exist,[11] 3) to the difference between the required notice and formal pleadings necessary in later stages of the suit,[12] and 4) to the necessity of only substantial compliance with the statute.[13] There are some jurisdictions, however, which adopt a stricter construction, such as that previously followed in Missouri.[14]

The broad interpretation now given to those provisions of the Missouri notice statute requiring a statement in the notice of "the character and circumstances of the injury" is in accord with modern pleading tendencies to remove "pitfalls in the way of honest claimants."[15] E. M. F.

TORTS — *Res Ipsa Loquitur* — EXPLODING OR BURSTING CONTAINERS — [Kentucky].—The action in the instant case was brought against a brewing company for injuries caused by the explosion of a beer keg which was attached to a carbon dioxide gas tank. The question of the brewing company's liability was submitted under the doctrine of *res ipsa loquitur* on the theory that the explosion of the keg was caused by the pressure of fermentation of the beer contained therein. *Held;* reversing the lower court, that negligence was not a reasonable deduction from the circumstances, and therefore the doctrine of *res ipsa loquitur* was inapplicable.[1]

In order to rely on the doctrine of *res ipsa loquitur*, the plaintiff must establish (1) that the accident was of a kind which, in the absence of proof of some external cause, does not ordinarily happen without negligence; (2) that the defendant owned, operated, maintained, or was responsible for the management of the instrument doing the damage; and (3) that the defendant possessed superior knowledge or means of information as to the cause of the injury.[2] One of the controversial problems which has

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11. Dalton v. City of Salem, 136 Mass. 278 (1884); Sheehy v. City of New York, supra, note 10; Savannah v. Helmken, 158 S. E. 64 (Ga. App., 1931); Langley v. Augusta, 118 Ga. 590, 45 S. E. 486, 98 Am. St. Rep. 133 (1903); Titus v. City of Montesano, 106 Wash. 608, 181 Pac. 43 (1919).

12. City of Atlanta v. Hawkins, 42 Ga. App. 847, 166 S. E. 262 (1932); City of Birmingham v. Guy, 222 Ala. 373, 132 So. 887 (1931); Judd v. City of New Britain, 81 Conn. 300, 70 Atl. 1028 (1908); Lowe v. Clinton, 133 Mass. 526 (1882); Spellman v. Chicopee, 131 Mass. 443 (1881); Maggs v. City of Seattle, 86 Wash. 427, 150 Pac. 612 (1915); Sizer v. Waterbury, 113 Conn. 145, 154 Atl. 639 (1931); Brown v. City of Owosso, 126 Mich. 91, 85 N. W. 256 (1901).

13. Sheehy v. City of New York, 160 N. Y. 139, 54 N. E. 749 (1899); City of Atlanta v. Hawkins, 42 Ga. App. 847, 166 S. E. 262 (1932); City of Birmingham v. Guy, 222 Ala. 373, 132 So. 887 (1931); Judd v. City of New Britain, 81 Conn. 300, 70 Atl. 1028 (1908); Savannah v. Helmken, 158 S. E. 64 (Ga. App., 1931).

14. Hilson v. City of Memphis, 142 Tenn. 620, 221 S. W. 851 (1920); Spear v. City of Westbrook, 104 Me. 496, 72 Atl. 311, 20 L. R. A. (N. S.) 804 (1908); Mears v. City of Spokane, 22 Wash. 323, 66 Pac. 1127 (1900).

15. Snickles v. City of St. Joseph, 139 Mo. App. 187, 122 S. W. 122 (1909).

1. Fehr Brewing Co. v. Corley, 96 S. W. (2d) 860 (Ky., 1936).

2. 5 Wigmore, *On Evidence* (2d ed. 1923) sec. 2509, l. c. 498; 3 Cooley, *Torts* (4th ed. 1932) sec. 480, l. c. 369.

arisen in applying these prerequisites to an existing *res ipsa loquitur* case is in determining whether the doctrine is applicable where the container of a product explodes, breaks, or bursts.[3]

The weight of authority is to the effect that the doctrine of *res ipsa loquitur* is not applicable to the breaking, bursting, or exploding of a container in which a commodity ordinarily harmless is sold.[4] The basis is that such an occurrence is one which may ordinarily happen in the absence of negligence, and that the real cause, therefore, is entirely conjectural or speculative.[5] If a number of similar burstings or explosions have occurred, however, these courts have held that the existence of negligence is reasonably deductible from the circumstances.[6] In those cases where the contents of the container are inherently dangerous, the rule of *res ipsa loquitur* is generally regarded as proper.[7]

The minority view is that the explosion or breaking of a container justifies the jury in drawing an inference of negligence, provided that there has been an affirmative showing that all persons through whose hands the object passed after leaving the manufacturer were free from fault and that the condition of the container and its contents was unchanged.[8]

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3. Note, 4 A. L. R. 1094 (1919); Note, 8 A. L. R. 500 (1920); Note, 39 A. L. R. 1006.

4. Note, 4 A. L. R. 1094 (1919); Loebig's Guardian v. Coca-Cola Bottling Co., 259 Ky. 124, 81 S. W. (2d) 910 (1935) (explosion of Coca-Cola bottle); Bates v. Batey & Co., 3 K. B. 351 (1913) (bursting of a bottle of ginger beer); Dail v. Taylor, 151 N. C. 284, 66 S. E. 135 (1909) (bursting of soda bottle).

5. Burnham v. Lincoln, 225 Mass. 408, 410, 114 N. E. 715 (1917) (a five gallon carboy broke); The court in Loebig's Guardian v. Coca-Cola Bottling Co., 259 Ky. 124, 126, 81 S. W. (2d) 910 (1935), as regards the inapplicability of the doctrine to the facts of the case said: "The doctrine of *res ipsa loquitur* assumes, at least *prima facie*, the existence of negligence from the mere occurrence and injury. Since the principle applies only to cases where the existence of negligence is a more reasonable deduction from the circumstances, it should not be allowed to prevail where, on proof of the occurrence, without more, the matter still rests in conjecture alone."

6. In Coca-Cola Bottling Works v. Shelton, 214 Ky. 118, 119, 282 S. W. 778 (1926), where 27 Coca-Cola bottles were shown to have exploded, the court held the condition "was such as to render them imminently, if not intrinsically, dangerous." See Dail v. Taylor, 151 N. C. 284, 288, 66 S. E. 135 (1909).

7. Weisen v. Halzman, 33 Wash. 87, 73 Pac. 797 (1903), where the court proceeded upon the theory that the bottled champaign cider was a dangerous explosive; Torgensen v. Schultz, 192 N. Y. 156, 84 N. E. 956 (1908) (explosion of siphon bottle of aerated water); Stone v. Texas Co., 180 N. C. 546, 105 S. E. 425 (1920) (where gasoline exploded); Selby v. Osage Torpedo Co., 241 Pac. 130 (Okl. 1925) (explosion of nitroglycerine container).

8. Stotle v. Anheuser-Busch, Inc., 307 Mo. 520, 271 S. W. 497, 39 A. L. R. 100 (1920) (explosion of bottle of beer); Riecke v. Anheuser-Busch Brewing Asso., 206 Mo. App. 246, 227 S. W. 631 (1921) (explosion of bottle of bevo); Coca-Cola Bottling Co. v. Donnevan, 25 Ga. App. 43, 102 S. E. 542 (1920) (explosion of bottle of Coca-Cola); In Payne v. Rome Coca-Cola

This latter view does not seem to advance a sound solution to the problem.[9] There are many types of containers upon the market,[10] and to allow each person who professes to have been injured when one explodes or bursts to reply upon the doctrine of *res ipsa loquitur*, is to open the door to many fictitious suits which are hard to disprove.[11] In the absence of some direct evidence of negligence by the defendant,[12] or of any showing that the contents were reasonably calculated to react in this manner,[13] the jury could at most speculate on the true causation.[14] The instant case which refuses to apply the doctrine of *res ipsa loquitur* on a bare showing that the keg exploded, seems to be in accord with the majority of the courts, as well as with practical considerations of public policy.

M. J. G.

Bottling Works, 10 Ga. App. 762, 763, 73 S. E. 1087 (1912) the court said: "The occurrence was unusual. Bottles filled with harmless and refreshing beverage do not ordinarily explode. When they do, an inference of negligence somewhere and in somebody will arise."

9. Supra, note 4 and cases cited.

10. Such as containers of milk, soda, beer, various medicinal products, etc.

11. As the court said in Dail v. Taylor, 151 N. C. 284, 289, 66 N. E. 135 (1909): "it would be entirely unsafe to permit the application of the principle contended for, or to hold that the explosion of a single bottle of such an article under such circumstances should of itself rise to the dignity of legal evidence sufficient, without more, to carry a case to the jury"; supra, note 4.

12. In Coylyar v. Little Rock Bottling Works, 114 Ark. 140, 140, 169 S. W. 811 (1914), the plaintiff's proof showed that the bottle was improperly charged, and the issue of negligence was submitted to the jury.

13. Supra, note 7.

14. Supra, notes 4 and 5.