

THE  
ONTARIO WEEKLY REPORTER

(TO AND INCLUDING MAY 10TH, 1902.)

VOL. I.

TORONTO, MAY 15, 1902

No. 18.

SNIDER, Co. J.

APRIL 28TH, 1902.

C. C. WENTWORTH.

LEADER v. SIDDALL.

*Pleading—Statement of Claim—Alternative Claim—Sale or Conversion—Concise Statement of Doubtful Facts—Rule 268.*

Motion by defendant to strike out of or direct an amendment of the following paragraph of the statement of claim:

On or about the 12th day of October, 1895, the plaintiff sold and delivered to the defendant, or the defendant wrongfully converted to his own use, one organ at the price, or of the value of, \$100.

D'Arcy Tate, Hamilton, for defendant.

S. F. Washington, K.C., for plaintiff.

SNIDER, Co. J.—By Rule 268 pleadings are to be as concise as they can be, consistently with giving a fair statement of the facts relied upon. It seems quite reasonable that, if a sale of the organ in question were alone claimed, the usual form is quite sufficient, that stating the bare fact that it was sold and delivered; or, if a conversion only were claimed, then the form for conversion would be enough. In this case the plaintiff comes to the Court and says, as he may now do under the Rules: "The defendant owes me or I am entitled to recover from him \$100, for an organ, but whether the facts are such as to establish a sale or a conversion I cannot quite say, but they amount to one or the other." Here, I think the Court and the defendant are both entitled to have under Rule 268 a concise statement of these doubtful facts, as under the circumstances in this alternative claim I think they are the material facts, and should be concisely stated, and a claim of the alternative legal right made upon them. See notes to Bullen & Leake, 4th ed., p. 12, and cases there cited; Holmsted & Langton, p. 453 et seq.

Order granted accordingly with costs to the defendant in any event of the cause.

Washington & Beasley, Hamilton, solicitors for plaintiff.

Carscallen & Cahill, Hamilton, solicitors for defendant.