The second paragraph is as follows: "The defendant club derives its existence from a public franchise, and owns and operates, for gain, a race-track in the city of Toronto, where it carries on race meetings at which the public are invited to attend and for which they are charged an entrance fee, and it owes a public obligation in the conduct of its business to treat all members of the public equally and fairly [and so public is the function it exercises, that it has a monopoly of race-horse betting on its track, that would be criminal but for the saving grace of legislation, whereby all members of the public, at its race-meetings, are forced to bet through the defendant club, which acts as stake-holder, and exacts therefor over five per cent. on over a million dollars a year of bettors' money passing through its hands and from which its chief revenue is derived.]"

The defendants ask to have all that follows the word "fairly," enclosed in brackets as above, struck out as irrelevant and tending to prejudice them at the trial, which the plaintiff asks to have before a jury.

In disposing of these motions it is well to refer once more to Con. Rule 268, which provides that pleadings shall contain a concise statement of the material facts upon which the party pleading relies, but not the evidence by which they are to be proved.

As to this second paragraph, it would seem that the material fact which the plaintiff must prove is the allegation in the first part that the Ontario Jockey Club is obliged to treat all members of the public equally and fairly—and that the part after the word "fairly" is probably wholly irrelevant, and not admissible in evidence in chief, whatever may be allowable in cross-examination.

In any case, it is no more than evidence to establish the obligation of which the plaintiff claims the benefit. It should, therefore, be struck out, as was done in Blake v. Albion, 35 L.T. 269, 45 L.J. C.P. 663, even though it was by the same Court allowed to be used at the trial: see 4 C.P.D. 94. Standing in the statement of claim, it could be read to the jury, and might very possibly prejudice their minds by suggesting the possibility of the defendants gaining $50,000 a year without any labour or expense.

The 5th paragraph is as follows: "The plaintiff further says that one of the members of the said Canadian Racing Association is known as the Niagara Racing Association, controlled by John H. Madigan, of Buffalo, New York, and Louis Cella, of St. Louis, Missouri, and owning and operating a racing-track at