

INDEX TO ENGLISH LAW REPORTS,

FROM 1813 TO 1856.

JUST PUBLISHED, BY T. & J. W. JOHNSON & CO.,

No. 197, Chestnut Street, Philadelphia.

A GENERAL INDEX to all the points direct or incidental, decided by the Courts of King's and Queen's Bench, Common Pleas, and Nisi Prius, of England, from 1813 to 1856, as reprinted, without condensation in the *English Common Law Reports*, in 83 vols. Edited by George W. Biddle and Richard C. Murtrie, Esqs., of Philadelphia. 2 vols. 8 vo. \$9

References in this Index are made to the page and volume of the English Reports, as well as to Philadelphia Reprint, making it equally valuable to those having either series. From its peculiar arrangement and admirable construction, it is decidedly the best and most accessible guide to the decisions of the English Law Courts.

We annex a specimen showing the plan and execution of the work :

PLEADING.

- I. General rules.
- II. Parties to the action.
- III. Material allegations.
 - [a] Immaterial issue.
 - [b] Traverse must not be too broad.
 - [c] Traverse must not be too narrow.
- IV. Duplicity in pleading.
- V. Certainty in pleading.
 - [a] Certainty of place.
 - [b] Certainty as to time.
 - [c] Certainty as to quantity and to value.
 - [d] Certainty of names and persons.
 - [e] Averment of title.
 - [f] Certainty in other respects; and herein of variance.
 - [g] Variance in actions for torts.
- VI. Ambiguity in Pleadings.
- VII. Things should be pleaded according to their legal effect.
- VIII. Commencement and conclusion of Pleadings.
- IX. Departure.
- X. Special pleas amounting to general issue.
- XI. Surplusage.
- XII. Argumentativeness.
- XIII. Other miscellaneous rules.
- XIV. Of the declaration.
 - [a] Generally.
 - [b] Joinder of counts.
 - [c] Several counts under new rules.
 - [d] Where there is one bad count.
 - [e] Statement of cause of action.
 - [f] Under common law procedure act.
 - [g] Now assignment.
 - [h] Of profert and oyer.
- XV. Of pleas.
 - [a] Generally.
 - [b] Pleas in abatement.
 - [c] Plea in abatement for nonjoinder.

I. GENERAL RULES.

II. PARTIES TO THE ACTION.

It is sufficient on all occasions after parties have been first named to describe them by the terms "said plaintiff" and "said defendant." *Davidson v. Savage*, 1, 637; 6 Taun. 675. *Stevenson v. Hunter*, 1, 675; 6 Taun. 406.

And see under this head, Twiss, Action; Assumpsit; Bankruptcy; Bills of Exchange; Case; Cho. in Action; Covenant; Executors; Husband and Wife; Landlord and Tenant; Partnership; Reprovin; Trespass; Trover.

III. MATERIAL ALLEGATIONS.

Whole of material allegations must be proved. *Recco v. Taylor*, xxx, 590; 5 N. & M. 469.

Where more is stated as a cause of action than is necessary for the gist of the action, plaintiff is not bound to prove the immaterial part. *Bronfield v. Jones*, x, 624; 4 B. & C. 380. *Brenham v. Boston*, xii, 721; 2 C. & P. 540. *Duke v. Gouthing*, xxvii, 766; 1 B. N. C. 858. *Pitt v. Williams*, xxix, 293; 2 J. & P. 811.

And it is improper to take issue on such immaterial allegation. *Arundel v. Hoeman*, iv, 103; 8 Taun. 109.

Matter alleged by way of inducement to the substance of the matter, need not be alleged with such certainty as that which is substance. *Stoddart v. Palmer*, xvi, 212; 4 D. & R. 624. *Churchill v. Hunt*, xviii, 283; 1 Chit. 480. *Williams v. Wilcox*, xxxv, 609; 8 A. & E. 314. *Brunskill v. Robertson*, xxxvi, 0 & A. E. 840.

And such matter of inducement need not be proved. *Croaskeys Bridge v. Rawlings*, xxvii, 41; 3 B. N. C. 71.

Matter of description must be proved as alleged. *Wells v. Girling*, v, 853. *Gow v. Stoddart v. Palmer*, xvi, 212; 4 D. & R. 624. *Ricketts v. Salway*, xviii, 68; 1 Chit. 104. *Treadale v. Clement*, xvii, 329; 1 Chit. 903.

An action for tort is maintainable, though only part of the allegation is proved. *Ricketts v. Salway*, xviii, 69; 1 Chit. 104. *Williamson v. Aenley*, xix, 140; 0 Bng. 266. *Clarkson v. Lawson*, xix, 209; 6 Bng. 587.

Plaintiff is not bound to allege a request, except where the object of the request is to oblige another to do something. *Amory v. Broderick*, xviii, 600; 2 Chit. 520.

In trespass for driving against plaintiff's cart. It is an immaterial allegation who was riding in it. *Howard v. Peete*, xvii, 633; 2 Chit. 315.

In assumpsit, the day alleged for an oral promise is immaterial, even since the new rules. *Arnold v. Arnold*, xxvii, 47; 3 B. N. C. 81.

Where the terms of a contract pleaded by way of defence are not material to the purpose for which contract is given in evidence, they need not be proved. *Robson v. Falloes*, xxvii, 186; 3 B. N. C. 302.

Distinction between unnecessary and immaterial allegation. *Draper v. Garratt*, ix, 11; 2 B. & C. 2.

Preliminary matters need not be averred. *Ebarpe v. Abbey*, xv, 637; 5 Ding. 193.

When allegations in pleadings are divisible. *Tapley v. Wamwright*, xxvii, 710; 6 B. & Ad. 395. *Hare v. Horton*, xxvii, 302; 5 B. & Ad. 715. *Hartley v. Burkill*, xxviii, 225; 6 B. N. C. 687. *Cole v. Creswell*, xxix, 355; 11 A. & E. 661. *Green v. Steer*, xii, 740; 1 Q. B. 707.

If one plea be compounded of several distinct allegations, one of which is not by itself a defence to the action, the establishing that one in proof will not support the plea. *Baillie v. Kell*, xxviii, 900; 4 B. N. C. 638.

But when it is composed of several distinct allegations, either of which amounts to a justification, the proof of one is sufficient. *Ibid.*

When is tender a material allegation. *Marks v. Lahee*, xxviii, 193; 3 B. N. C. 408. *Jackson v. Allaway*, xvi, 842; 6 M. & G. 442.

Matter which appears in the pleadings by necessary implication, need not be expressly averred. *Galloway v. Jackson*, xlii, 493; 3 M. & G. 960. *Junco v. Clarke*, xliii, 624; 5 B. & P. 104.

But such implication must be a necessary one. *Galloway v. Jackson*, xlii, 498; 3 M. & G. 960. *Prentice v. Harrison*, xiv, 532; 4 Q. B. 532.

The declaration against the drawer of a bill must allege a promise to pay. *Henry v. Burbridge*, xxviii, 234; 3 B. N. C. 601.

In an action by landlord against sheriff under 8 Anne, cap. 14, for removing goods taken in execution without paying the rent, the allegation of removal is material. *Smallman v. Pollard*, xvi, 1001.

In covenant by assignee of lesser for rent arrears, allegation that lesser was possessed for remainder of a term of 22 years, commencing, &c., is material and traversable. *Carvelk v. Balgrave*, v, 783; 1 B. & C. 531.

Maximum of allegation is the maximum of proof required. *Francis v. Steward*, xviii, 1; 5 Q. B. 984, 985.

In error to reverse an outlawry, the material allegation is that defendant was abroad at the issuing of the writ, and the averment that he so continued until outlawry pronounced, need not be proved. *Robertson v. Robertson*, i, 165; 6 Taun. 360.

Tender not essential in action for not accepting goods. *Boyd v. Lett*, i, 221; 1 C. B. 222.

Averment of trespasses in other parts of the same close is immaterial. *Wood v. Wedgwood*, i, 271; 1 C. B. 273.

Request is a condition precedent in bond to account on request. *Davis v. Cary*, lxi, 416; 15 Q. B. 418.

Corruptly not essential in plea of simoniacal contract, if circumstances alleged show it. *Goldham v. Edwards*, lxxi, 435; 16 C. B. 437.

Mode by which nuisance causes injury is surplusage. *Fay v. Prentice*, i, 527; 1 C. B. 828.

Allegation under per quod of mode of injury are material averments of fact, and not inference of law in case for illegally granting a scrutiny, and thus depriving plaintiff of his vote. *Price v. Belcher*, li, 58; 3 C. B. 58.

Where notice is material, averment of facts "which defendant well knew," is not equivalent to averment of notice. *Celchester v. Brooke*, liii, 339; 7 Q. B. 338.

Specimen Sheets sent by mail to all applicants.

LEGISLATIVE COUNCIL,

Toronto, 4th September, 1857.

EXTRACT from the Standing Orders of the Legislative Council.

Fifty-ninth Order.—"That each and every applicant for a Bill of Divorce shall be required to give notice of his or her intention in that respect specifying from whom and for what cause, by advertisement in the official Gazette, during six months, and also, for a like period in two newspapers published in the District where such applicant usually resided at the time of separation; and if there be no second newspaper published in such District, then in one newspaper published in an adjoining District; or if no newspaper be published in such District, in two newspapers published in the adjoining District or Districts."

J. F. TAYLOR,

10-11.

Clark Legislative Council.