

JARVIS V. CITY OF TORONTO—CAMERON, MASTER IN CHAMBERS  
—OCT. 12.

*Jury Notice—Irregularity—Action against Municipal Corporation—Nonrepair of Highway—Judicature Act, sec. 54.*—Motion by the Corporation of the City of Toronto, the defendants, for an order striking out, as irregular, a jury notice filed and served by the plaintiff. By sec. 54 of the Judicature Act, R.S.O. 1914 ch. 56, actions against a municipal corporation for damages in respect of injuries sustained by reason of the default of the corporation in keeping in repair a highway shall be tried by a Judge without the intervention of a jury. The plaintiff sued for damages in respect of injuries sustained by reason of a pile of bricks negligently left by the defendants upon a highway in the city. THE MASTER, in a written judgment, said that the case came within sec. 54: a highway may be considered out of repair when an obstruction such as a pile of bricks is allowed to remain upon the highway for an unreasonable time: *Barber v. Toronto R.W. Co.* (1896), 17 P.R. 293. Order striking out the jury notice with costs. M. H. Ludwig, K.C., for the defendants. A. R. Hassard, for the plaintiff.

REDMOND V. STACEY—CAMERON, MASTER IN CHAMBERS—OCT. 12.

*Pleading—Statement of Defence—Rule 141—“Material Facts” —Particulars.*—Motion by the plaintiff for an order striking out as embarrassing certain paragraphs of the statement of defence. THE MASTER, in a written judgment, said, referring to Rule 141—“Pleadings shall contain a concise statement of the material facts upon which the party pleading relies”—that “a material fact” is defined in *Odgers on Pleading* as every fact which is essential to the plaintiff’s cause of action or to the defendant’s defence, which they must prove or fail. There are many facts which are not material to the main issue, but which will be proved or discussed at the trial, for the reason that they affect the amount of damages recoverable. It was decided in *Millington v. Loring* (1880), 6 Q.B.D. 190, that any fact which it is open to any party to prove at the trial is a material fact and may be pleaded. That decision has been followed continuously. No order in reference to para. 12 of the statement of defence. Particulars should be given of the allegations contained in para. 11. Costs in the cause. G. S. Hodgson, for the plaintiff. F. S. Mearns, for the defendant.