

5. Claims to recover personal property, with or without damages for the withholding thereof; or,

6. Claims against a trustee, by virtue of a contract, or by operation of law.

7. But the causes of action, so united, must all belong to one only of these classes, and must affect all the parties to the action, and not require different places of trial, and must be separately stated.

LIX. Every material allegation of the complaint, not specifically controverted by the answer, and every material allegation of new matter in the answer, not specifically controverted by the reply, shall, for the purposes of the action, be taken as true. But the allegation of new matter in a reply shall not in any respect conclude the defendant, who may on the trial countervail it by proofs, either in direct denial or by way of avoidance.

Allegations
not
controverted
deemed true.

Exception.

MISTAKES IN PLEADING AND AMENDMENTS.

Material variances, how provided for.

Immaterial variances, how provided for.

What to be deemed a variance.

Amendments of course.

Amendments by the Court.

Amendment, after demurrer.

Suing a party by a fictitious name, when allowed.

No error or defect to be regarded, unless it affect substantial rights.

Supplemental complaint, answer and reply.

LX. No variance between the allegation in a pleading and the proof shall be deemed material, unless it has actually misled the adverse party, to his prejudice, in maintaining his action or defence, upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the Court, and in what respect he has been misled; and thereupon the Court may order the pleading to be amended, upon such terms as shall be just.

Material
variances,
how dealt
with.

LXI. Where the variance is not material, as provided in the last section, the Court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

Immaterial
variances.

LXII. Where, however, the allegation of the cause of action or defence to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a

When
amounting
to failure of
proof.