

Practice Notes

1: AMENDING WRIT

Order 20 Rule 4 provides as follows:

"Whenever a statement of claim is delivered the plaintiff may therein alter, modify or extend his claim without any amendment of the indorsement of the writ."

This rule is subject to some exceptions, inter alia, the one that the plaintiff cannot by enlarging the claim in his statement of claim, introduce a new and wholly different cause of action not referred to in the writ.

Under Order 28 Rule 1, where a plaintiff wishes to claim on any cause of action not mentioned in his writ, he can do so only by leave of the Court. However, amendments which would prejudice the rights of opposite parties existing at the date of the proposed amendment, are not as a rule allowed. A plaintiff will not be allowed to amend by setting up fresh claims which, since the issue of the writ, have become barred by the Statute of Limitations or any other statute.

MOCKLER v TOWN OF GRAND FALLS et al per Michaud C.J.K.B.

2: COUNTERCLAIM

Where the original action is dismissed for want of prosecution, the counterclaim may still be proceeded with.

BEYEA et al v. WALSH et al per Michaud C.J.K.B.

3: CRIMINAL CODE 285 (2)

An information which alleges any one or more of the three matters contained in section 285 (2) namely; failure to stop, failure to tender assistance and failure to give name and address is sufficient in law upon which to found a conviction.

GRASS v. REGINA per Keirstead Co. Ct. J.

4: DECEASED PARTY

The defendant in the original action died before a judgment was delivered. The plaintiff subsequently made an application to the Court. Held, the Executor of the deceased defendant should be made a party to the action and served with notice before any further applications could be considered.

SEARS v. COLE per Dysart Co. Ct. J.
Solicitor for Plaintiff: W. G. Stewart
Solicitor for Defendants: C. V. Cole

5: DISCOVERY

The defendants applied for examination for discovery of an officer of the plaintiff corporation. The officer selected was unable to furnish certain information. Application was made to have a former manager of the plaintiff corporation examined as an officer under Order 31 (a) Rule 19 (2). It was held that the question whether the former manager was an officer or merely an employee of the plaintiff would be left up to the trial judge and an order in the alternative was granted for the examination of the manager as an officer or employee of the corporation.

ELLIS MOTORS LTD. v. BALOISE INSURANCE CO. et al
per Anglin J.

Solicitor for Plaintiff: Ritchie, McKelvey & McKay
Solicitor for Defendant: Gilbert McGloan & Gillis

6: EVIDENCE

Before petition for divorce had been served an application was made to take evidence of a witness *de bene esse*. An order was made allowing the evidence to be taken and the petitioner was granted leave to apply after the petition had been served for an order that the evidence so taken be used upon the trial.

G. v. G. per Anglin J.
Solicitor for Petitioner: Ritchie, McKelvey and McKay.

7: INJUNCTION

Upon an *ex parte* application for an injunction to restrain members of a labour Union on strike from molesting the premises of the plaintiff the injunction was limited in so far as parading and congregating was concerned to parading and congregating in excess of lawful picketing.

LAWSON MOTORS LIMITED v. LODGE 1700 I. A. M.
per Anglin J.

Solicitor for Plaintiff: Ritchie, McKelvey & McKay

8: LUNACY COMMITTEE'S COMPENSATION

Where the committee of the estate and persons of a lunatic passed his accounts, the court allowed the committee compensation based on income and receipts. The committee of the person was also allowed compensation for services rendered in taking care of the person.

Re: ADA J. TEED Per Harrison J.

9: STATEMENT OF CLAIM

A plaintiff claimed damages for assault, illegal arrest and false imprisonment which were endorsed on the writ of summons. Allegations referring to malicious prosecution will not be allowed in the statement of claim until the writ is amended. Where the writ cannot be amended because such would institute a new action, then barred by statute, all such allegations will be struck out of the statement of claim.

MOCKLER v. TOWN OF GRAND FALLS et al

per Michaud C.J.K.B.

10: THIRD PARTY PROCEEDINGS

Third party proceedings are not available in the County Court.

HOGAN v. HARVEY & CITY TRANSIT LIMITED

per Keirstead Co. Ct. J.

Solicitor for Plaintiff: J. B. M. Baxter

Solicitor for Defendant: J. Paul Barry

Solicitor for 3rd Party: Gilbert, McGloan & Gillis

11: TORT

(Difference between False Imprisonment and Malicious Prosecution)

There is no doubt that a cause of action for assault, false arrest and false imprisonment is altogether different from a cause of action for malicious prosecution. Assault, illegal arrest and false imprisonment are trespass to the person, while malicious prosecution of a person is an injury to his character rather than his person, and gives rise to a right of action different in its character, in the manner in which it should be conducted and in the nature of the damages to be proven and awarded from the right to an action for direct trespass to his person.

MOCKLER v. TOWN OF GRAND FALLS et al

per Michaud C.J.K.B.

12: WANT OF PROSECUTION

Where the original action has been dismissed, time for further proceedings in the counterclaim is calculated as from the date the original action was terminated. A motion made to dismiss the counterclaim for want of notice of trial will be refused where the time allowed by the rules, when calculated from the date when the original action was disposed of, had not expired.

BEYEA et al v. WALSH et al

per Michaud C.J.K.B.

13: WITNESS

The name of a police informant is privileged from disclosure on cross examination on the grounds of public policy.

REGINA v. ROY per Keirstead Co. Ct. J.

ERIC L. TEED