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Demurrer to Parts of Complaint

John D. Welman
Member, Evansville Bar

DEMURRER TO PARTS OF COMPLAINT

By JOHN D. WELMAN*

"A demurrer is an objection made by one party to his opponent's pleading, alleging, he ought not answer such pleading. . . . A demurrer is either to the whole or to part of a pleading." (Saunders on Pleading.)

Our code, after abolishing all inconsistent forms of action, by Sec. 362, Burns 1926, provides that a complaint may be demurred to, (1) when the court has no jurisdiction of the defendant or the subject matter; (2) that the plaintiff has no legal capacity to sue; (3) another action pending between the parties for the same cause; (4) defect of parties; (5) the complaint does not state facts sufficient to constitute a cause of action; (6) that several causes of action have been improperly joined. Section 367 provides, as did the common law, that a demurrer will lie to "one or more of the several causes of action alleged in the complaint, and answer as to the residue."

This article pertains to the use and function of a demurrer for want of facts when addressed to a part or parts of a complaint. It is suggested on account of its infrequent use, and because there is an occasional lower court holding that if a party demurs for one of the above reasons, or upon one ground, he can not demur upon another; that if he demurs for defect of parties he can not demur for want of facts; that if he demurs to the complaint he can not thereafter demur to a part of it, and *vice versa*; that if he unsuccessfully demurs for any reason, there is nothing left except to answer.

Our code provides[1] that an action is by complaint. This complaint must contain "a statement of the facts constituting the cause of action, in plain and concise language, without repetition." The aforesaid sections of our present code (1881) are identical with that of 1852. The practice acts of 1831 and 1838 and prior thereto preserved in substance the general and special demurrers of the common law. Such a general demurrer went only "for defects in substance and excepts to the sufficiency in general terms, without showing specially the nature of the objection." The special demurrer was "only for defects in form, and adds to the terms of a general demurrer a specification of the particular ground of exception." Our code demurrer took

* Of the Evansville bar.

1 Burns, 1926, *Annotated Indiana Statutes*, Sec. 359.

the place of the common law demurrers. It kept alive the general demurrer to the effect that the complaint did not state facts sufficient to constitute a cause of action, but destroyed that function of the special demurrer in that it might add to the general demurrer a specification of the particular ground of exceptions. This condition existed until 1911 when by amendment there was added the following provision:[2]

"That when a demurrer to any complaint is filed on the ground that the complaint does not state facts sufficient to constitute a cause of action, a memorandum shall be filed therewith, stating wherein such pleading is insufficient for want of facts, and the party so demurring shall be deemed to have waived his right thereafter to question the same for any defect not so specified in such memorandum."

This had the practical effect of making our general demurrer for want of facts a special one limited to the memorandum, and as such, similar to the second function of common law special demurrer. Our present demurrer for want of facts is in form a combination of the general and special, and its function as to its general averments being limited to the matter stated in the memorandum. The exception to this restriction is that a court itself may go outside the memorandum to sustain a demurrer to a bad complaint. Since 1911 a demurrer to an answer does not search the record unless the defendant has demurred to the complaint.[3]

Whether a complaint states a cause of action may be determined by a demurrer. The evident purpose of our code is that there is no need to answer a complaint, or try an issue, that does not state a cause of action, or would not warrant a judgment by law upon the facts pleaded and proven. Such policy and principle is too elementary for further discussion. But, it must be that our code provides, by demurrer, that a complaint may be tested so as to ascertain before proceeding further whether or not it states a cause of action. As a necessary complement to that purpose of our code, it must be that a complaint may state only one cause of action or if otherwise the various parts may be demurred to. Our highest court from the beginning has uniformly held that a complaint, or each paragraph thereof, must proceed upon a "single and definite theory." Theory is often

[2] Burns, 1926, Annotated Indiana Statutes, Sec. 362, cl. 6.

[3] *Malone v. Kitchen*, 79 Ind. App. 119.

confused with cause of action. If a complaint contains more than one cause of action, a motion to paragraph it is proper and an established procedure of attack.[4] If the complaint be in tort, it is quite common for it to contain numerous averments of different acts or omissions, and each of such acts or omissions charged as negligence and as the proximate cause of the accident and injury. If the complaint be for slander, the same condition as to various slanderous words may exist. Let us consider a complaint alleging five different acts causing an injury, and each act charged to be negligent; each act itself charged as the cause of the injury. It is well settled that if one of the acts be a negligent one, the complaint will withstand a demurrer. If one or more of the four remaining acts do not aver negligence, how may that matter be determined? If there be doubt as to whether either of the four remaining acts be actionable negligence, how may that matter be determined before answer or trial? It is the purpose of our code that a defendant know, if he desires, whether a complaint states a cause of action, and this must be as to all the acts attempted to be averred as actionable negligence. Our code does not provide that such surplusage, actionable or otherwise, may remain in a complaint, and to be taken care of afterward on the trial of the case, or not at all. If said other four acts are pure surplusage they should be stricken out upon motion; or if they are not surplusage, there must be a proper disposal as to their value as constituting a cause of action, or an additional cause of action.

It is not necessary to cite cases to show that both of our higher courts have held that a tort action may contain several separate, independent and distinct acts of negligence averred as the cause of the injury, and yet proceed upon a single theory. This situation exists notwithstanding our code says, "Where the complaint contains more than one cause of action, each shall be distinctly stated in a separate paragraph and numbered."[5] The reasoning is that the complaint asks but one recovery; that there is only one injury involved; that the theory of the complaint is the negligent injury; that it makes no difference whether the acts of negligence averred are such by statute or common law. Therefore only one theory is involved, and for a single injury and a single recovery.

What then can and must be done with a complaint stating five acts of negligence and each averred as the cause of the injury?

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[4] *Rich v. Fry*, 196 Ind. 303.

[5] Burns, 1926, *Annotated Indiana Statutes*, Sec. 359, Cl. 3.

If none of said acts of negligence is actionable, then a demurrer would be sustained to the entire complaint. But if one of the five is good, then the demurrer to the complaint must be overruled; and because that particular act of negligence makes the complaint state a "cause of action." *A demurrer attacks the cause of action and not the theory.* How then are the other four, and each of them, to be tested as to their sufficiency to state a cause of action? Our code provides that pleadings and issues are settled before the trial, except such as may be amended thereafter by the parties as provided by the code. The duty of a court is to try the issues tendered by the pleadings. It instructs the jury upon the issues, and has no power to reform them.

It is evident the complaint will be read to the jury. It may be taken to the jury room. Evidence will be offered upon all its five charges of negligence, only one of which has been tested by demurrer. What of the other four as a matter of pleading?

In some of the lower courts a motion to strike out parts of the complaint is entertained. Others overrule this motion because it is not error so to do. This no doubt is proper as to surplusage. It may be that some courts are entertaining such motion in the nature of a demurrer to delete plural causes of action, or, those portions of the complaint that independently do not state a cause of action, and therefore merely encumber the record as surplusage.

As it was the purpose of the code to test a complaint in its entirety by demurrer, there must be a proper method as to each independent charge of negligence. Under Section 367 our courts have entertained demurrers to parts of complaints as shown by our reports, and also before its enactment. In *Reno v. Tyson,*[6] which was an action on the breach of a bond, it was held that although a demurrer will not lie to part of a paragraph of pleading, under the practice at that time, "but regarding each separate breach assigned * * * in the light of a separate paragraph, containing a distinct cause of action, a demurrer may be properly filed to such breach."

What difference can there be in an action for damages for the breach of a contract and the breach of any duty imposed by law? In that case Reno first demurred jointly with his co-defendants and then demurred separately. If the breach of a

[6] 24 Ind. 56.

contract or bond, or its various parts, may constitute distinct causes of action, may not the negligent breach of various duties imposed by law create distinct causes of action?

In *Colburn v. State,*[7] an action on a guardian's bond, where several breaches were assigned, it was held that a demurrer to the whole complaint should be overruled if one or more of the breaches be good. It also held that the sufficiency of the breaches "may be tested by a motion to strike out, or by a separate demurrer to each breach."

In *Sheetz v. Longlois,*[8] it is said it is not necessary that each breach of the covenants of a deed be stated in a separate paragraph in order that each breach may be separately tested by a demurrer thereto.

These early cases indicate clearly that various causes of action in the same paragraph may be tested by demurrer, and possibly by a motion to strike out.

In *Jones v. Cullen,*[9] Cullen sought to enjoin Jones, Treasurer, from collecting a tax. The complaint contained 11 reasons or specifications for the illegality of the tax. Each specification was assailed by a demurrer. It was held proper practice to demur to each specification. This case followed that of *Hill v. Probst,*[10] where it was held that the numerous specifications of the illegality of the tax might be put in one paragraph for *convenience,* and that each specification, when demurred to, is considered a separate paragraph. This last case likewise is based upon *Hilton v. Mason,*[11] which reviewed former cases and said:

"All that is decided by any of them in relation to this question is, that where the complaint consists of but one paragraph, under our code, a special demurrer will not lie to a separate allegation, *not containing a cause of action within itself,* but the remedy in such cases is by motion to strike out." (Our italics.)

This last case quotes with approval from *Mustard v. Hoppess,*[12] as to the convenience and avoidance of repetition as follows:

"It seems to us, in analogy to the practice in kindred cases to be soon noticed, the defendants would have the right to either plead or demur to

[7] 47 Ind. 310.
[8] 69 Ind. 491.
[9] 142 Ind. 336.
[10] 120 Ind. 528.
[11] 92 Ind. 157.
[12] 69 Ind. 324.

each of the specifications, in the same manner as if each had been contained in a separate paragraph of complaint. Thus in action for slander, where there are different sets of words charged in one paragraph of complaint, the defendant may plead or demur to each set of words * * *. Under these late and well considered cases, there can be no doubt of this being the correct practice and within the exceptions noted in *Boden v. Dill*, 58 Ind. 273."

In *Stover v. Harlan*,[13] the action was to set aside the agreement in a deed. It was held that a demurrer to a certain part of the complaint "is proper practice, see Section 367 Burns 1926; *Jones v. Cullen*, 142 Ind. 335; *Sheetz v. Longlois*, 69 Ind. 491."

This is the first time I have noticed that section of the statute quoted as an additional authority for demurring to part of a complaint. Neither have I taken the trouble to find the date of its enactment. It is in the code of 1852.

In *Lovett v. Lovett*,[14] the action was to enjoin the violation of a contract. Where a demurrer is presented to complaint as a whole and only part of it is demurrable, the demurrer should be overruled. Court said,—"Had a demurrer been addressed to so much of appellant's complaint as presents this question, it should have been sustained."

In *Flagg v. Russel*,[15] the action is for damages in an automobile collision. The complaint charged that appellant negligently swerved his auto from the right to left side of the road thereby striking appellee's car. Also, that appellant was driving upon a public highway while intoxicated in violation of Section 9 of an act of 1925, page 144. This section makes operating an auto upon a public highway while intoxicated a misdemeanor punishable by fine and imprisonment. Appellant moved to strike out of the complaint so much thereof as charged him with the violation of this statute. The court overruled this motion with exception. An answer in denial was filed, trial had and judgment rendered against appellant. Error was assigned for the overruling of the motion to strike out the aforesaid part of the complaint. The court held it was not error to overrule said motion; that the effect of overruling of said motion was only to leave surplusage in the complaint. The complaint was good because it stated common law negligence in negligently

[13] 87 Ind. App. 34.
[14] 87 Ind. App. 42.
[15] 86 Ind. App. 432.

swerving from the right to left side of the road. The court said,—"There was no demurrer to so much of the pleading as alleged violation of the statute." This is a clear intimation that appellant might have tested that part of the complaint by demurrer, and in an ordinary personal injury case. This disposition of the motion to strike out shows that such motion does not have the attributes of a demurrer. There is no reason, statutory or otherwise, why the rules of pleading in the ordinary tort case should be different from other actions. It also must be convincing that more than one cause of action (and especially when numerous) were permitted in one paragraph of complaint as a matter of convenience and to avoid lengthy repetitions. With this permission in conflict with the provision in our code (see 359), requiring that each cause of action "shall be distinctly stated in a separate paragraph and numbered," necessarily came the permission, as well as the preservation of the right by the code (Sec. 367), to separately demur to "one or more of the several causes of action alleged in the complaint." That every cause of action is subject to a demurrer must be admitted lest our code and the practice under it be a failure. If that be true, then every cause of action whether stated separately in one paragraph, or whether there be two or more in the same paragraph, must be subject to attack by demurrer. It has become quite common for complaints for personal injuries to contain numerous acts or omissions as the cause of the injury. They are purposely so pleaded and charged as negligence. It is well settled that if it requires all the acts, that is a combination of all of them, to produce the injury, then all such acts must be pleaded and proven as the cause of action. A failure to prove one would be a failure to prove the cause of action.[16] Such acts are said to be dependent upon one another, or inter-dependent. A demurrer to the complaint reaches that condition.

But the most common occurrence is where a complaint, in one paragraph, contains from two to five acts or omissions charged as negligence, and with the averment that each of these was the cause of the injury. These acts may be those of different persons, or occurring at different times, or they may be different acts or omissions of the same person. Often the acts have no relation to each other. Every imaginable thing is put in the complaint and with the contention of the pleader that the proof

[16] See *Terre Haute, etc., R. R. Co. v. McCorkle*, 140 Ind. 613; *Southern R. R. Co. v. Jones*, 33 Ind. App. 333.

of any one of them will warrant a recovery. It is self-evident that if proof of one of the acts will warrant a recovery, then that act alone, in connection with the general averments of the complaint, states and is a cause of action, and is a separate and distinct cause of action. The same would be true as to each of the several acts contained in the complaint.

Authority is not wanting for such pleading, and therefore the trouble occasioned in the lower courts as to procedure, when in fact there is ample procedure for the defendant if properly used. It has been said in substance:[17]

"In a case where several acts of negligence are sufficiently alleged in the complaint, a recovery upon the trial will be justified if it be established that the injury complained of was the result of one or more of said acts."

The invitation for tort pleaders to aver numerous acts as the cause or causes of the injury, as well as the resulting confusion comes from the following or kindred expressions:[18]

"The action pleaded was at common law, and might be predicated upon as many separate or concurrent acts of negligence as the pleader deemed operative in producing the injury described. Appellee could have at most, but one recovery, and, accurately speaking, had but one cause of action, but had the right of electing to plead it in different forms, and in separate paragraphs, if the facts were such that the accident might be attributed to more than one act of negligence. It was his privilege to also include in his complaint as many acts as he thought in any way contributed toward producing the accident without making such complaint amenable to a motion to separate the same into independent paragraphs."

This and similar expressions have been misconstrued and perhaps misunderstood. It is conceded that plaintiff's attorney has the right to file a complaint. He has the "privilege" to write it as he pleases, upside down if he likes. After all, it must conform to the code and rules of pleading as construed or provided by our Supreme Court. His privilege does not extend beyond that. In the case just quoted from the complaint might have been filed in separate paragraphs so that each paragraph contained a single act alleged to be the cause of the accident and injury. Each paragraph then, if it stated a cause of action, would state a separate and distinct cause of action, and could be tested by demurrer thereto. The privilege of putting more than one act in one paragraph is the privilege heretofore noticed as one granted for the purpose of convenience and to avoid

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[17] *Chicago, etc., Ry. Co. v. Barnes*, 164 Ind. 143.

[18] *Knickerbocker, etc., Co. v. Gray*, 171 Ind. 395.

repetition of the general averments of the complaint. This privilege was granted in the face of the provision of the code that each cause of action should be in a separate paragraph and numbered. This at most was only a privilege, and as such could not and did not undertake to destroy any right of the defendant to question the complaint as provided by our code, or to demur to parts of the complaint.

Confusion arises because of the expression quoted above,—"Appellee could have, at most, but one recovery, and accurately speaking, had but one cause of action," etc. This does not say that a plaintiff can not, or may not, assert in the same complaint several causes of action, and yet be confined to one recovery. This does not say there can not be two or more causes of action on the same theory. If each paragraph contained a separate cause of action for the same injury there can be but one recovery even though a verdict be returned upon all the paragraphs. The trouble with the lower courts, and it may reach further, is, that when various independent acts, each charged as causing the accident, are put into one paragraph it is concluded that there is but one cause of action pleaded—and so, because there can be but one recovery. The statement that appellee had but "one cause of action" and the right to plead it in "different forms" certainly means that as there could be only one recovery necessarily this recovery depended upon proof of one of the several negligent acts charged, or two or more when so charged. It is the facts averred under the law involved that constitute the cause of action. A demurrer attacks causes of action, not theories. "Different forms" as used in the quotation does not refer to "forms of action." They were abolished by our code and in lieu thereof a statement of facts provided. The same quotation suggests the proper pleading—"and in separate paragraphs, if the facts were such that the accident might be attributed to more than one act of negligence."

That case and quotation also says:

> "It was his privilege also to include in his complaint as many acts as he thought in any way *contributed* toward producing the accident, without making such complaint amenable to a motion to separate the same into independent paragraphs." (Our italics.)

No doubt such holding was proper because acts that contribute to the producing of the accident are not the cause of the accident. They are only a complement to other acts which when combined produced the accident.

In *Mustard v. Hoppess,*[19] heretofore noted, there were 25 distinct and specific reasons alleged why the tax was illegal. The defendants had unsuccessfully moved the court to require the complaint to be paragraphed so that each would state a single reason. The court said:

"This practice has the merit of convenience, and economy of time and expense, as it saves the repetition of the whole statement of the levying of the tax with each specification of objections to it. And, unless the practice deprives the defendants of some legal right which they would otherwise have, it should not, in our opinion, be overturned."

This practice based upon convenience and economy did not deprive the defendant of the right to demur to each specification. It seems that practice has obtained, and only on the ground of convenience and economy. When it arose there was need of it. In fact, Sec. 359 says the facts should be stated "without repetition." At present there is doubtful need for such convenience and economy. Section 361 (enacted 1917) provides in substance and in order to prevent repetition the pleader may subdivide each paragraph into clauses numbered consecutively and by proper reference and identification incorporate such clause or clauses into any other paragraph. To read a complaint constructed in this manner is troublesome and perhaps this is the reason the older practice has continued. Yet it is plain that the provision of the code requiring each cause of action to be stated in a separate paragraph and number was permitted to be violated in the interest of economy and convenience, and with the express understanding that it did not take away the right to demur to each cause of action. This was merely a privilege, and it took away no right of the other party.

I have not undertaken to note the office of a motion to strike out, or its function when addressed to such part of a complaint as contains one of the causes of action in a complaint containing more than one cause of action. In one of the earlier cases referred to it was intimated such motion was equivalent to a demurrer. It has been said,[20] speaking of the general and special demurrer of the common law (and long before our memorandum act of 1911) that, "we have no special demurrer. Its place is occupied by the controlling power of the court to amend, render more certain, or strike out pleadings, or parts thereof." An entire pleading may be stricken out for various statutory rea-

[19] See *supra,* note 12.

[20] *Graham v. Martin,* 64 Ind. 567.

sons but not because it does not state a cause of action. In *Guthrie v. Howland*,[21] it is held, after reviewing many authorities, such motion can not function as a demurrer for the reason that if stricken out it can not be amended. Yet in *Hart v. Scott*,[22] and later cases, it is held that an answer too irrevelant to be amended may be stricken out. In the most recent case referred to, *Flagg v. Russell*,[23] it was held that the motion was properly overruled and left merely surplusage in the complaint, and which surplusage might have been attacked by demurrer.

The writer has tried to keep pace with the practice in tort cases where numerous negligent acts or omissions are charged in one paragraph as the cause of the accident and injury. If such acts are interpendent and require the combination of all of them to cause the injury, then a demurrer to the complaint will test its sufficiency. There may arise a difference of opinion whether such acts are dependent on each other, or otherwise.

The most common paragraph is one that avers such negligent act or omission as the cause of the accident, and purposely so pleaded.

I gather from the best observation I can make from custom or practice in the lower courts and the decided cases, the following procedure:

1. Motion to paragraph, and if overruled—
2. Motion to strike out each part alleging a separate cause of action, and leaving unattacked one cause of action, the best one pleaded. Such parts may be surplusage only. If this be overruled in whole or in part—
3. Demurrer to complaint. If this be overruled—
4. Demurrer to each cause of action in the complaint, setting out separately each cause alleged. If one or more of these causes of action are well settled as stating a cause of action, such are omitted and the demurrer is addressed to those which do not state a cause, and to those that are doubtful.

It does not seem well settled whether the first demurrer should separately attack each cause of action or the entire complaint. Such matters little except that the issues be correctly defined. Proper procedure, as well as the economy of time and expense, demands that the issues be formed and closed before trial. Evidence is unnecessary before that time, except that the facts

[21] 164 Ind. 214.
[22] *Hart v. Scott*, 168 Ind. 530.
[23] *Supra*, note 15.

pleaded should be known in advance to be in consonance with the evidence. A court should be deeply interested in the manner in which the issues of law and fact are made. It may exercise wise discretion in allowing the withdrawals or the filing of additional pleadings. To say that an additional answer or other pleading may not be filed in many instances would be arbitrary.

Perhaps the case most illustrative of the foregoing is *Pittsburgh, etc., Ry. Co. v. Nichols.*[24] It certainly must appeal to the sense and justice of attorneys and courts.

"The defendant has insisted throughout that the first paragraph of complaint contains five distinct and independent averments of negligence, on each of which, separately and severally, the plaintiff relies for a recovery. On that basis the defendant should have moved for an order to require the plaintiff to separate the first paragraph into further paragraphs so as to present but one theory in each paragraph. That would have been a legitimate method of attack; for, if such a motion had been sustained and the order complied with, the defendant then could have tested the sufficiency of each paragraph by demurrer. This brings us to an interesting subject which requires brief attention.

"The rule has been long established that a complaint should proceed on a single definite theory; and that is the intention of our Code. Clause 3, Sec. 343, Burns' Ann. St. 1914. There may be cases where two or more negligent acts or omissions are so related to or dependent on each other as that without the concurrence of all of them there would have been no injury. *Pittsburgh, etc., R. Co. v. Broderick,* 56 Ind. App. 58, 71, 102 N. E. 887; *Lake Shore, etc., R. Co. v. McIntosh,* 140 Ind. 261, 38 N. E. 476. In such a case it is proper, of course, to combine the negligent acts and omissions in one paragraph; for then there is but one theory. But, where the acts or omissions are of such a nature as that any one of them, independently of the others, might have caused the injury, and the pleader desires to rely on them separately, each one should be stated in a separate paragraph. To permit two or more independent acts of negligence to be averred in the same paragraph of complaint is unfair to the defendant and confusing and perplexing to the courts. *Baltimore, etc., R. Co. v. Trennepohl,* 44 Ind. App. 105, 87 N. E. 1059; *Western Union Tel. Co. v. Reed,* 96 Ind. 195; 1 Watson's Practice, Sec. 331, and authorities there cited; 2 Thornton, *Negligence,* Sec. 2333, and authorities there cited."

There is a wide effort to simplify the practice of law and to expedite or hurry litigation. Unfortunately there are no labor saving machines or automatic devices whereby a court may do five times what it formerly did. It is also quite the fashion that no one should work but few hours each day. There is probably about as much just cause for this hue and cry against courts as there is reason for the present crime wave. It may be disposed

[24] 78 Ind. App. 361.

of, if ever, in much the same manner, whatever that may be. The time was when the overruling of a demurrer to a bad complaint was reversible error. Now it is not error provided the right result is reached in the trial. How a case may be tried on a bad complaint and the right result reached is hard to explain, but it can be and is done. In short, a court reaches that conclusion and finds that result when in fact such court has no authority to weigh the evidence, or, if so, can weigh it for the benefit of an appellee only. The right result should be carefully guarded. One of the litigants is trying to avoid it. Our code[25] also provides the simplest action that can be devised, and without pleadings. The parties may submit an agreed statement of facts, in good faith, signed by the parties, and ask that their rights be determined. Thereupon the court may render judgment. This statement, the submission, and judgment of the court is the entire record. The judgment may be enforced the same as other judgments. It may be appealed from unless otherwise agreed in the submission. It is needless to state why this method is not used. Yet that agreed case, or statement of facts under the law applicable must show a cause of action in favor of one of the parties. A cause of action, and not its theory, is the foundation for every recovery. Our code does not mention theory. Litigants want a fight, and will not stand for the aforesaid simple practice whereby one of them is stipulated out of court. They prefer that a jury or court construe or misconstrue the evidence.

It is not reversible error to overrule a motion to strike out parts of a complaint. Such holding is based upon the reason that the evidence to prove such part may be objected to at the trial and error predicated at that time if it be inadmissible. Why wait until that time, and broadcast it to a jury with the increased expenses of a trial and the probable effect upon the jury?

It is not reversible error to overrule a motion to paragraph a complaint although the motion is well taken. Misjoinder of causes of action, and especially the motion to require the several paragraphs of complaint to be docketed as independent actions improperly joined, are matters largely within the sound discretion of the court. This condition creates a greater necessity that parts of a complaint be tested by demurrer. Good pleading simplifies issues and expedites trials.

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[25] Burns, 1926, *Annotated Indiana Statutes*, Sec. 604.

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