

6-10-65- (3)
1247 197-216
Record No. 4395

In the
Supreme Court of Appeals of Virginia
at Richmond

Dispute from opposing
**VIGILANT INSURANCE COMPANY,
A CORPORATION**

v.

SARAH LELAND BENNETT

No. 197-216
FROM THE CIRCUIT COURT OF NORFOLK COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

197 VA 216

VIGILANT INSURANCE CO., A CORPORATION

v. Record No. 4395

SARAH LELAND BENNETT

This is an action to recover damages against Sarah Leland Bennett for maliciously destroying the automobile of her husband, Herbert B. Bennett.

On motion of defendant, the court dismissed the action on the ground that the insurance company was subrogated to the right of the husband and that he had no legal recovery for damages for a tort committed by his wife.

We have held in numerous cases that neither spouse may recover of the other damages for personal injury committed by the other during cohabiture. The question of whether either can recover against the other for property seems to have never been judiciously determined in Virginia.

I have not received defendant's reply brief, but the trend of modern decisions is to construe pertinent statutes giving the wife full control of her property to allow either spouse to sue the other for damages affecting their separate properties.

IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

Record No. 4395

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 12th day of January, 1955.

VIGILANT INSURANCE COMPANY, A CORPORATION,
Plaintiff in Error,
against

SARAH LELAND BENNETT, Defendant in Error.

From the Circuit Court of Norfolk County.

Upon the petition of Vigilant Insurance Company, a corporation, a writ of error is awarded it to a judgment rendered by the Circuit Court of Norfolk County on the 21st day of June, 1954, in a certain notice of motion for judgment then therein depending wherein the said petitioner was plaintiff and Sarah Leland Bennett was defendant; upon the petitioner or some one for it, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

Virginia:

In the Trial Justice Court of the County of Norfolk.

* * * * *

NOTICE OF MOTION.

To: Sarah Leland Bennett, 2014 Carolina Ave.,
 East Fairmount Park,
 Norfolk County, Virginia:

TAKE NOTICE: That I will, on the 23rd day of June, 1949, at 9:00 A. M., or as soon thereafter as counsel may be heard, move the Trial Justice Court of the County of Norfolk, Virginia, for a judgment against you, defendant, for the sum of \$902.00 with interest from the 3rd day of May, 1949, for this, to-wit:

For that heretofore to-wit: On the 22nd day of April, 1949, the defendant maliciously destroyed the automobile of one Herbert B. Bennett, to which the undersigned plaintiff was subrogated by reason of the issuance of his insurance policy.

WHEREFORE, the plaintiff institutes this notice of motion for \$902.00 with interest from the 3rd day of May, 1949.

VIGILANT INSURANCE COMPANY
 By LOUIS B. FINE
 Counsel.

Filed 6-25-49.

A. W. SNOW, D. C.

page 2 } Virginia:

In the Trial Justice Court of the County of Norfolk.

* * * * *

AFFIDAVIT OF DEFENSE.

I, Sarah Leland Bennett, hereby certify and make oath that I have a meritorious defense to the notice of motion for judgment filed in this case, and I hereby request that the case be removed to the Circuit Court of Norfolk County.

The plaintiff has been reimbursed for court costs spent thus far.

Given under my hand this 20th day of June, 1949.

SARAH LELAND BENNETT.

Virginia,
City of Norfolk:

Subscribed and sworn to before me this 20th day of June, 1949.

DOROTHY LEIGH WINBORNE
Notary Public.

Filed 6-25-49.

A. W. SNOW, D. C.

page 3 } Virginia:

In the Circuit Court of Norfolk County.

* * * * *

ORDER.

This day came both parties by counsel and the defendant moved the Court to dismiss this action;

And it appearing to the Court that the plaintiff was subrogated to the right of Herbert B. Bennett; that the said Herbert B. Bennett was at the time of the alleged destruction of his automobile the husband of the said defendant, Sarah Leland Bennett;

It is therefore ADJUDGED and ORDERED that this action

be dismissed with prejudice; to which action of the Court the plaintiff by counsel duly excepted.

Enter this 21st day of June, 1954.

E. L. OAST, Judge.

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**NOTICE OF APPEAL AND NOTICE FOR APPLICATION
FOR THE TRANSCRIPT OF THE RECORD.**

To: Preston P. Taylor, Esq.
National Bank of Commerce Building
Norfolk, Virginia.

You are hereby notified that the plaintiff is appealing from the order entered by the Circuit Court of Norfolk County, Virginia, on the 21st day of June, 1954, and will file with the Clerk of the Circuit Court of the County of Norfolk, Virginia, this notice of appeal within sixty (60) days of the final judgment in accordance with the rule of the Supreme Court of Appeals of Virginia.

Take further notice that on the 13th day of August, 1954, at 9:30 A. M., or as soon thereafter as counsel may be heard, the plaintiff will make application to the Clerk of the Circuit Court of the County of Norfolk, Virginia, for a transcript of the record in said cause, for the purpose of presenting the same to the Honorable John W. Eggleston, Justice of the Supreme Court of Appeals of Virginia, with a petition for a writ of error.

VIGILANT INSURANCE COMPANY,
a Corporation
By **JERROLD G. WEINBERG**
Of Counsel.

LOUIS B. FINE and
JERROLD G. WEINBERG, p. q.
1106 National Bank of Commerce Building
Norfolk, Virginia.

I hereby certify that I have mailed a true copy of the foregoing Notice of Appeal and Notice for Application for the Transcript of the Record to Preston P. Taylor, Esq., National Bank of Commerce Building, Norfolk, Virginia, counsel for the defendant, this 31st day of July, 1954.

JERROLD G. WEINBERG.

Filed in the clerk's office the 4th day of August, 1954.

Teste:

MAJOR M. HILLARD, Clerk
By H. T. GILLETTE, D. C.

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ASSIGNMENT OF ERROR.

Pursuant to the rules of the Supreme Court of Appeals of Virginia, the plaintiff does hereby designate as the assignments of error in this action, the following:

1. The Court erred in entering the order of the 21st day of June, 1954, dismissing the action with prejudice.

VIGILANT INSURANCE COMPANY,
a Corporation,
By JERROLD G. WEINBERG
Of Counsel.

LOUIS B. FINE and
JERROLD G. WEINBERG, p. q.
1106 National Bank of Commerce Building
Norfolk, Virginia.

I hereby certify that I have mailed a true copy of the foregoing Assignment of Error to Preston P. Taylor, Esq., Na-

Supreme Court of Appeals of Virginia

tional Bank of Commerce Building, Norfolk, Virginia, counsel for the defendant, this 31st day of July, 1954.

JERROLD G. WEINBERG.

Filed in the clerk's office the 4th day of August, 1954.

Teste:

MAJOR M. HILLARD, Clerk
By H. T. GILLETTE, D. C.

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NOTICE.

To the Clerk:

You are hereby notified to transmit the record in the above styled case with the designation of the parts to be printed to the Honorable John W. Eggleston, Justice of the Supreme Court of Appeals of Virginia, Norfolk, Virginia.

VIGILANT INSURANCE COMPANY,
a Corporation,
By JERROLD G. WEINBERG
Of Counsel.

* * * * *

Filed in the clerk's office the 4th day of August, 1954.

Teste:

MAJOR M. HILLARD, Clerk
By H. T. GILLETTE, D. C.

A Copy—Teste:

H. G. TURNER, Clerk.

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