

The statement of defence was delivered on 28th May, and on 10th September, plaintiffs gave notice of motion to strike out paragraphs 10, 11, 12 and 13 of that pleading as being embarrassing and irrelevant.

The motion was argued on 11th October, instant.

R. McKay, K.C., for motion.

J. Grayson Smith, contra.

CARTWRIGHT, K.C., MASTER:—The 10th paragraph alleges that plaintiffs' "process has been condemned and prohibited by legislative enactments in Minnesota and other States of the American Union and has been condemned by Public Health Boards in Great Britain and Europe as being injurious to the health of the persons consuming the flour so bleached or aged and as being a fraud upon the innocent purchasers of the flour so aged or bleached."

This attack on the character of the plaintiffs' process is fully set out in the 9th paragraph which is not objected to by the plaintiffs. The 10th paragraph therefore, at best, only indicates evidence in support of the 9th paragraph nor does it seem possible that the opinions said to have been given by other legislatures or health boards would be receivable at the trial of this case.

If the allegations in the 9th paragraph are to be pressed at the trial, they must be supported by the testimony of experts and others given there and then to be tested by cross-examination and weighed in the judicial balance. For this reason, as well as in the view of the decision in *Canavan v. Harris*, 8 O. W. R. 325, I think this paragraph should not be allowed to stand. See, too, *Blake v. Albion*, 35 L. T. 269; 45 L. J. C. P. 663; 4 C. P. D. 94. Paragraphs 11 and 12 allege certain offers of settlement made by plaintiffs to defendant before action.

I agree with Mr. McKay that these officers (even if admitted) are not relevant to the issues and cannot be given in evidence even as to damages.

Paragraph 13 sets out that Woodstock should be the place of trial. On a substantive motion to that effect I have ordered this to be done. It now is immaterial whether this paragraph is struck out or not. But perhaps it may as well go with the others. The costs of this motion will be to plaintiffs in the cause.