

amended so as to comply with the statute or else limited to the claim for breach of promise as aggravated by the alleged seduction, as in Precedent No. 49 in Odgers, p. 398.

Whatever is essential to the cause of action is a material fact, and should, therefore, be set out in the statement of claim, under Con. Rule 268. See *Phillips v. Phillips*, 4 Q.B.D. 127, at p. 133, where Brett, L.J., said: "If parties were held strictly to their pleadings under the present system, they ought not to be allowed to prove at the trial, as a fact on which they would have to rely in order to support their case, any fact which is not stated in the pleadings. Therefore, they ought to state every fact upon which they must rely to make out their right or claim."

The defendant to have ten days after amendment to plead. Costs of the motion will be in the cause.

MIDDLETON, J., IN CHAMBERS.

MARCH 31ST, 1913.

*RE MAHER.

Infants—Custody—Agreement by Father with Children's Aid Society—Rights of Mother after Death of Father—Welfare of Infants—Difference in Religion—Proceedings in Juvenile Court—Order for Delivery of Children to Society—Review by High Court on Habeas Corpus—Neglected Children's Act, 8 Edw. VII. ch. 59, secs. 2(1), 10-14—Illegitimate Child—Right of Custody—Costs of Application.

Motion by Mary Helen Metcalf, the mother of the infants Ilene May Maher and Frances Maud Maher, on the return of a writ of habeas corpus, for an order awarding the applicant the custody of the infants.

A. R. Hassard, for the applicant.

T. L. Monahan, for the St. Vincent de Paul Children's Aid Society.

MIDDLETON, J.:—On the return of the writ, it was agreed that the truth and sufficiency of the return should be determined upon viva voce evidence. The evidence was taken before me on the 12th March inst.

*To be reported in the Ontario Law Reports.