

CARTWRIGHT, MASTER.

APRIL 30TH, 1906.

CHAMBERS.

HART v. HUTCHESON.

*Pleading—Statement of Claim—Motion to Strike out—Embarrassment—Irrelevancy—Prayer for Relief—Damages—Parties—Company.*

Motion by defendants to strike out parts of the statement of claim as being irrelevant and embarrassing and intended to prejudice a fair trial.

John A. Ferguson, for defendants.

Casey Wood, for plaintiffs.

THE MASTER:—The action is brought by plaintiffs on behalf of themselves and the other shareholders (except the individual defendants), against those defendants and the company. The plaintiffs ask: (1) an injunction restraining defendants from issuing stock without the authority of the directors; (2) to prevent defendants from voting on certain stock which it is alleged has been illegally issued; (3) to have the same cancelled; (4) to have the books of the company rectified accordingly; and (5) "damages from the said defendant," costs, and further relief.

The paragraphs attacked do not seem objectionable in view of such cases as *Millington v. Loring*, 6 Q. B. D. 191. They are only historical statements of what led up to the transactions complained of, or else are statements of fact of which plaintiffs can give evidence at the trial.

So far therefore as the grounds on which the motion was based are concerned, it cannot succeed.

I think, however, that the statement of claim must be amended so far as the 5th clause of the prayer for relief is concerned. It does not appear from which defendant the damages are claimed—grammatically it would seem to be the company—which is impossible. It may be safely assumed that the personal defendants are those intended. This, however, should be made clear. Defendants are not called on to spell out the plaintiffs' meaning. See per *Moss, J.A.*, in