

## HARRIS V. ELLIOTT—MASTER IN CHAMBERS—FEB. 20.

*Pleading—Statement of Claim—Oral Contract—Consideration—Particulars—Con. Rules 261, 268.*]—By the statement of claim the plaintiff alleged that on the 14th September, 1911, the defendant promised to pay to the plaintiff \$1,000 on the happening of a certain event, which had happened. Particulars were demanded as to whether this promise was in writing, and, if so, whether by deed or otherwise, and the consideration, if any. Particulars were thereupon furnished as follows: “The defendant’s promise to pay alleged in paragraph 3 of the statement of claim was verbal and not in writing.” The defendant moved for further particulars so as to shew the consideration relied on to support the verbal promise to pay \$1,000 as alleged. The Master said that it might be true that, on this statement of claim as now in effect amended by the particulars, the defendant might have moved under Con. Rule 261 to set it aside as shewing no cause of action, because no consideration was alleged. But there was much force in the answer to this objection, that, if that course had been taken, the Court would have asked the defendant’s counsel why he had not moved for particulars, and would have directed the plaintiff to amend by alleging consideration. As the plaintiff had complied with the demand to some extent, he should now state what, if any, consideration was relied on. Then, if there was none or one which the defendant thought insufficient in law, he could move under Con. Rule 261, if so advised. It, therefore, followed that the plaintiff should furnish some answer to the demand as to consideration; and that the time for delivery of the statement of defence should be enlarged meantime. In *Odgers on Pleading*, 7th ed., p. 91 (p. 88 of the 5th ed.), it is said: “The consideration for any contract not under seal is always material, and should be correctly set out in the statement of claim, except in the case of negotiable instruments.” The present statement of claim, therefore, did not conform to Con. Rule 268. Costs of the motion to the defendant in the cause in any event. G. S. Hodgson, for the defendant. Grayson Smith, for the plaintiff.