TORONTO WORLD: SATURDAY MORNING, NOVEMBER 12, 1881,-EIGHT SATURDAY

POINTS ABOUT PLEADING. 'in addition to the breach of duty and negligence aforesaid, or in the alternative, the plaintiff alleges that the defendants, in breach of their duty in that behalf,

PRINCIPLES OF THE SYSTEM UNDER THE JUDICATURE ACT. Second Part of the Lecture on the New Pleading

by Mr. Thomas Hodgins, Q.C. The English' decisions affecting the new system of pleading show that marginal rule 128 sets forth the leading principle of the act. It provides that "every pleading shall contain as concisely as may be, a statement of the material facts on which the party

pleading relies." This rule applies to the statement of claim, statement of defence, statement of claim, reply or other pleading. It requires, in express terms. a specific state-ment of the material facts on which the party relies as founding his right of action

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1. As to the first, the sententious obser-vation of Lord Justice Mellish in Watson contain "a statement of the plaintiffs case v. Rodwell, 3 Ch., D. 380, may be quoted "The facts must be to a certain extent in clear and concise language," and chancery order 68, which requires that every stated, but there SHOULD BE NO RHETORIC." bill answer and petition filed, and every

affidavitito be used in any cause or matter, is to be divided into paragraphs, and every paragraph numbered consecutively, and as nearly as may be is to be confined to a dis-tinct portion of the subject. It will be found that this rule sweeps away the old common indebitatus count which figured

tinct portion of the subject. It will be found that this rule sceeps away the od common law declarations is assumptit. THE COMMON INDERITATUS COUNT for goods acid and delivered, was couched ed in the vaguest and most general terms and gave the defendant to sepecifie informa-tion as to the status are specifie informa-tion as collams, were stated at great parts in the status are specifie informa-tion as the defendant. Such as pleading we they the how that they might not be provide by the defendant to the pelitient in the status are specifie information and pave the defendant. Such as pleading we that they might not be an attramed agains him, thus: 'More payable by the defendant to the pelitient in the status and the specifie information as a really, treppes to land, source of the status in the status are to information are interpreted by the note land status and into the status are to interformed courts. The court who took are to be allowed, for, says ford Justice to the status are to the status are to into the old oppressive pleading into the status are to the status are to the status are to be allowed, the specifie information are the status are to the status are to the status are to the status are to be allowed, the specifie information are to the status are to the status are to the status are to be allowed, the specifie information are into the status are to be allowed, the specifie and the status are to be allowed, the specifie and the status are to be allowed, the status are to the status are to the sta

if not filed already, and deliver as his state-ment of claim is that which appears by the en-dorsement upon the writ." And by mar-ginal rule 15: "When the plaintiff's claim is for a debt or liquidation demand only the claim, shall state the amount claimed for debt, or in respect of such dem.nd and for costs respectively." It may be found in practice that rule 15 applies only to cases which come within rule 15, for by a consideration of this latter rule and by a reference to the forms of special indorse-ment given in appendix A, it would appear that the particulars of demand given to the defendant, when the plaintiff' specially in-tiff's claim, and furnish more details than the common indebitatus count. As an il-hustration of what must be set forth in the indorsement of the writ of summons the following case be referred to: In Walker



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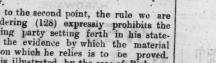
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beteren. In giving judgment, Gockburn,
C. J., said: "The object of the special informement is this—On the one hand it is to have a vary prompt and summary effect in favor of the piantifit, by any effect in favor of the piantifit of the debt. On looking to the forms of in lorsements in hattors or provises of poetial indorsements in actions of a party in the particulars of the adjust of the debt. On looking to interest of the adjust of the intercogatories. This release actions of a party proceedings for judgment, and that if the defendant wished to have the avidence of 8% heatern railway company. Wishes a given of the dations in the particulars of the adjust of the intercogatories. This release called a provide in the cale and that in the meaning of marginal rule 128, and as such to render liable to a demurer if it does not refer the point in the special indorsements and of the eriter a notice (Ont. 159). That the particulars of the particulars of the adjust of the indications of a party which here are in a statement which as toright of the indications of a party which here are proved the particular of the adjust and that in the indications of a party and which are also in the particular in the particular of the adjust and that in the the particular is the statement of the adjust and the particular is the statement of the adjust and that the reliet and remed by the indorsement in

beaming within the meaning of the order. (Ont. 189). As already noticed the rule prescribes that every pleading shall contain a concise statement in numbered paragraphs of the material facts relied upon by pleading party. The extent to which this rule has modified pleading may be illustrated by asses where a plaintiff claims damages in respect of personal injuries caused by the negligence of the defendant. For nerly it was enough to allege that the defen-dent conducted himself carelessly and negligence the carelessness upon which he relies. This may be illustrated by the relies. This may be illustrated by the sense that the defen-dent conducted himself carelessly and negligence and carelessness upon which he relies. This may be illustrated by the case of Foulkes v. Metropolitan District railway company, C. P. D. 267, in which the plaintiff in an action for injuries re-ceived while taveiling on the defendants, in breach of their dity, negligently provided an unsafe and improper carriage for the case and improper carriage for the sense and improper carriage for the the an unsafe and improper carriage for the an unsafe and improper carriage for the taw reform a the paragers in the sense that they must show the pre-cise legal form which the plaintiff a dama defen-tation of the sense that the defen-dant. The sense that they must show the facts, and then it is for the court from the facts to decide upon the legal result of these facts. As a corollary to these rules, 139 provides that 'neithor party need in any pleading the pleading the sense of the sense that the defen-tion of the plaintiff in the sense that the defendants, in breach of their dity, negligently provided an unsafe and improper carriage for the the sense that the sense th

railway, pleaded "that the defendants in breach of their duty, negligently provided an unsafe and improper carriage for the purpose of carrying the blaintiff, and omit-ted to provide him with a fit and proper carriage, that is to say, that the floor of the carriage which they provided was of so great a height above the platform at the Hehmond station as to render it dangerous and unsafe for the plaintiff to get out of it, and no proper or sufficient step was pro-widet to enable him to do so;" and further,

histration of what must be set forth in the indorsement of the writ of summons the following case be referred to: In Walker v. Hicks, L. R. 3, 2 B. D. 8, the indorse-iment on the writ was, the plaintiff's claim is £399 9s 7d; the defendant's share or contribution to the payment of certain bills of exchange and promissery notes on which he and the plaintiff were jointly liable, and which bills and notes have been taken up by the plaintiff. The court held that this indorsement did not constitute a good "special indorsement" within the rule, and thereon. In giving judgment, Cockburn, C. J., said: "The object of the special imlorsement is this—On the one hand it is to have a very prompt and summary effect in favor of the plaintiff, by entitling him to apply to sign final judgment; and on the play the individual to the the plaintiff, by entitling him to apply to sign final judgment; and on the plaint is distributed to the the plaintiff, by entitling him to apply to sign final judgment; and on the plaint is the plaint iff, by entitling him to apply to sign final judgment; and on the plaint is the plaint iff, by entitling him to apply to sign final judgment; and on the plaint is this—On the one hand it is the have a very prompt and summary effect in favor of the plaintiff, by entitling him to apply to sign final judgment; and on the plaint is this—On the one hand it is the have a very prompt and summary effect in favor of the plaintiff, by entitling him to apply to sign final judgment; and on the plaint is the plaint iff. The could be play to sign final plate the plaint iff. The plate the plaint iff. The plate the plaint iff. The plate the plant iff. The could be play to sign final plate the p

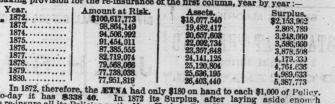
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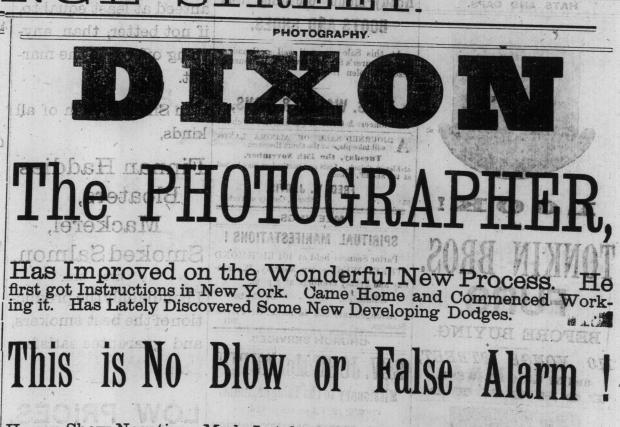


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