Notre Dame Law Review

Volume 7 | Issue 3 Article 7

3-1-1932

Motions to Make Complaints and Parts of Complaints More Specific, Definite and Certain and to State Facts Supporting Conclusions in Motor Vehicle Negligence Cases

Clifford V. DuComb

MOTIONS TO MAKE COMPLAINTS AND PARTS OF COMPLAINTS MORE SPECIFIC, DEFINITE AND CERTAIN AND TO STATE FACTS SUPPORTING CONCLUSIONS IN MOTOR VEHICLE NEGLIGENCE CASES

I.

The purpose of this article is to point out and illustrate, as far as practicable, to the courts, lawyers and law students of the State of Indiana, a method of determining when a motion is made to make a complaint, or parts of a complaint, more specific, definite or certain and to state facts supporting conclusions, as related to motor vehicle negligence, should be sustained and when it should be denied or overruled, as supported by the rules of practice and the decisions of the Supreme and Appellate Courts of the State of Indiana.

It is also the purpose of this article to point out to the trial courts the extent that a number of lawyers have resorted to in filing motions to make complaints more specific, certain and definite for the purpose of delaying the closing of the issues, and for the purpose of making further investigation as to evidence and to delay the trial of the cause until witnesses have moved away to parts unknown, so that their evidence may not be obtainable, and the abuses thereby which may result in the repeal of the statute.

II.

STATUTES OF INDIANA

Burns' Annotated Indiana Statutes [1] provide as follows:

"Allegations in pleadings, construction.—Hereafter, in all pleadings, papers or writings which are filed in or before any court in any civil or criminal case, or in any proceeding of any kind, where the sufficiency of the same can, may be or is called in question, all recitals therein, and all statements contained in any participial expression, or

1 § 360 (1926).

following the words 'having' or 'being,' shall be considered and held to be allegations of fact whenever necessary to the sufficiency thereof; and all conclusions stated therein shall be considered and held to be the allegation of all the facts required to sustain said conclusion when the same is necessary to the sufficiency of such pleading, paper or writing.

"Provided, That, as against such conclusions, only the following remedy is given, that a motion may be made to require the party filing such pleading, paper or writing to state the facts necessary to sustain the conclusions alleged, said motion setting out wherein such pleading, paper or writing is insufficient. If no such motion is made and ruled upon, all objections on account thereof are waived."

The Statutes of Indiana also provide as to Liberal Construction and Indefiniteness of pleadings and how corrected as follows:[2]

"In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed with a view to substantial justice between the parties; but when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment."

III.

DISTINCTION BETWEEN MOTIONS AS BASED ON ABOVE STATUTES

It is often quite difficult to distinguish between the different motions to make more specific, motions to state facts to support conclusions and motions to make more definite and certain. It has been said that there is very little difference, if any, between a motion to make more specific and a motion to make more definite and certain. It has been the common practice of lawyers to state both in the caption, such as follows: "Motion to make the pleading more specific, definite and certain." There is, however, a distinction between motions to make more specific and a motion to state facts to support a conclusion, as the former is based on Section 403 as above set out, while the latter is based on Section 360 as above set out, and, therefore, the distinction

2 BURNS' ANNO. IND. STAT. (1926) § 403.

is based entirely upon the construction of these statutes as construed by the Appellate and Supreme Courts of the State of Indiana.

IV.

MOTION TO STATE FACTS SUPPORTING CONCLUSIONS IN PLEADINGS—APPLICATION OF THE STATUTE

These statutes apply to all answers as well as complaints and especially is this true in an answer pleading an estoppel, without setting out facts constituting the estoppel. A motion to require the pleader to set out the facts sustaining the estoppel, is the only remedy.[3]

The statute does not apply, however, to all conclusions in a pleading, but only to those which are necessary to the sufficiency of the pleading. As to any conclusions unnecessary to the sufficiency of the pleading, the law remains as it has always been, *viz.*, they may be disregarded.

In the case of *Premier Motor Mfg. Co. v. Tilford*[4] Judge Hottel says that Section 360, Burns' Statutes of Indiana, "does not require every conclusion stated in a pleading to be considered and treated as the allegation of the facts necessary to sustain such conclusion, but expressly limits its application to such conclusions as are necessary to the sufficiency of the pleading. As to conclusions unnecessary to the sufficiency of a pleading, the law remains as it has always been, *viz.*, any statement in a pleading whether made by way of conclusion, or direct averment of fact, if unnecessary to the sufficiency thereof, may be disregarded and hence any ruling on a motion to make such an averment more specific would be necessarily harmless."

In the case of *Tecumseh Coal and Mining Co. v. Buck*[5] Judge Ewbank says "That mere averments of legal con-

---

[3] Schlosser v. Nicholson, 184 Ind. 283-288, 111 N. E. 13 (1916).
[4] 61 Ind. App. 164, at p. 167 (1916).
[5] 192 Ind. 122-125 (1923).

clusions amount to nothing and must be disregarded." [6] The court further says that it cannot be a reversible error to overrule a motion to make averments more specific when such averments are not material.

V.

SUCCESSIVE MOTIONS TO MAKE COMPLAINTS MORE SPECIFIC

Judge Ewbank, in the case of *Tecumseh Coal & Mining Co. v. Buck,* above cited, says:

"The law does not contemplate that the defendant, in an action may file a succession of motions, one after the other, as they are successively overruled, asking in each that the facts relied on shall be stated more definitely."

And ordinarily it is within the sound legal discretion of the trial court to reject a second motion that requires a more definite and certain statement of facts, after overruling the one first presented.

In the above case, after a motion to make the complaint more specific had been overruled, the defendant filed a motion to require the plaintiff to plead facts to sustain alleged conclusions of facts as well as of several conclusions of law. The court further stated that "a motion of that kind tends to delay the formation of an issue and the decision of the case, and ordinarily it is within the sound discretion of the trial court to reject a second motion to require a more definite and certain statement of the facts after overruling the first one presented."

VI.

TIME OF MAKING SUCH MOTION

A motion to make a pleading more specific or to state facts to support conclusions of law must be made before it is answered, unless upon leave of court, the answer is withdrawn.[7] Likewise, there is good authority for the proposition that it must precede a demurrer to the pleadiing.[8]

---

[6] Temple v. State, 185 Ind. 139 (1916); Cincinnati, etc., R. Co. v. Little, Admr., 190 Ind. 662 (1921).

[7] Hart v. Walker, 77 Ind. 331 (1880).

[8] Crowder v. Reed, 80 Ind. 1 (1882).

VII.

WHEN MOTION DOES NOT LIE

A motion to make a pleading more specific should be overruled under the following conditions, to-wit:

(1) When the motion calls for the pleading of facts which are peculiarly within the knowledge of the movant.[9]

(2) Where the requisite information is not within the reach of the pleader.[10]

(3) Where the movant is seeking to have an unnecessary allegation made more specific.[11]

(4) Where the pleading is already as definite as the laws of pleading require.[12]

(5) Where the motion would require the party to plead to disclose evidence.[13]

VIII.

OVERRULING OR SUSTAINING OF THE MOTION NOT IN THE DISCRETION OF THE COURT

Where the motion is well founded it is not in the discretion of the trial court to sustain or overrule the motion, but it is as much the duty of the court to sustain the motion as it is to sustain a demurrer to an insufficient pleading, and the refusal of the court to grant an order requiring the pleader to amend his pleading is reversible error on appeal.[14] However, before a reversal will be granted on an appeal, the complaining party must show that he has been deprived of some substantial right by such ruling.[15]

---

9 Rockwell Co. v. Brumbaugh, 59 Ind. App. 640-646 (1915).

10 B. & O. R. Co. v. Countryman, 16 Ind. App. 1391 (1897).

11 A. J. Yawger Co. v. Joseph, 184 Ind. 228-231 (1916).

12 Kinmore v. Cresse, 53 Ind. App. 693-698, 102 N. E. 403 (1918).

13 31 Cyc. 647 and cases cited therein.

14 Premier Motor Mfg. Co. v. Tilford, *op. cit. supra* note 4; S. W. Little Coal Co. v. O'Brien, 63 Ind. App. 504 (1917); A. J. Yawger Co. v. Joseph, *op. cit. supra* note 11.

15 Kinmore v. Cresse, *op. cit. supra* note 12; Ind. Mfg. Co. v. Coughlin, 65 Ind. App. 268, 115 N. E. 260-262 (1916).

IX.

AS APPLICABLE TO SPECIFIC ACTS OF NEGLIGENCE IN MOTOR VEHICLE CASES

A. BRAKES—The statutes of the State of Indiana [16] provide that every motor vehicle or motor bicycle operated or driven upon any public highway in this state shall be provided with good and adequate brakes in good working order and sufficient to control such motor vehicle or motor bicycle at all times when the same is in use.

A complaint or an allegation in a complaint as an act of negligence for the violation of the above statute that simply states "that at the time of the alleged injuries defendant's automobile was not provided with good and adequate brakes in good working order" may state a cause of action which would be sufficient as against a demurrer, but the bare allegation alone without alleging any facts in what manner the brakes were deficient or stating any facts showing their condition as to whether they were out of adjustment, loose, worn, or that the defect was a latent defect or that defendant had knowledge of said defect, or that the brake drums were oily or greasy, or to show at least some condition that the brakes were not good or adequate at the time of the alleged injuries, would not be sufficient to apprise the defendant of the nature of the charge against him in operating his motor vehicle when the same was not provided with good and adequate brakes, and a motion to require the pleader to state facts to support the conclusion that the brakes were not adequate should be sustained. It has been held that an unforseen failure of equipment will not necessarily expose an operator of an automobile to a charge of negligence.[17]

In my opinion, the allegation should state the nature of the defect and it should be alleged so that the defendant

---

16 BURNS', *op. cit. supra* note 2, § 10126.

17 Rath v. Bankston, 281 Pac. 1081 (Cal. 1929).

may determine whether or not, by the exercise of ordinary care in the inspection of his automobile, he could have discovered the defect and thus prevented the operation of the motor vehicle in a defective condition.[18]

B. RIGHT OF WAY—The Statutes of Indiana [19] provide for the right of way of motor vehicles as follows:

"Motor vehicles and motor bicycles traveling upon any public highway shall give the right of way to any other vehicle, motor bicycle or any other vehicles approaching along an intersecting highway from the right and shall have the right of way over those vehicles approaching along an intersecting highway from the left (subject to certain exceptions not herein set-out)."

It is quite common among lawyers in drafting complaints for negligence for failure to yield the right of way to state "that the plaintiff was traveling in a northerly direction on a certain highway and that the defendant was traveling in an easterly direction on an intersecting highway; that on arriving at the intersection, the defendant failed to yield the right of way," or to allege "that the plaintiff was approaching the intersection of certain highways to the right of the defendant and defendant failed to yield the right of way," and fail to allege any facts as to the respective speeds of the automobiles on approaching the intersection or their respective distances from the place of intersection. Such a bare allegation "that the defendant failed to yield the right of way" is a conclusion, and a proper motion made at the proper time to require the pleader to state facts to sustain the conclusion should be sustained, for the reason that the right of way given to the driver approaching from the right is not an absolute one, neither is the fact of which driver arrives first at the intersection of the streets necessarily of controlling influence,[20] and the application of the law does not

18 1 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW Annotated (1927) Chapter 18, p. 376; 3 HUDDY, ENCYCLOPEDIA OF AUTOMOBILE LAW (9th ed. 1931) Chapter 3, § 71, p. 127.

19 BURNS', *op. cit. supra* note 2, § 10154.

20 Blasengym v. Gen. Accident Fire & Life Assur. Corp., Ldt., 89 Ind. App. 524, 165 N. E. 262 (1929).

apply; unless the trevels or vehicles on intersecting streets approach the crossing at the same time or so nearly at the same time, and at such a rate of speed that if both proceed, each without regard to the other, a collision or interference between them is reasonably to be apprehended; and if a traveler not having a right of precedence at a street intersection comes to the crossing and finds no one approaching it upon the other street within such distance as reasonably to indicate danger of interference or collision, he is under no obligation to stop or to wait, but may proceed to use such crossing as a matter of right.[21]

C. SPEED—The Statutes of Indiana [22] provide as follows as to the speed of motor vehicles and motor bicyles:

"No person shall drive or operate a motor vehicle or motor bicycle upon any public highway in this state at a speed greater or less than is reasonable or prudent, having regard to the width of the highway, the density of the traffic, the condition of the weather and the use of the highway, or so as to endanger the life or limb or injure the property of any person. If the rate of speed of any motor vehicle or motor bicycle driven or operated upon any public highway in this state where such highway passes through the closely built up business portion of any city, town or village exceeds twenty miles per hour; or if the rate of speed of any motor vehicle or motor bicycle driven or operated upon any public highway in this state where such highway passes through the residence portion of any city, town or village exceeds thirty miles per hour; such rate of speed shall be prima facie evidence that the person driving or operating such motor vehicle or motor bicycle is running at a rate of speed which is greater than is reasonable and prudent."

Many lawyers in drafting a complaint for negligence for violation of the speed laws simply allege "that the defendant at the time of the alleged injuries was driving and operating the motor vehicle at a high and dangerous rate of speed" or

---

21 Barnes v. Barnett, 184 Iowa 936, 169 N. W. 365 (1918); Mattes v. Bruggner, 88 Ind. App. 36, 159 N. E. 156 (1929); Wolf v. Vehling, 79 Ind. App. 221, 137 N. E. 713 (1923); Keltner v. Patton, 159 N. E. 162 (1927).

Contra: Elgin Dairy Co. v. Shepherd, 183 Ind. 466 [This case, however, was decided before the statute relative to right of way was in effect (1915)]; Kent County Motor Co. v. Pure Oil Co., 140 Atl. 646 (Del. 1926).

22 Acts, 1929, p. 617.

"at a high and unlawful rate of speed" without alleging any other facts as to the conditions or circumstances, relying entirely on the fact that the simple allegations of a "high and dangerous rate of speed" or "high and unlawful rate of speed" are sufficient as against a demurrer under the common law. It is true that there are many cases that have held that the words "high and dangerous rate of speed" and "high and unlawful rate of speed" are sufficient allegations of negligence under the common law, yet under Indiana law these allegations are mere conclusions, and without any motion to require the pleader to state facts to sustain the conclusions, either of them would be sufficient; yet if a motion is addressed to either of them to require the pleader to state facts to sustain these conclusions, it should be sustained, for the reason that the above statute regulates the speed of motor vehicles in Indiana and the law states that a speed that is greater than a fixed rate in certain districts of a city, town or village, shall be prima facie evidence that the operator was driving and operating the motor vehicle at a greater rate of speed than is reasonable and prudent, having regard to the width of the highway, the density of the traffic, the condition of the weather and the use of the highway, or so as to endanger the life or limb or injure the property of any person. And the defendant is entitled to know the rate of speed that he is charged with operating his motor vehicle and the location where such speed occurred and other conditions, if any, that are set-out in the statute. In my opinion, the defendant is entitled to know all of the necessary material allegations of fact that makes the rate of speed he is charged with traveling prima facie evidence of driving and operating his motor vehicle at a greater rate of speed than was reasonable or prudent.

If the courts are to hold that such allegations as "high and dangerous rate of speed," "high and unlawful rate of speed" are to be sufficient on a motion to require the pleader to state facts to support such conclusions, the time will not

be very far off when the lawyers in order to charge an act of negligence of speed, will only need to state "that at the time of the injuries, the defendant was violating the speed laws of the State of Indiana." There is only one way to correct the common habit of pleading such conclusions in motor vehicle negligence cases, and that is, to sustain a motion to require the pleader to state facts to support the conclusions and enter an order to that effect, and especially such facts that are material and necessary. When the court does this, and the pleader has amended his complaint, or the allegation of negligence relative to speed, the court can then without hesitation give the instructions on speed laws as laid down by the decisions in the State of Indiana, the form of which is as follows:

No. 1. I instruct you, Gentlemen of the Jury, that there was in full force and effect at the time of the alleged injuries to plaintiff as complained of in plaintiff's complaint, a statute in the State of Indiana with reference to the speed of automobiles, to-wit: (Copy speed statute as above set-out).

No. 2. With reference to the statute I have just given you, I instruct you that if you find by a fair preponderance of the evidence that the defendant at the time the alleged injuries in question occurred, was driving and operating his automobile on a public street and highway in the city of —— where the same passes through a residence portion of said city, at a greater rate of speed than thirty (30) miles per hour, then I instruct you that such speed, if any, should be by you considered as prima facie evidence that the defendant was driving and operating said automobile at a speed greater than was reasonable or prudent, having regard to the width of the highway, the density of the traffic, the condition of the weather and the use of the highway, or so as to endanger the life or limb or injure the property of any person.

This simply means that in absence of all other evidence, the evidence of speed in excess of thirty (30) miles per hour under the conditions named, may be considered as a speed greater than is reasonable or prudent, having regard to the width of the highway, the condition of the weather, the density of the traffic, and the use of the highway or so as to endanger the life or limb or injure the property of any person.

However, it is for you to determine from all the evidence in the case, whether or not the defendant was driving at a speed in excess of thiry (30) miles per hour and whether such speed was negligence under the circumstances.[23]

One of the perplexing questions that has come to the trial courts of Indiana is as to whether or not it is proper to instruct the jury by giving them the instructions relative to speed as based on the above statute as have been supported by the decisions of the Appellate and Supreme Courts of Indiana when the complaint alleges only common law negligence of speed.

The Appellate Court of Illinois held that a count in a declaration charging that defendant drove his motor truck at "a high, excessive, unreasonable and dangerous rate of speed, to-wit: at the rate of thirty miles per hour," by reason of the *videlicet*, not to charge that the vehicle was being driven at any particular number of miles per hour, and, therefore, not to justify an instruction that running a motor vehicle at a speed of more than twenty miles per hour was prima facie evidence that the rate of speed was greater than was reasonable and proper under Section 10 of the motor vehicle act of the State of Illinois in the year of 1911.[24]

---

[23] Buchanan v. Morris, 198 Ind. 79 (1927); Gallaher v. State, 193 Ind. 629 at p. 639 (1923); Miller v. Johnson, 82 Ind. App. 85 (1925); Russell v. Scharge, 76 Ind. App. 191 (1921).

[24] 1 BERRY ON AUTOMOBILES, 6th ed., § 184, p. 151, and footnotes; Fippinger v. Glos, 190 Ill. App. 238 (1914).

In my opinion, the act of 1929 of the State of Indiana as above set-out does not fix a speed limit in any locality but prescribes a rule of evidence to the effect that exceeding a certain speed rate in certain localities will be prima facie evidence of a rate of speed greater than is reasonable and prudent, and if a pleader expects to take advantage of having the court instruct the jury as to the prima facie rule of evidence, he must allege in his complaint the necessary allegations of speed as set-out in the statute to support such an instruction, otherwise the trial court will be compelled to give to the jury the common law instructions relative to speed.

D. RECKLESS DRIVING—The Act of 1929 of the State of Indiana, at page 619, sets out and states particularly what constitutes reckless driving of a motor vehicle or motor bicycle. Quite frequently attorneys in drafting complaints for reckless driving simply allege "that the defendant at the time of the alleged injuries was guilty of reckless driving" without stating any other fact as to what constitutes the reckless driving. The above statutes specifically states that reckless driving shall be construed to mean: (1) Driving on that side of the highway which is to the left of the operator; (2) Driving in and out of line of traffic except as provided elsewhere in the act; (3) Driving from side to side of the highway; (4) Driving at such an unreasonably slow rate of speed as to endanger traffic; (5) Refusing to give one-half of the highway to the driver or operator approaching from the rear at greater rate of speed and desiring to pass; (6) Passing or attempting to pass another vehicle from the rear while on the brow of a hill or on a curve where vision is obstructed for a distance of less than five hundred feet ahead of any vehicle desiring to pass another.

So if a pleader alleges only that the defendant at the time of the alleged injuries was guilty of reckless driving without setting-out any facts to constitute such reckless

driving, then the bare statement is a conclusion and if a motion in proper time and properly addressed to the court to require the pleader to state facts to support the conclusion as alleged is made, such motion should be sustained. A person charged with reckless driving is entitled to know the facts constituting the reckless driving so that he may be able to properly prepare his defense thereto. The court, likewise, is entitled to know and require the pleader to state the facts that constitute reckless driving under the statute so that he may be able to properly instruct the jury and in his instructions state to the jury the statute that was in effect at the time, defining reckless driving and what acts are to be construed as meaning reckless driving.

In the case of *Lorber v. Peoples Motor Coach Co.*[25] the court stated, "that the violation of that part of the motor vehicle law relative to reckless driving by the driving on that side of the highway which is to the left of the operator was at least prima facie negligence." So, therefore, if a violation of the above statute is prima facie evidence of negligence, certainly the courts should require the pleader to specifically charge the facts necessary to support a conclusion of a bare statement of reckless driving.

E. AGENCY—The allegation of agency in automobile negligence cases has become one of the most important allegations of a complaint. The reason being that it has become a common practice of agents, chauffeurs and employees, during the noon hour and after business hours, to use their employer's motor vehicles for their own private affairs, without consent or knowledge on the part of the employer. A corporation cannot operate its motor vehicles except by and through the driver thereof as its agent. This being true, the allegations "that the defendant corporation, at the time of the alleged injuries received, was driving and operating its motor vehicle by its agent, servant, chauffeur or em-

25 164 N. E. 859 (Ind. App. 1929).

ployee in the due scope of his employment" are not sufficient when a motion is made requiring the court to enter an order to require the pleader to make the complaint more specific by stating facts to support the conclusion; such facts as to state what the agent, chauffeur, servant or employee of the defendant corporation was doing and what business of the defendant he was furthering at the time of the alleged injuries or accident, are necessary to the sufficiency of the complaint.

The above allegation of agency states two conclusions: (1) That the driver was the agent or servant of the defendant; (2) That he was acting within the scope of his employment at the time of the alleged injuries or accident. Judge Hottel says, in the case of *Premier Motor Mfg. Co. v. Tilford,*[26] "that the pleader ought not to be relieved from stating facts upon which the above conclusions are based." He also states that "the facts on which the above conclusions are based are necessary to the sufficiency of the complaint for the reason that the master is responsible only for the acts of his servant done in obedience to express orders or directions of the master or in the execution of the master's business within the scope of his employment, and for acts in any sense warranted by the express or implied authority conferred upon him, considering the nature of the services required, the instructions given and the circumstances under which the act is done." The court further says "that defendant was not liable merely because it was the owner of the automobile and the driver thereof was in its employ. Such facts do not make the owner of the automobile liable for injuries caused by the driver's negligence while such driver was riding for his own pleasure and profit and not upon the owner's business." This case holds that while in many jurisdictions the fact that the automobile was admitted to belong to defendant, a corporation, and that the

[26] *Op. cit. supra* note 4.

driver was in the employ of the corporation and operating the automobile with its knowledge and consent, in the absence of anything to the contrary, was sufficient to give rise to the inference that the relation of owner and chauffeur or agent existed between the corporation and such driver and hence put the defendant upon the proof that the automobile was not used in its business or for its employment.[27]

In my opinion in the future the Appellate Courts will hold that it is a necessary allegation of agency to allege the act or thing the driver, chauffeur or agent of a corporation was doing for the corporation and to prove the facts of such allegation at the trial, before the corporation will be held liable, and that the defendant corporation, because of inference that might arise from ownership or the driver being an employee of the defendant corporation, will not be required to prove that the motor vehicle was not being used in the furtherance of the business of the corporation at the time of the alleged negligence.

F. LOOKOUT—The allegation "that the driver of a motor vehicle failed to keep a lookout" is an allegation of negligence under the common law, but when a pleader in an allegation of a complaint states "that the defendant failed to keep a proper lookout," such an allegation raises the inference of the degree of care required, whether or not the defendant should have kept, under the circumstances, a constant watch or lookout, or a vigilant watch or lookout, or such a watch or lookout as an ordinarily prudent person would have kept under like or similar circumstances, and, therefore, an allegation "that the defendant failed to keep a proper lookout" may, under some circumstances, be a conclusion, especially when no other facts are alleged stating the degree of care required.

---

[27] DAVID, MOTOR VEHICLES, § 209; Burger v. Taxicab Motor Company, 66 Wash. 676, 120 Pac. 519 (1912).

So when a motion is addressed to the bare statement "the defendant failed to keep a proper lookout" to require the pleader to state what a proper lookout should be at the time of the alleged injuries or accident in question, it should be sustained for the reason that the defendant cannot determine from the pleading what a "proper lookout" under the circumstances would be, and, therefore, would not apprise the defendant of sufficient and necessary facts to meet the proof. For what might be a "proper lookout" in one case, might not be a "proper lookout" in another. It seems to me that it is a question of fact for the jury to decide whether or not under all the facts and circumstances, a driver kept a "proper lookout" so that in order to admit proof under an allegation of lookout, if the pleader is going to plead a conclusion and expect to rely upon it, which under the common law would be a sufficient allegation as against demurrer, and expects to introduce evidence showing that the defendant failed to keep a lookout, he would ordinarily be required to allege facts showing what the "proper lookout" or watch should be.

X.

There may be many other instances where conclusions are alleged in automobile negligence, both statutory and common law, that could be mentioned, but I have only attempted to point out those that are of common practice. In my opinion, the statutes providing for motions to make conclusions more specific and to require the pleader to state the necessary facts to support or sustain his conclusions, are of a vast help to the courts and to defendants that are charged with negligence, for the reason that it clears the court's docket, places the negligence squarely before the court and jury so that the court may understand what the plaintiff expects to prove and what the defendant is expected to meet and can govern his instructions to the jury accordingly. However, if the lawyers at the bar attempt to use these stat-

utes as a means of a delay in closing the issues and the trying of the cause, by filing flimsy motions such as requiring the pleader to state the width of the street, or a distance of a tree or a post from the intersection, or various other geographical requirements which knowledge the defendant has or can readily obtain, all that have no merit whatever, the time will not be far off when these statutes will be repealed and, unless the legislature gives further remedy, the only remedy then left for a pleader will be a motion to strike or a demurrer to each specific allegation of negligence, and the allegation in a great many instances might state facts to constitute a cause of action, either under the common law or under a statute and be sufficient as against a demurrer, and, therefore, would necessarily be overruled by the court and the defendant would not have the necessary averments that he is justly entitled to have.

Clifford V. DuComb.

South Bend, Indiana.