

of damage sustained, to receive the benefit of the amount of such insurance and to have the same applied in reduction of such damage."

The plaintiffs moved to strike out this paragraph, because it "is immaterial and tends to prejudice and embarrass the plaintiffs in the fair trial of the action."

H. E. Rose, for plaintiffs.

C. A. Moss, for defendants.

THE MASTER:—In support of the motion *Flynn v. Toronto Industrial Exhibition Association*, 2 O. W. R. 1047, 1075, 6 O. L. R. 635, was cited. That case, however, is not in point. There the allegation by the plaintiff that the defendants had insured themselves against liability resulting from the use of the machine in question was clearly not one of the material facts on which the plaintiff could rely. Here the plaintiffs are asking to have a part of the statement of defence struck out, on the ground that what is alleged therein cannot be given in evidence at the trial.

Since the judgment in *Stratford Gas Co. v. Gordon*, 14 P. R. 407, approving the decision in *Glass v. Grant*, 12 P. R. 480, it is but seldom that a defendant's pleading should be interfered with in Chambers. According to the Chancellor in *Glass v. Grant*, *supra*, this should never be done "unless the pleading is so plainly frivolous or indefensible as to invite excision." Is that the case here?

Doubtless *Brown v. McRae*, 17 O. R. 712, decided that in cases like the present "the defendants cannot deduct from the amount of damages to be paid by them a sum received by the plaintiff from insurers in respect of such damages:" p. 714. From this it would seem probable that the plaintiffs here could successfully demur to this defence. But, however that may be, in *Knapp v. Carley*, 7 O. L. R. 409, 3 O. W. R. 187, it was pointed out that no application which is equivalent to what was formerly the argument of a demurrer can be heard except by a Judge in Court. Following the reasoning of the learned Judge in that case, I do not think I have power to give effect to the motion, which I think must be dismissed without prejudice to any application under Rule 259 or otherwise, after reply, which plaintiffs may be advised to make.

Costs in the cause.