CLARK, BY HIS NEXT FRIEND, *v.* CHICAGO, B. & Q. RY. CO.*

Circuit Court, S. D. Iowa. January, 1883.

RAILROAD—NEGLIGENCE—INJURY TO PASSENGERS—PLEADING.

The plaintiff in a suit against a railroad company to recover damages for injuries received while traveling as a passenger on the defendant's cars through the defendant's negligence, is not bound to state in his declaration the particular facts constituting the negligence. It is sufficient to slate generally that the injury was the result of the defendant's negligence.

At Law. Action to recover damages for personal injuries. Motion to make declaration more specific.

Hagerman, McCrary & Hagerman, for plaintiff.

H. H. Trimble, for defendant.

The opinion of the court was delivered orally by MCCRARY, Circuit Judge, who discussed the requisites of a declaration in such a case 589 with respect to the allegation of negligence. He said in substance: The question is one of pleading, and not necessarily one of evidence. The plaintiff, who was injured while traveling as a passenger on board the defendant's cars, alleges that he was injured by the derailment of the train on which he was traveling, and that the injury resulted from negligence on the part of the defendant, but he does not state in what the negligence consisted. If this were a suit by an employee it might, perhaps, be necessary to specify in the complaint the facts constituting the negligence; but there is a material difference between a suit by an employe and a suit by a passenger for personal injury. The latter has, as a general thing, no means of knowing what has caused the accident or injury. He has nothing to do with the operation of the road. He may be only one of a thousand passengers occupying

many coaches. He may be so seriously injured as to be unable to inquire into, the causes of the accident. He may be killed, and suit may be brought by his representatives. Many reasons suggest themselves at once why it would be a harsh rule to require a passenger who sues for an injury to specify the acts of negligence, or the facts showing want of care, on the part of the railroad company. It is accordingly settled, we think, by reason and authority, that it is sufficient to state in the declaration generally that the injury was the result of defendant's negligence. When it comes to the trial the burden is upon the plaintiff to show a *prima facie* case. Whether he does so by showing simply that the car ran off the track, and that he was injured in consequence, is a question which may arise on the trial, but which is not now before us. He must show enough to raise a presumption of negligence on the part of the defendant, but how far he must go in order to do this we need not now determine.

This view is supported by the authority of Thompson's work on Carriers of Passengers, p. 547, § 9, and by the cases there cited.

* From the Colorado Law Reporter.