

COMMON LAW ACTION IN EQUITY GARB.

(Explanatory Letter Following)

By

Vincent Giblin, LL.B., '18

In the Circuit Court of the Seventh Judicial Circuit of Florida. In and for Brevard County.

O. K. Key, Plaintiff,

vs.

Florida East Coast Railway Company, a Florida corporation, defendant.

Declaration in Suit for Damages.

To the Circuit Court of the Seventh Judicial Circuit of Florida, in and for Brevard County; Greetings:

Your orator, O. K. Key, a resident of Brevard County, Florida, brings this, his action for damages against the Florida East Coast Railway Company, a Florida corporation and thereupon respectfully sheweth:

First

That the Florida East Coast Railway Company, a Florida corporation, hereinafter called the defendant, has injured and damaged your orator in the sum of \$500.00.

Second

Your orator shows that said defendant owns and operates a line of railroad tracks running through the County of Brevard, said State of Florida and on the night of the 28th of August A. D. 1920, said defendant through their agents and employes were running and operating a train over said line which said train passed through the City of Cocoa in the County of Brevard about twelve o'clock on the night of Aug. 28th, 1920. Your orator shows that in operating said train over said road and line, the said defendant, through

their agents and employes were careless and negligent and through the carelessness of the agents and employes of said defendant, the said defendant injured and damaged your orator in the sum of \$500.00.

Third

Your orator shows that on the 28th day of August. A. D. 1920, your orator was the owner of one large mouse colored horse mule of the value of \$300.00, which said mule was run over and killed by the said defendant's train above mentioned in the City of Cocoa, Brevard County Florida between mile post 173 and 174 on defendant's railroad track wherein the said defendant injured and damaged your orator in the sum of \$500.00.

Fourth

Your orator shows that at the point where the said defendant, through their agents and employes run over and killed said described mule, the property of your orator, the track is straight for a long distance in each direction from said point and there was nothing in the way to hinder the engineer in charge of and operating said train from seeing and detecting said mule long before said mule was hit by the engine pulling said train; your orator shows that described mule was run over and killed on a street crossing in the city of Cocoa and that the engineer in charge of said train did not ring the bell, blow the whistle or attempt to bring the train to a stop after he had discovered said mule on

defendant's track. Your orator further shows that the engineer in charge of said train did not keep the proper watch-out as he was approaching a road crossing, and by keeping a proper watch-out he could have seen the said mule and thereby prevented running over and killing same. Your orator shows further that at the time the defendant, through their agents and employes run over and killed your orator's said mule, the engineer in charge of said train was running said train at a fast and reckless rate of speed, notwithstanding the fact that he was running said train through the incorporate limits of the City of Cocoa and approaching a public street crossing, said train was running at a rate of 30 miles per hour and when the engine struck said mule, it knocked the said mule several feet in the air which was caused by the fast and reckless running of said train, all of which was due to the carelessness and negligence of the defendant through their agents and employes and running over and killing said described mule being due to the carelessness and negligence of the defendant through their agents and employees and thereby injuring and damaging your orator in the sum of \$500.00, which the said defendant refuses to pay after demand in writing having been made.

Wherefore, your orator, placing himself upon his country, prays judgment of the Court in his behalf.

Plaintiff's Attorney.

EXPLANATORY LETTER

Jacksonville, Fla.,
Feb. 3rd, 1921.

Judge F. J. Vurpillat,
University of Notre Dame,
Notre Dame, Indiana.

My Dear Judge:

One is never too old to learn, and I am forwarding for your further enlightenment on the subject of pleading, a rare specimen of a common law declaration. Bearing in mind that Florida is still a common law State, you will note that the pleader has rather skillfully and technically blended equity and law.

A reading of this rather unique declaration will in some degree explain why I have chosen Florida as a field for my professional labor, for the weaker the opposition the less difficult of attainment is the goal of success. While the enclosure is not typical of the efforts of a Florida lawyer, I have found that a great many of the members of the bar in this section have sadly neglected their education upon the subjects of pleading and practice. This condition is largely due, I think, to the leniency of the bar examination.

Trusting that this finds you in the enjoyment of good health and prosperity, and with kindest personal regards to yourself and Prof. Tiernan, I remain,

Sincerely yours,
Vincent Giblin.