

MOSIER *ET UX.* V. BEALE.

*Circuit Court, S. D. California.*

August 8, 1890.

1. INJURIES BY ANIMALS—PLEADING—SCIENTER.

In an action, for personal injury, caused by defendant's cow, it is not necessary to allege *scienter* where it is alleged that the injury was committed while the cow was negligently permitted, by defendant, to trespass on plaintiff's premises.

2. HUSBAND AND WIFE—ACTIONS—PLEADINGS—MISJOINDER.

In an action by husband and wife, a complaint stating as the cause of action a personal injury done to the wife, and averring that by reason of such injury both plaintiffs have been damaged, is demurrable for misjoinder of causes of action, since the husband, though a proper party plaintiff, cannot recover for such injury.

At Law. On demurrer to complaint.

*J. W. Ahern* and *Del Valle & Munday*, for plaintiffs.

*Stephen M. White*, for defendant.

ROSS, J. Two objections are urged by the demurrer to the amended complaint in this case. One is that there is no allegation to the effect that the defendant had any knowledge of the dangerous character of the cow which, it is alleged, inflicted the injuries complained of. But the complaint alleges that the defendant negligently permitted the cow to trespass and unlawfully to be upon the premises of the plaintiffs, and that while so trespassing the injuries were inflicted. Under such circumstances it is not necessary to allege that the owner had knowledge of the vicious propensity of the animal. *Van Leuven v. Lyke*, 1 N. Y. 515; *Decker v. Gammon*, 44 Me. 322, and authorities cited in note to that case in 69 Amer. Dec. 103. The plaintiffs are alleged to be husband and wife, and the injuries to have been inflicted on the wife, and by reason of such injuries that "the plaintiff Nellie L. Mosier, and both plaintiffs herein, have been injured in the sum of fifty thousand dollars." Wherefore they pray, judgment for that sum, with costs.

The ground of the action being the wife's personal injuries, the cause of action is hers. The husband was properly joined as a plaintiff, because the common-law rule, requiring that he do so, is yet in force in this state. But the husband cannot himself recover for the personal injuries sustained by his wife. *Matthew v. Railroad Co.*, 63 Cal. 451, and authorities there cited. Upon the ground that there is a misjoinder of causes of action in, the amended complaint, the demurrer is sustained, with leave to plaintiffs to further amend within 10 days.