

to the sheriff to return writs of fieri facias; to set aside cognovits; attachment for non-performance of award and appointment of a guardian to sue for an infant, etc., etc. None of these do we find in the court at all at the present time. But there are other matters which were in those days solemnly passed upon by the full court, which are now disposed of in Chambers, by a judge or the Master; e.g., leave to discontinue; change of venue, order for security for costs, the plaintiff being out of the jurisdiction; entering up satisfaction; leave to amend pleadings; leave to have further time to plead; to amend writs of execution; particulars of demand, etc., etc.

There are a few matters to which particular reference may be made. The plaintiff might give notice of trial and fail to go to trial at the assizes for which notice was given. In that case, the court might, and generally did, order him to pay the defendant's costs as a punishment for not going to trial; but the defendant could not give notice of trial, himself.

Demurrers were not uncommon, due chiefly to the strictness with which pleadings were construed. In those days the court did not call upon the plaintiff to set out the facts upon which he relied so much as the legal consequences of the facts. If the declaration (statement of claim) did not disclose a cause of action, the proper and usual course was for the defendant to demur, i.e., to say in effect that granting all that is alleged to be true, the plaintiff has no legal right to relief. Nowadays we should raise a point of law and have it decided under C. R. 259; but in those days counsel would demur and then apply for a "dies concilii," "dies consilii" or "concilium," i.e., for a day upon which the court would hear argument upon the demurrer; and upon the day so fixed, counsel on both sides would be heard and the question decided, the demurrer being "allowed" or "overruled," as the case might be. Demurrers were abolished by Rule 1322 in 1894.* (See 16 P.R., p. xv.)

*I believe I argued the last demurrer at Osgoode Hall; it was before Galt, C.J., just before the rule came in force. What has been so far spoken of was the general demurrer. In addition, there were special demurrers of all kinds. For example, I remember while a student drawing