

**DEMURRERS.**

The case of *Hollender v. Ffoulkes*, 26 O.R. 61, strikes us as one of those curious judicial deliverances, whereby, under the pretence of interpreting a rule of court, the court has succeeded virtually, and to all intents and purposes, in reducing it to a nullity, and, we might almost say, rescinding it. Rule 1322 abolishes demurrers, but it now seems, according to this case, a pleading may be still pleaded which, though not a demurrer, is "equivalent to a demurrer," to use the language of the court, and which has all the legal incidents of a demurrer in so far as the party pleading it is deemed to admit the facts of the opposite party's pleading to which it is directed.

When the judges of the Queen's Bench Division agreed with the other judges of the Supreme Court of Judicature to abolish demurrers, it would be curious to know what particular benefit they thought was to be effected thereby, if, as it appears, though abolished in name, they intended that they were still to exist in substance.

We were under the impression that the abolition of the demurrer was due to the growing conviction that the attempt to decide questions of law merely upon the statement of facts disclosed in pleadings is not a satisfactory method, and that, by abolishing demurrers, the court designed that questions of law were to be determined, not upon the facts stated in the pleadings, but on the facts as they might be actually proved. And we should, therefore, have thought, apart from this decision, that any pleading raising a point of law is on the same footing as any other pleading, and subject to Rule 403, and, consequently, though it contain no denial of facts, would be held merely to amount to a submission that the facts stated, even if they were proved, would not afford a cause of action, or defence, as the case might be. But the court has decided otherwise, and a pleading raising a question of law must be taken to admit the facts on which the question arises, unless it also expressly denies them.

So long as the present decision remains unreversed, it will be needful, therefore, for practitioners desiring to raise a question of law in a pleading to be careful also to deny the facts on which the question of law arises, or, at all events, put the opposite party to the proof thereof, or he will be excluded, by an implied admission of their truth, from afterwards disputing them.