POINTS ABOUT PLEADING.

THOS. HODGINS, Q.C., ON THE JUDICATURE ACT.

A Lecture to Law Students—Pleading in Olden Time—How the Practice Has Changed—The New Order of Things.

Mr. Thos. Hodgins, Q. C., delivered a lecture on some general rules of pleading under the judicature act, before the law students at Osgoode hall this week. The learned gentleman's remarks are very timely, and worthy of reproduction.

The Ontario judicature act of 1881 marks the termination of that ancient conflict between the systems of common law and equity which was commenced in England during the reign of Richard II., when poor suitors appealed to the prerogative jurisdiction of the king's chancellor for that redress in chancery which they could not get in the courts of common law. Under these two systems of jurisprudence, as has been said, a litigant in a court of common law at one side of Westminster hall was often found clearly in the right and was awarded his opponent's estate; while in the court of chancery, on the other side of the hall, the same litigant was as often pronounced in the wrong, and decreed bound to surrender that estate to his opponent on such equitable terms as were just. But instead of troubling ourselves now to find reasons to justify the ancient severance of commen law and equity, we have the pleasanter task of

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of modern times upon the complete fusion o the courts into one supreme court of judicature, and the affirmance of a new maxim that "the common law follows equity," and that hereafter "where there is any conflict "or variance between the rules of equity "and the rules of the common law with re- "ference to the same subject matter, the "rules of equity shall prevail." This fusion of the conflicting jurisdictions required the abandonment in great measure of the dual system of pleading and the establishment of a new one. And the new system of pleading will be found to be more in harmony with the pleading of the court which in modern days has educated the most able as well as the most venturesome law reformers for parliament.

"Pleadings" in an action may be said to consist of a succession of alternate statements and counter statements by the plaintiff and defendant, so controlled by certain rules that all disputed points—technically called issues—are at each stage singled out and set apart as it were from such as are not disputed, in order that: 1st, The nature of the issues being ascertained, they may be referred to the appropriate tribunals—judge or jury—for decision; 2nd, That the tribunal before which the issues shall come for decision may be clearly informed of the questions to be decided; 3rd, That the plaintiff and defendant may also be clearly and definitely informed of the propositions to be maintained or controverted by them respectively, so as not to be taken by surprise, and also spared the useless expense and trouble of preparing to meet propositions of law or issues of fact which were never intended to be disputed.

IN ANCIENT TIMES

an action at law was commenced by what was called "original writ"—a royal mandate granted by the king with the advice of his council and issued to the sheriff, directing him to command the defendant to redress the grievance complained of, and in default to summon him to appear in court and show cause wherefore he would not do so. When the defendant appeared his appearance was actual and not by attorney, and he had to enter his appearance on the roll, together with two sureties, that he would defend. The pleadings in those days were conducted orally in open court, either by the litigant parties or their pleaders under the immediate superintendence of the judges. During the progress of the oral controversy, a minute of the pleading, inclusive of the issues, was taken down on a parchment roll by an officer of the court, as also the acts of the court, which were chiefly adjournments or "continuances." This official record of the pleadings and proceedings was called the record, and, as may be imagined, made the clerk of the court "a busy man" during the sitting of the court. This practice is in some measure revived by the judicature act, for, by marginal rule 274, "the "registrar clerk of assize or other officer "present at the trial shall enter all findings "of fact as the judge at the trial may "direct to be entered, and the directions, "if any, granted by the judge—such entry "to be made in a book to be kept for the "purpose, and also to be endorsed on a "copy of the pleadings." (Maclennan, p. 261.)

LAWYERS WERE PLENTIFUL

in the reign of Edward III., and then the pleadings were no longer delivered orally in court, but were written down by the parties or their pleaders upon a roll in the office of the court. This roll acquired a different name as the proceedings advanced from time to time. Thus it was called at different stages the plea roll, the issue roll, the nisi prius record, and the judgment roll. Since then many changes have been made, more interesting to the antiquarian in legal lore than to the student of modern pleading. Now the pleadings are no longer entered on the roll, but are drawn on up separate papers by the parties or their solicitors, and after being fyled in court are delivered alternately to each other out of court, and when completed are entered together upon what was formerly a nisi prius record or judgment roll, but now a "Certified copy of pleading," or "Judgment." During the period of oral pleadings the rules of pleading were simple, and the power of amendment was ample. Any confusion or defect in the mode of statement, or any attempt to embarass was at once remedied by the court directing the party to put his pleading into the proper shape. In like manner either party was allowed to correct his pleading upon discovering that he had made a mistake. In course of time when written pleadings were introduced, positive rules, which gradually increased both in number and strictness, governed the pleadings. As a necessary consequence the

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introduced intricacy; and the practice of pleading became elaborated into a highly-finished and refined art, and which, as the reports show, contributed as frequently to the failure as to the vindication of justice. As a learned judge remarked in Grant v. Eddy (21 Grant), "The technical system of pleading formerly in vogue with its extreme accuracy, precision and casting out of immaterial issues, possessed many advantages amongst professional gentlemen well versed in its mysteries; but where you had, as it frequently happened, the learner pitted against the learned, and the education of the former carried on at the expense of the client whose rights were pleaded into such a maze that he was obliged to give them up. It became necessary to abandon the higher standard of pleading and to bring it down to the comprehension of those who had not thought it worth while to devote years to its study.

UNDER THE JUDICATURE ACT

such a document that under a technical system of pleading a client's rights may be pleaded into a maze so that he will be obliged to give them up, will be found impossible. The administration of justice act of 1873, introduced and carried by the present attorney-general of Ontario, whose professional and judicial experience well fitted him for the work of reform, affirmed as a principle of statutory law that it was the duty of all courts "for the more speedy, convenient and inexpensive administration of justice in every case to be auxiliary to one another respectively." This and the later acts brought back to the courts in effect the practice of the time of oral pleadings with respect to amendments, for it directed that "at any time during the progress of any action, etc., the court or a judge may upon the application of any of the parties, or without any such application, make all such amendments as may seem necessary for (1) the advancement of justice; (2) the prevention and redress of fraud; (3) the determining of the rights and interests of the respective parties, and of the real question in controversy between them, and best calculated to secure the giving of judgment according to the very right and justice of the case." (See also jud. act, marg. rule 474).

Prior to the judicature act the number of pleadings in an action at law was almost unlimited. There were declaration, plea, replication, rejoinder, surrejoinder, rebutter, surrebutter, etc. In equity we had only three, bill, answer and replication. Now in each of the divisions there can rarely be more than three pleadings, and there cannot be more than four without the leave of the court—marg. rule No. 174—providing that "no pleading subsequent to reply, other than a rejoinder of issue, shall be pleaded without leave of the court or a judge." Practically the chancery system of pleading has been adopted by the act, but not the titles of the pleadings. We have now statement of claim for "delaration" and "bill of complaint;" "statement of defence" with or without counter claim for "plea," with or without set-off, and "answer" with or without a prayer for cross relief, and "reply" or "joinder of issue" for "replication." While, however, the number of pleadings is apparently adapted from the chancery practices

THERE IS THIS PECULIARITY

to be remembered. Under the chancery form of pleading any defences which required a special reply had to be made by an amendment of the bill setting out the contention of the defendant as a "pretence" on his part and the reply, which the plaintiff made to such pretence. Under the common law pleading such reply was embodied in the replication. This latter practice has been adopted by the judicature act, and the case of Hall v. Eve, L. R. 4 ch. D. 341 affirms this. In that case Vice-chancellor Bacon set aside a reply in which the plaintiff denied the truth of the defendent's statement of defence and pleaded that even if the defence were true he was entitled to relief on various equitable grounds—all of which the vice-chancellor held should have appeared in his statement of claim. The court of appeal reversed this judgment and held that matters by way of traverse confession and avoidance of the defence, or both combined, should be pleaded in reply. A new code of rules regulating the form and substance of the modified system of pleading is set out in gay rules, 128-150. But in Evans v. Buck, L. R. 4, ch. D, p. 434, Mr. G. Jessel, M.R., held that the same rules of pleading which prevailed under the old law prevail now, unless there is anything in the judicature act or in the new Orders or Rules which prevents it." And it follows from this that the pleader will still not unfrequently have to refer on some point of pleading in a case not provided for in the rules to old precedents or to a standard work on pleading.

This closes the first part of the lecture. The second part will be published in a later issue.

THE POLICE WORLD.

Wilfred Calvert was bound to the peace, having threatened to kill his wife.

The notorious Maud Brown was detained at No. 4 station last night, having been arrested for assaulting her mother.

A woman had her husband summoned for slapping her on the face and then turned round and paid his fine of $1 and costs.

John Healy of Lumbard street was placed under arrest last night for having committed an aggravated assault on Mary Johnston.

Two boys named John Henderson and Henry Shine were arrested for stealing thirty potato bags from J. H. Hargrave of King street east.

Andrew O'Brien was arrested by Constable Kearns in connection with the recent burglary at Shaver's store on King street east. This is the second arrest Kearns has made in this affair.

Miss Macpherson reports the loss of her satchel containing a gold watch and chain, checks and tickets from a Pullman coach, while on her way home from Montreal Wednesday night. Robberies on the sleepers seems to be frequent.

Margaret Dandy accused James McLean of being the owner of a vicious dog which attacked her on Emma street yesterday. McLean was ordered to take the dog to a police station where it will be destroyed, or he will have to pay a fine of $10.

The other night a boy named Knox was assaulted by some roughs on Sherbourne street. At the time it was not known who the parties were, but yesterday a warrant was issued for the arrest of a young man named Thomas Richardson, who is supposed to have been a principal in the affair.

WATTERWORKS MATTERS.

The watterworks committee met yesterday afternoon. Three parties applied for discount on their bills, but in the face of the cast iron rule of no discounts after the first month of the quarter was up the committee could not grant the same. Mr. Sutherland of the Commercial hotel, was one of the applicants, and swore so help his bob that he wouldn't pay the full amount. Ald. Taylor and other members drew attention to the great waste of water at the drinking fountains, which the manager said he would see to. Another source of waste was mentioned, viz., allowing taps to run. Much water is wasted in this way and all water takers who pay according to metre measurement will study their own interests by wasting as little water as possible. It was reported that little or no progress had been made in the works at the island since last week. The receipts for the year so far amount to $133,000 which is $7000 over and above the estimated revenue.

A Prospective Bride Elopes.

BUFFALO, Nov. 4.—Forestville, in Chautauqua county, was startled yesterday by the report that Miss Nellie Record, the daughter of a prominent and well known lawyer of that place, John G. Record, had been married to and had eloped with Dell Dye, a young man well known in Forestville. Inquiry confirmed the truth of the report. Nellie was to have been married this evening to her father's law partner, Warren Hooke, six years her senior. Invitations had been out for some time and the bride's trousseau had been delivered and all arrangements for the event completed.

A Generous Gift.

MONTREAL, Nov. 4.—W. E. McDonald, scion of a highland family resident in Prince Edward Island, has handed to McGill university a check for $30,000, being the capital of certain amounts of which for many years he has paid the interest to the college for certain purposes.

Bismarck and the Jews.

BERLIN, Nov. 4.—Bismarck recently informed a prominent Jewish manufacturer that he would never entertain the proposition to curtail the constitutional rights of the Jews, and that he made no distinction between his Christian and Jewish opponents.

The French Ministry.

PARIS, Nov. 4.—In the chamber of deputies to-day the president announced that he had received notice of three interpellations on the Tunisian question. President Ferry said he wished to state the position of the cabinet in regard to the interpellations. The cabinet always considered its powers would expire with the last chamber and the resolve to retire from office, which would be carried out whatever happened, was only adjourned in order to reply to the charges against it. Previous to retiring he would give what explanations were considered necessary and the sooner debate commenced the better. The discussion was fixed for Saturday.

MONEY AND TRADE.

Toronto Stock Market.

TORONTO, Nov. 4.—The stock market this morning was quiet, but prices generally firm. Bank of Montreal rose ½ per cent. in bid, with sellers asking 200, but no transactions. Toronto was steady at 160 bid. Ontario was higher, with a sale of 25 shares at 59, and closing at that price bid; an advance of ½. Merchants' steady at a decline of 1 in bid, but holders asking ½ per cent. more than yesterday. Dominion firm, with sales of 100 shares in two lots at 193½, and closing at yesterday's quotations. Hamilton rose 1 per cent. in bid for the fully paid-up stock, but there were no sellers. Standard was firm, with sales of 160 shares at 112, and closing at 111½ bid, an advance of ½ on yesterday. Federal was easier in bid, while holders asked an advance of ½ per cent., without transactions. Imperial declined ½ in bid, while Molson was held ½ higher than yesterday, without bids. Insurance stocks quiet and firm, the only change being in Confederation Life, which was wanted at an advance of 5, without sellers. Consumers' Gas rose ½ in bid. Dominion Telegraph offered at a decline of 1, and Montreal rose ½ in bid, without transactions in either. Loan companies quiet and firm. Western Canada rose ½ in bid, while Union declined ½. Farmers' Loan was wanted at 126, and Canadian Savings offered at 135, without bids. Real Estate rose ½ in bid. Toronto House Building association was 123 bid, and English Loan offered at 98, without bids. The balance of the list is unchanged.

Montreal Stock Market.

MONTREAL, Nov. 4.—Banks—Montreal, 199½ and 199½, sales 11 at 199½; Merchants' 123½ and 123½, sales 29 at 123, 21 at 123½; Commerce 141½ and 141½, sales 150 at 141½, 375 at 141½; Ontario 59½ and 58½; Toronto 163½ and 159; Molson's 116½ and 116½; Banque du Peuple 92 and 90; Jacques Cartier 108 and 104; Union asked 97; Montreal xd. 196 and 195½; Merchants' xd 125½ and 125; Montreal Telegraph Co 128 and 127½, 25 at 127, 50 at 127½, 25 at 127½, 50 at 127½; Dominion Telegraph Co asked 97; Montreal Gas Co. asked 143; City Passenger railway 125½ and 123s; Richelieu and Ontario Navigation Co. 45½ and 45½, sales 25 at 45, 50 at 45½; Royal Canadian Ins Co 55 and 50; Canada Cotton Company 140 and 132; Dundas Cotton Company 120½ and 123.

Toronto Street Market.

TORONTO, Nov. 4.—The receipts of grain to-day were a little larger, and prices continue weak. Some 700 bushels of fall wheat offered and sold at $1 25 to $1 27; spring would bring $1 30 to $1 32. Barley sold to extent of 4000 bushels at 82c to 9.c, with the bulk of No 1 at 88c to 90c. Oats firm, with one load at 45c. Rye sold at 95c; no peas offered. Hay was firm, with receipts of forty-five loads, and sales at $11 to $14 for clover, and $15 to $17 for timothy. Straw firm, with a sale of one load of bundled oat at $14, and loose at $9 to $11. Butter quiet and steady. Eggs easier. We quote:

Wheat, fall	$1 25 to $1 28	Turnips, bag	0 35 to 0 40
do spring	1 30 to 1 30	Beans, bu	1 90 to 2 10
Barley	0 86 to 0 92	Tomatoes, bu	1 00 to 1 10
Oats	0 44 to 0 45	Onions, bag	1 00 to 1 25
Peas	0 80 to 0 83	Radishes, doz	0 00 to 0 00
Rye	0 96 to 0 96	Cauliflr, doz	0 60 to 1 00
Beef, hd qrs	5 00 to 6 50	Melons, doz	0 00 to 0 00
do fre qrs	4 10 to 5 00	Chickens, pair	0 45 to 0 60
Mutton	6 00 to 7 00	Fowls, pair	0 45 to 0 60
Venison, h	10 00 to 11 00	Ducks, brace	0 60 to 0 75
" carc	5 00 to 6 00	Partridge "	0 50 to 0 65
Lamb	8 00 to 8 50	Geese	0 50 to 0 75
Hogs, 100 lbs	7 00 to 7 80	Turkeys	0 75 to 2 00
Beets, bag	0 75 to 0 80	Butter, lb. rll	0 25 to 0 27
Carrots, bag	0 35 to 0 40	do dairy	0 20 to 0 21
Parsnips, bag	0 60 to 0 70	Eggs, fresh	0 23 to 0 25
Parsley, doz	0 15 to 0 20	Wool, per lb	0 00 to 0 24
Potatoes, bg	0 85 to 1 00	Hay	11 00 to 17 00
Apples, brl	1 50 to 2 50	Straw	12 00 to 14 00
Cabbage, dz.	0 60 to 1 00		

Grain and Produce Markets.

CALL BOARD, TORONTO, Nov. 4.—Flour dull and nominal. No 2 fall wheat was wanted at $1 25, with sellers asking $1 27. Barley quiet and unchanged. Oats firm at 43c to 44c.

MONTREAL, Nov. 3.—Flour—Receipts 2630 brls. Market dull; 550 brls. superior extra sold at $6 20; 225 brls do at $6 20. Grain—Wheat, corn, peas, oats, barley and rye nominal. Oatmeal, $5 25. Cornmeal, $3 75. Provisions—Butter, western, 17c to 19c; E T 18c to 21c; B and M 18c to 21c; creamery 24c to 25c. Cheese 11c to 13c. Pork $21 to $22. Lard 15c to 15½c. Bacon unchanged. Hams 11½c. Ashes—Pots $5 10 to $5 15. Pearls $6 15.

MILWAUKEE, Nov. 4.—Wheat $1 23 Dec.; $1 28½ Jan.

CHICAGO, Nov. 4.—Flour dull and nominal. Wheat lower and unsettled, No. 2 spring $1 26½ cash, $1 26½ Nov. Corn weak and unsettled, gilt edge 60c cash, 59¾c Nov. Oats weak and lower at 42½c cash, 42½ for Nov. Rye dull and lower at 96c. Barley easier at 91.06. Pork lower at $15 75 to $16 cash, $17 12½ to $18 for December. Lard weak and lower at $10 95 to $11 cash, $11 10 Dec. Bulk meats lower; shoulders $6 25, short ribs $8 60, short clear $9. Whiskey steady and unchanged. Receipts—Flour 14,000 brls, wheat 24,000 bush, corn 190,000 bush, oats 46,000 bush, rye 5,000 bush, barley 26,000 bush. Shipments—Flour 16,000 brls, wheat 65,000 bush, corn 297,000 bush, oats 62,000 bush, rye 5,000 bush, barley 25,000 bush.

NEW YORK, Nov. 4.—Cotton dull and unchanged. Flour—Receipts 21,000 brls, buyers' favor, without decided change; sales 17,000 brls. Rye flour dull and unchanged. Cornmeal unchanged and quiet. Wheat—Receipts 199,000 bush, opened lower, closed better; sales 2,621,000 bush, including 285,000 bush spot; exports 173,000 bush; No 2 red $1 41½ to $1 42½, No. 1 white $1 39½ to $1 41, No 2 red Nov. $1 41½ to $1 42½. Rye weak at $1 02 to $1 04½. Barley steady; No 1 Canada at $1 12. Malt unchanged and quiet. Corn—Receipts 304,000 bush, opened lower, closing strong; sales 1,270,000 bush, including 167,000 bush spot; exports 115,000 bush; No. 2 69c to 70c, yellow 73c, No 2 November 68¾c to 69½c. Oats—Receipts 34,000 bush, higher; sales 493,000 bush; mixed 45c to 49c, white 50c to 54½c. No 2 November 47¾c to 49c. Hay steady. Hops firm. Coffee quiet and unchanged. Sugar strong, standard A 9¼c, cut loaf and crushed 10½c. Molasses unchanged. Rice steady. Petroleum dull and weak; crude 6¾c to 7½c, refined 7½c asked. Tallow steady at 7¾c to 8c. Potatoes and eggs firm and unchanged. Pork heavy; new mess at $17 50 to $17 75. Beef dull and weak. Cut meats steady; middles easier, long clear 9½ to 9¾c, short 9½c. Lard heavy at $11 40 to $11 45. Butter and cheese unchanged and quiet.

DETROIT, Nov. 4.—Wheat, No 1 white $1 32, Nov.; $1 32½ Dec.; $1 34½ Jan.

OSWEGO, Nov. 4.—Barley, No 2 Canada, $1 05, rye 97c to 98c in bond.

TOLEDO, Nov. 4, 10.30 a.m.—Wheat—No 2 red $1 33½ Nov, $1 25½ Dec, $1 38½ January, $1 33 bid for year, $1 30½ to $1 41 Feb. Corn—No 2 64c asked cash, 63c asked for November, 62½c for December, 67¾c for May. Oats nominal. Receipts—Wheat 8044 bush, oats 2000 bush, corn 13,000 bush. Shipments—Wheat 5000 bush, corn 1000 bush, oats 2000 bush.

12 a.m.—Wheat, No 2 red $1 33 cash for November, $1 38½ for December, $1 37¾ for January, $1 40 for February. Corn, No 2 62c for cash and December, 61½c for year, 67c for May.

DETROIT, Nov. 4, 10.30 a.m.—Wheat—No 1 white $1 30½ for cash, $1 32½ for Dec., $1 34½ for Jan., $1 36½ to $1 36½ for Feb., $1 39½ for March, $1 30½ for year. Receipts—13,000 bush; shipments 40,000 bush.

BEERBOHM SAYS: "LONDON, Nov. 4.—Floating cargoes—Wheat quiet, maize steady. Cargoes on passage—Wheat and maize, not much enquiry. Mark Lane—Wheat and maize quiet and steady. Liverpool—Spot wheat quiet and steady. California—No 1 cheaper, maize more enquiry. English country markets firm. French steady. Paris—Flour and wheat firm.

LIVERPOOL, Nov. 4.—Flour 10s 6d to 13s; wheat 9s 10d to 10s, club 12s to 11s 6d, winter 10s to 11s 1d, white 10s 10d to 11s 2d, corn 5s 6d to 5s 6½d; oats 6s 4d, barley 5s 2d, peas 7s 10d to 8s 0½d, pork 78s, lard 58s 9d, bacon 43s to 49s, beef 92s 6d, tallow 42s 0d, cheese 58s.