W. Va. 166, 43 S. E. 223 (1902); but see Long v. Foley, 82 W. Va. 503, 96 S. E. 794 (1918); Snyder v. Wheeling Electrical Co., 43 W. Va. 661, 665, 28 S. E. 733 (1897) ("A declaration will be treated as alleging by implication every fact which can be implied from its averments by the most liberal intendment"). Other cases applying the rule: Conoly v. Hill, 115 W. Va. 175, 174 S. E. 883 (1934); Gorsuch v. Woolworth Co., 107 W. Va. 552, 149 S. E. 610 (1929); Phenix Fire Ins. Co. v. Virginia Western Power Co., 81 W. Va. 298, 94 S. E. 372 (1917); Ironton Lumber Co. v. Guyandotte Timber Co., 68 W. Va. 358, 69 S. E. 815 (1909).
8 1 CHITTY, PLEADING (16th ed. 1879) *236.
10 Strain v. Strain, 14 Ill. 367 (1853).
as a lone allegation that the plaintiff’s mare was injured. Although the defendant might be given notice by the declaration, the court is given none at all. On demurrer it must say that these facts do not constitute a cause of action, for any of a number of things might have happened to the mare irrespective of the defendant’s negligence.

The layman reading this declaration would probably wonder what the plaintiff was suing for. The same cannot be said of the declaration in the principal case. The series of words, “using explosives”, “exploded with great force and violence” and “damage” leads only to the conclusion that the alleged misuse of the explosives caused unusual concussions of the air which broke the glass. At least two legally trained minds understood this declaration; i.e., the plaintiff’s attorney and the circuit judge. It is submitted that that should be sufficient. It is well to encourage scientific pleading. If attorneys would pay more attention to the rules of common law pleading, much time would be saved. But we should remember that courts are dedicated to the adjudication of the rights of clients. There is no sense in wasting time and money to instruct attorneys in pleading.

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11 This declaration might admit of other proof, but other situations than the one mentioned are improbable. It is extremely technical to call an allegation ambiguous because strained thinking might bring forth an ambiguity.

12 An implied allegation may be denied so as to raise the necessary issue for the jury. Gilbert v. Parker, 2 Salk. 629 (1625); Sunderland, Cases on Common Law Pleading (2d ed. 1932) 450.
