MASTER-IN-CHAMBERS.   MAY 29TH, 1913.

FRITZ v. JELFS AND GREEN.

4 O. W. N.

Pleading—Statement of Defence—Action for Assault and Forcible Ejectment from Premises—Defence of Police Constable—Alleged Instructions from Superior—Plaintiff Alleged to have been Drunk and Disorderly—Failure of Motion.

MASTER-IN-CHAMBERS in an action against a police officer for forcibly ejecting plaintiff from certain premises without authority, refused to strike out of the statement of defence an allegation that defendant was acting *bona fide* under the instructions of his superior officer and that plaintiff was at the time drunk and disorderly.

The facts of this case appear in the report of a former motion in 24 O. W. N. 610.

The defendant Green is one of the two constables there stated to " have forcibly ejected the plaintiff and put his goods and chattels on the street."

This defendant Green has put in a statement of defence, which alleges in the 3rd and 4th paragraphs that all he did was on instructions from his superior officer, to go to plaintiff's residence, and that when he got there he saw the plaintiff " *acting in a drunken and disorderly manner,*" and that he did nothing more than was his duty.

The plaintiff moves to strike out all paragraph three and especially the words in italics, as being likely to prejudice the jury against him.

L. E. Awrey (Hamilton), for motion.

G. H. Sedgewick, contra.

It is at all times difficult to strike out part of a pleading—see *Bristol* v. *Kennedy,* 4 O. W. N. 337, 23 O. W. R. 685.

It is especially undesirable to interfere with a statement of defence. See *Stratford Gas Co.* v. *Gordon,* 14 P. R. 407. The conduct of the plaintiff on the occasion complained of would seem to be very material to the defence, if it can be proved. In any case it must be left to the trial Judge to say if evidence can be given on this matter. The plaintiff so far from being in any way put at a disadvantage by the statement of defence is now made aware exactly of what this defendant relies on to escape liability.