the evidence, that the act done by Jarman was done in the course of his employment.

In my opinion, the charge and judgment were right, and the present motion should be dismissed with costs.

CARTWRIGHT, MASTER. DECEMBER 29TH, 1904.

CHAMBERS.

GLOSTER v. TORONTO ELECTRIC LIGHT CO.

Pleading—Statement of Claim—Personal Injuries by Electric Wires—Subsequent Removal of Wires—Admissibility of Evidence.

This action was brought to recover damages for injuries to a boy by touching the wires of defendant company on Glen road bridge. It was alleged that the wires were not properly guarded, and that they were in a dangerous position, which lured unsuspecting children to their certain injury and possible death.

The 9th paragraph of the statement of claim concluded with these words: "After the injury to the plaintiff, the defendants insulated the said wires and removed them further away from the said bridge to prevent a recurrence of injury to other members of the public such as the plaintiff sustained."

The defendants moved to strike out this as being contrary to the Rules.

R. H. Greer, for defendants.

W. N. Ferguson, for plaintiff.

THE MASTER.—I think the motion must succeed, on two grounds:

1st. Because the case of Cole v. Canadian Pacific R. W. Co., 19 P. R. 104, seems exactly in point.

2nd. Because, even if evidence of the facts pleaded is admissible at the trial, it is only evidence. It cannot possibly be one of the material facts which the plaintiff must prove in order to succeed at the trial. Being only evidence at the most, it should not be pleaded. This question is well illustrated by the case of Blake v. The "Albion," 35 L. T. 269, where allegations of fact were struck out of the statement of claim, though evidence of them was allowed to be given at the trial. This appears from the report of the same case on motion after the trial, in 4 C. P. D. 94.

Mr. Ferguson contended that such facts could be proved at the trial, and might be pleaded. He relied on Atchison