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Parties-Real Party in Interest

Parties—Real Party in Interest. The complaint in substance alleged that the appellant was the owner of a certain truck, and while driving the same upon the highway in the state of Indiana, the appellee, through its agent and employee, carelessly and negligently drove its truck at a high rate of speed and in consequence ran into the truck of appellant, thereby damaging it. The appellee filed a general denial and also an affirmative answer to the complaint. In the affirmative answer it was alleged that the appellee was not the proper party in this suit because it had been paid in full for the damages by the State Automobile Insurance Association and for this reason such Association had been subrogated to the rights of the appellee; and, therefore, it and not the appellee was the real party in interest. On appellee's demurrer to this answer being overruled, this appeal was taken. Held, that the demurrer should have been sustained.[1]

It will be remembered that at common law the subrogee had no rights in the law courts for he obtained subrogation only at the hands of equity. Subrogation was strictly a creation of the equity courts. Hence, it necessarily followed that the subrogor was the proper party in an action at law. An assignment stood practically upon the same footing even though it was of a legal nature rather than equitable. The assignee could not bring his action in his own name, but was required to bring it in the name of his assignor. To

15 (1932) 204 Ind. 122, 179 N. E. 778.

16 (1930) 202 Ind. 214, 172 N. E. 907.

17 In re Kariher's Petition (1925), 284 Pa. 455, 131 Atl. 265; Sheldon v. Powell (1930), 99 Fla. 782, 128 So. 258.

18 Borchard, The Constitutionality of Declaratory Judgments (1931), 31 Colum. L. R. 561.

1 Williamson v. Purity Bakeries of Indiana, Inc. (1935), (Ind. App.).

just what extent the code has modified these common law rules has received little attention from commentators, but has been the subject of widely diverse opinions in the courts.

That the insurance company today is subrogated to the rights of the insured against a wrongdoer is a doctrine so well settled that it needs no discussion in this report.[2] It also seems to be the accepted rule under the code that the insurer may maintain the action in his own name without joining the insured as a coplaintiff.[3] The question infrequently arises, however, on the point whether the insured may maintain an action in his own name against the wrongdoer after being paid in full for his loss by the insurer.

The principal case has relied upon two previous decisions in Indiana. It was held in the Griffin case,[4] decided in 1893 by the Indiana Appellate Court, that under facts analogous to the present case, the insured could maintain an action against the wrongdoer. The Cunningham case,[5] decided eight years earlier by the Indiana Supreme Court, was cited in support thereof. These cases to some extent do support the case at bar, but it is to be noted with emphasis that the Cunningham case is half a century old. Though they were decided after the passage of the Indiana Code, they should not be taken as a settled interpretation of the code on the points involved. This is only too well shown in the Claffy case,[6] decided by the Indiana Appellant Court in 1929. In this case the insured was denied a right of action against the wrongdoer because he had been paid in full for his loss by the insurer. The facts showed that there was a provision in the insurance policy to the effect that the insurer was to be subrogated to the rights of the insured on payment of any loss covered by the policy.

In deciding the principal case the court acknowledged the rule in the Claffey case but disposed of it by the distinction between an assignment that is supported by a provision in the insurance policy and one that results solely through the operation of law. Such a line of demarcation is not well taken. It is submitted that the Claffey case cannot be distinguished from the present case, and especially on such grounds as the court chose to rely. The insurer's right of subrogation does not rest upon any relation of contract or of privity between them, but upon the nature of the contract of insurance as a contract of indemnity, and arises independently of a provision in the insurance contract which gives the insurer the right to recover damages from the person responsible for the loss.[7] The contract that the insurer is to be subrogated is not an act of subrogation, but only an aleatory contract with no material value. The insured has only consented to submit to that which the law requires. His promise, therefore, to give such an assignment is wholly subordinate to the legal requirement.

To support the principal case, the very objective of the code must be ignored. One of the fundamental concepts of the code is the blending of law and equity and it is to be found that before its adoption, the insurer, after full payment, could sue in equity and not the insured. Is it to be contended that the adoption of the code took away this substantive right from the insurer? By the substantive law of the case the insurer has the right of action. He is therefore, the real party in interest. So it was said by Justice Pound:

2 Spray v. Rodman (1873), 43 Ind. 225; Henry v. Knight (1919), 74 Ind. App. 562, 122 N. E. 678.

3 Lake Erie E. W. R. Co. v. Hobbs et. al. (1907), 40 Ind. App. 511, 81 N. E. 90.

4 Lake Erie and W. R. v. Griffin (1893), 8 Ind. App. 47, 35 N. E. 396.

5 Cunningham et. al v. The Evansville and Terre Haute Railroad Co. (1885), 102 Ind. 478, 1 N. E. 800.

6 John A. Boyd Motor Co. v. Claffey (1929), 94 Ind. App. 492, 165 N. E. 255.

7 Offer v. Superior Court of City and County of San Francisco (1924), 194 Cal. 114, 228 P. 41.

"The action should have been brought in the name of the insurance company alone. No other party has any interest in the claim".[8] This doctrine has been recognized in Indiana in regards to Workmen's Compensation cases. The appellate court has said: "Where an employee sustains an injury under such circumstances as to create a liability in some other person then the employer, the Workman Compensation Statutes give to the injured employee the option of an action against the person causing the injury, or against the employer. However, if he elects to take compensation, and accepts payment from his employer, he thereby surrenders whatever right of action he may have had to recover at common law from the person whose negligence caused the injury".[9] This same rule has been applied to a subrogee under guarantor's contract of indemnity.[10]

The legal distinction between an assignment and subrogation can only be negligible, if any distinction can be made at all. Although, as said, subrogation was originally of equitable cognizance, so was the assignment of a chose in action originally cognizable in a court of equity, and realizing this, many courts have said that just as an assignee may now sue to enforce his rights in a common law action, so a subrogee may also resort to a common law forum of relief.[11] That a subrogee is thus entitled to a jury trial must necessarily follow.[12] His rights then are substantially legal, the same as an assignee's, and not equitable. The parties in a suit at equity are not entitled to a jury trial.[13] The overwhelming weight of authority holds that if an assignment has been made prior to the beginning of the action, the assignee is the only proper plaintiff, and the action can not be maintained by the assignor. Indiana adheres to this rule.[14]

It is not to be contended that the code abolished the fundamental distinctions between law and equity, for such was not its purpose. But the proposition that the law courts have at times absorbed equitable rights and remedies, giving them legal rather than equitable force, is not new or startling. The development of mortgage law is one of the best examples.[15] In the older cases if the insured received satisfaction from the wrongdoer, for the amount to which the insurer was entitled to subrogation, the insurer had a right of action against him to recover the same.[16] The insured was a mere trustee for the insurer. Today, this trust set-up is no longer desirable, nor does it have any right to exist. The development of the law of subrogation is similar to the development of the law of mortgages. Subrogation is now a legal right. The subrogee may resort to the law courts and through legal proceedings may obtain relief.

The principal case could well have relied upon the Claffey case and perhaps, by doing so, a more logical result would have followed.

L. E. B.

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8 Lord and Taylor v. Yale and Towne Mfg. Co. (1920), 230 N. Y. 132, 129 N. E. 346.

9 Employers' Liability Assurance Corp. v. I. and C. Traction Co. (1923), -- Ind. App. --, 139 N. E. 200.

10 Sloat-Darrogh Co. v. General Coal Co. (1921), 276 F. 502.

11 Metropolitan Casualty Ins. Co. v. Badler (1928), 229 N. Y. S. 81, 132 Misc. Rep. 132.

12 U. S. Casualty Co. v. Anderson Electric Car Co. (1916), 157 N. Y. S. 710.

13 Flaherty v. Murphy (1920), 291 Ill. 595, 126 N. E. 553.

14 Louisville, etc., R. Co. v. Goodbar (1882), 88 Ind. 213; Reynolds v. Louisville, etc., R. Co. (1875), 143 Ind. 579, 40 N. E. 410.

15 Walsh, A Treatise on Mortgages (1934), Chapter I.

16 Newcomb v. Cincinnati Ins. Co. (1872), 22 Ohio St. 382, 10 Am. Report 746; Atchison, T. & S. F. R. Co. v. Home Ins. Co. (1898), 59 Kan. 432, 53 Pac. 459; Shawnee Fire Ins. Co. v. Cosgrove (1911), 85 Kan. 296, 116 Pac. 819.