seventh pleas of the defendants being good in substance, ought not to have been so stated, as the defendants had final judgment on account of the plaintiffs' declaration being bad in substance, and that it should be struck out. This, I understand, was the main ground of complaint on the part of Mr. Harrison. If the defendants desire it, their rule to amend the roll shall be absolute, the defendants paying to the plaintiffs 25*s.* costs; such amendment to be made within two weeks. If the amendment be not made within that time, the plaintiffs' rule to be made absolute for setting aside the judgment with costs.

Grant v. Palmer et al.

Record—What it should contain—C. L. P. Act, sec. 77.

Issues in law having arisen on the same pleadings with issues in fact, the former, which had been already argued but not determined, were omitted from the *nisi prius* record.

Held, an irregularity in omitting these issues on which contingent damages might have been assessed; and plaintiff was ordered, after verdict, to amend the record by inserting them.

The question, how far the *nisi prius* record should be a full transcript of the pleadings, discussed.

[Practice Court, Hilary Term, 1871.

This was an action brought on a promissory note made by the defendant Winstanley, and endorsed by the defendant Palmer. The latter pleaded three pleas, on all of which the plaintiff joined issue, and demurred to the first and third. The defendant Winstanley, pleaded one plea, on which the plaintiff joined issue.

During this Term a rule was obtained calling on the plaintiff to shew cause why the record or paper writing purporting to be a record of *nisi prius* in this cause and the verdict rendered in favour of the plaintiff herein should not be set aside, either wholly or as against the defendant Palmer for irregularity, with costs, on the grounds that such record or paper writing, purporting to be a record of *nisi prius*, is irregular and defective as such, in that it is not a complete transcript or copy of all the pleadings in this cause, but wholly omits therefrom the demurrer of the plaintiff to the first and third pleas of the defendant Palmer herein, and the joinder in demurrer thereto; and also that such record contains no entry of any intended assessment of damages, contingent or otherwise, with reference to such demurrer, or why the verdict should not be set aside on the merits, and on other grounds disclosed in the affidavits and papers filed.

Harrison, Q. C., shewed cause.

The question of irregularity only can be raised in this court.

The demurrers were argued before the trial, and stood for judgment, and judgment has been given on them since the trial.

The jury had nothing to do with the issues in law, because the demurrers were to pleas on which issues in fact were also joined, and all the issues in fact were on the record: *Harrington* v. *Fall*, 15 U. C. C. P. 541; *Campbell* v. *Kemp*, 16 U. C. C. P. 244.

The record should be a copy of the issue book: *Doe* v. *Cotterell*, 1 Chit. Rep. 277; *Shepley* v *Marsh*, 2 Str 1131; and must be passed by the proper officer: *Reeves* v. *Eppes*, 16 U.C.C P. 137. The issue book must also be made up: *Jones* v. *Tatham*, 8 Taunt. 634.

He referred also to *Skelsey* v. *Manning*, 8 U. C. L. J. 166; *Patterson* v. *McCallum*, 2 U C. L. J., N. S. 70; *Wood* v. *Peyton*, 2 D. & L. 441; Har. C. L. P. Act, (2nd ed.), 643, note (*x*). 287, note (*v*); *Welsh et al.* v. *O'Brien et al.*, 29 U. C. Q. B. 474.

M. C. Cameron, Q. C., supported the rule. The question is, are the demurrers a necessary part of the record? If they are, they should have been on the record.

The Common Law Procedure Act, section 77, enacts, that every declaration or other pleading shall be entered on the record made up for trial.

Section 203 provides for passing the record by the clerks of the crown or his deputy, and that it shall be signed by him.

The issue book is required to be made up only by rule of court.

The judgment roll is made up from the *nisi prius* record. The latter therefore should contain a full transcript of the pleadings. The practice is clear on that point: Arch. Pr., 12th ed., 929; Impey's Pr. K. B., 6th ed. 358; *Ferguson* v. *Mahon*, 2 Jur. 820.

Wilson, J.—In 2 Lush's Pr. 537-538, it is said if the record be right proceedings will not be set aside because the issue book is wrong: Bagley's New Pr. 165; Tidd's New Pr. 476; *Codrington* v. *Lloyd*, 8 A. & E. 449.

The defendant, it is admitted, is estopped from complaining of the defective issue book, but still the record has to be made up, passed and signed by the officer of the court.

The officer knows nothing of the issue book, he must make up or pass the record from and by the original pleadings on his file, which he has not done. The issue book is only a collateral proceeding.

The case in 15 U. C. C. P. 541, applies only to actions of ejectment, which are regulated by a practice under the special statute applicable to them.

It is said that a plea in abatement, on which judgment of *respondeat ouster* is given, is not entered on the roll: *Pepper* v. *Whalley*, 4 A. & E. 90; *Dubartine* v. *Chancellor*, 1 Ld. Ray. 329; 5 Mod. 399, and 12 Mod. 190.

In 1 Sellon's Pr. 425-429, it is said that all the pleadings in the cause must be regularly entered *verbatim* on the *nisi prius* record, and if there are proceedings on demurrer they must be set forth.

By Tidd's Pr. 9th ed. 775, the *nisi prius* record contains an entry of the pleadings, &c., as in the issue or paper book; and (p. 722) the issue book must contain all the issues in fact and in law.

By the present English practice it is a copy of the issue as delivered in the action which must contain the whole of the proceedings.

By section 203 of the Common Law Procedure Act the *nisi prius* record is to be passed and signed by the officer of the court in whose office the same is passed. The *nisi prius* record is referred to as a well known proceeding, and it is not said what it shall contain.

In *Pepper* v. *Whalley*, 4 A. & E. 90, the court