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THE PHILOSOPHY OF PLEADING.

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In every system of jurisprudence there must necessarily be some method of ascertaining the matters to be adjudicated; for, otherwise, the defendant would not know how to make his defense, and the judge would not know the real point in dispute. The essentials of every litigation are four: First, a party complaining; second, a party complained of; third, a matter of complaint; and, fourth, a court empowered to determine the justness of the complaint.

The jurisdiction of a judge is more circumscribed than is generally supposed. He must not only be authorized by law to determine the general questions involved in the controversy, but he must also be specially called upon by the party complaining to determine a particular question within his jurisdiction. When a suit is brought in court the judge has no right to generally investigate all the dealings and relations between the parties, and determine what wrongful acts or omissions anywhere appear. His right is circumscribed by the question submitted to his decision; and this question must be one within his general jurisdiction. If, therefore, his determination embraces a matter not submitted to his adjudication, to that extent his decision is coram non judice and absolutely void. The statute circumscribes his general jurisdiction, and the pleadings circumscribe his jurisdiction in the particular case; and he must keep with both.

This being the law, the importance of a proper presentation of the matters in controversy cannot be over-estimated. This presentation is termed pleading, and is a controversial science based on law and logic, and designed to so formulate the contentions of litigants as to best develop the questions of law and fact involved in the controversy, to the end that the court may be thereby enabled to readily and certainly determine them.

1 Sto. Eq. Pl., § 1.
2 Judicis est judicare secundum allegata et probata.
Skill in pleading necessarily presupposes a knowledge of the law applicable to the facts sought to be submitted to the adjudication of the court; for, unless the pleader knows this law, he will be unable to frame a concise and logical statement of the facts on which he relies. The logic of syllogisms is also of great importance in aid of a correct understanding of the science of pleading; for, as already stated, this science is based on law and logic, and, therefore, presupposes a knowledge of both. A pleader can no more draw a good declaration in law, or bill in equity, without knowing the general rule of law or equity, applicable to the particular case, than a tailor can make a suit of clothes to fit a particular person without knowing the size and proportions of such person. Presupposing, therefore, a knowledge of the general rule of law or equity, applicable to the particular case, the purpose of the party complaining is to make such a special statement of facts as will bring the case within this general rule, and entitle him to the benefit thereof. On the other hand, the object of the party defending is: First, to deny that there is any such general rule as the plaintiff presupposes, (and this denial raises a question of law); or, second, to deny one or more of the plaintiff's material allegations of fact, and thus show that his case is not within the general rule presupposed, (thereby raising a question of fact by way of a general or special traverse); or, third, to admit the facts set forth by the plaintiff, but allege other facts which will draw his case within some exception to the general rule, (which is called a defense by way of confession and avoidance). And these objects of both plaintiff and defendant are the same, and their pleadings are substantially the same, whether the suit be at law, or in equity; the only difference being that the pleadings in equity are less formal. 4 To illustrate the foregoing general propositions, let us take a suit to recover the amount of an alleged account, (which may be sued on either at law, or in equity). Presupposing that the suit is brought in a court having general jurisdiction of the subject-matter, the plaintiff, (under the general rule that a person who is indebted on an account can be compelled to pay it by process of law) will, in his pleading, whether it be a declaration

3 Sometimes called *common* traverse. Heard's Steph. on Pl., 153-164.
4 This dissertation is equally applicable to pleadings under the code practice, or "reformed procedure." Indeed, the philosophy of pleading is one and the same in all courts, and in all systems; and he who comprehends this philosophy will have no trouble in adapting his pleadings to the requirements of any statutory system.
The philosophy of pleading.

At law or a bill in equity, set forth the account, and pray a judgment or decree for the amount thereof. If, on examining the declaration or bill, the case alleged is for an amount beneath or above the jurisdiction of the court, or if the account appears on its face to be barred by a statute of limitation, or to be based on an illegal or immoral consideration, the defendant may demur to the plaintiff's pleading, and demand the judgment of the court on its sufficiency. If, however, the plaintiff has made out a case within the general rule of law or equity applicable, and his case does not appear to be at the same time within some of the foregoing, or other, exceptions to the general rule, the defendant must file a plea, or answer: First, denying that he was ever liable on said account; or, second, confessing the account and avoiding it by showing that the plaintiff has kept back from the court material facts which will bring the case within some one or more of the exceptions to the general rule, as that the suit is barred by a statute of limitation, or that there has been an arbitration and award, or that the account has been closed by a note, or that there has been a release, or a satisfaction, or that there is a set-off, or some other valid matter in avoidance.

It will thus be seen, first, that the office of a declaration at law, and of a bill in equity, is to state a case within some general rule authorizing the court in which the suit is brought to render a decision in favor of the plaintiff; and, second, that the office of a demurrer is to show either that there is no such general rule of law or equity as the plaintiff presupposes; or, if there be, that the facts alleged by the plaintiff do not make out a case within such general rule, or else are within some exception to the rule; and, third, that the office of a plea, or answer, is either to deny some one or more of the plaintiff's material allegations, or to allege some new fact that will show that the plaintiff's case is within some exception to the general rule. To sum it all up briefly, the plaintiff's pleading claims a judgment or decree on the supposition that he has stated a case within some general rule of law, or equity, entitling him to the redress he seeks; a demurrer denies that the plaintiff on his own showing is entitled to such redress; and a plea or answer either seeks to strike out one of the plaintiff's material allegations of fact, or to inject into the case a new fact.

5 Material allegations are those necessary to bring the case within the general rule.

6 If the defendant desires to contest the jurisdiction of the court, he must do so by demurrer, if the want of jurisdiction appear on the face of the record; or by plea, if it does not so appear.
which will take the plaintiff's case out of the general rule under which he sues, or force it into an exception to that rule.+

The plaintiff's attorney will, therefore, readily see the necessity of thoroughly grasping the general rule of law within which he seeks to bring his client's case, before he begins to draw his bill, petition or declaration; for, when he well understands such general rule, he will know what facts are material and hence necessary to be alleged, and what facts are immaterial and may be omitted. No one can draw a logical and concise declaration or bill without keeping the general rule of law or equity in mind; and the result of an obscure conception of the general rule will inevitably be an obscure, prolix and chaotic pleading.

This general rule is sometimes called the "theory of the case;" and no case can be well commenced, or properly prosecuted or defended, without a thorough comprehension of this general rule, and the principal limitations and exceptions to it. The attorney must keep this general rule and its limitations and exceptions in mind while drawing his pleadings, taking his proof, making his argument, and drawing his orders, judgments and decrees. If, during the progress of the suit, the plaintiff's attorney discovers that his "theory of the case" is false in fact, he must amend his pleading so as to conform it to the real facts, if the real facts

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7 The following diagram will somewhat illustrate the text:

The large circle represents the general rule of law or equity relied on by the plaintiff; and the small circles represent the exceptions to that rule. It will be noticed that the small circles are not really within the large circle, but are formed by loops in its circumference, and thus limit its area, as exceptions limit the comprehension of the general rule. Using the case supposed in the text, the general rule, represented by the large circle, is that whosoever obtains goods from another must pay for them. The eight small circles represent eight exceptions to this rule, the person obtaining the goods not being bound to pay for them if, first, the account is barred by a statute of limitation; or, second, it was closed by a note; or, third, the obtainer was a minor, and the goods not necessaries; or, fourth, he was an agent and disclosed his principal; or, fifth, the goods proved worthless; or, sixth, the goods were a gift; or, seventh, the plaintiff released the defendant; or, eighth, the defendant has a valid set-off.

2. The office of a bill, petition or declaration, is to show a case within the general circle.

1. The office of a demurrer is to show, first, that there is no such general circle as the plaintiff's pleading supposes; or, second, if there is, the case stated
entitle him to relief; so, if the defendant learns of a new defense he must set it up in appropriate form.

It will thus be seen that a thorough understanding of both the facts and the law of the case is necessary to enable the pleader to make a proper presentation of his client's case. The law arises from the facts, and is, as it were, the shadow cast by the facts; and the object of the pleader is to state the material facts of his case in due and logical form. But this statement cannot well be made until the general rule of law, with its limitations and exceptions, is apprehended and understood.

From these premises it will be seen that the object of the plaintiff's attorney is to state and prove a case within some general rule of law or equity, entitling him to the judgment or decree he seeks; whereas, the object of the defendant's attorney is to show, first, that there is no such general rule as the plaintiff presupposes; or, second, if there be, that the facts alleged do not make out a case within such rule; or, third, if they do, that some one or more of the material facts alleged are false; or, fourth, that if the material facts alleged are true, there are other material facts that will take the case out of the general rule, or force it into some of the exceptions to that rule. And the office of pleading by the plaintiff does not come within such circle; or, third, that it is within some exception to that circle.

3. The office of an affirmative plea in bar is to allege some new fact that will bring the case within one of the exceptions to the general circle.

4. The office of a negative plea in bar is to deny some allegation of the plaintiff which, if false, will either take his case out of the general circle, or force it within some of the circles of exception.

5. The office of an answer in equity, or under the code practice, is to deny any or all of the allegations of the plaintiff necessary to bring him within the general circle; or to allege any new fact or facts that will bring his case within one or more exceptions to the general circle; or to both deny what the plaintiff alleges, and to allege new facts. And thus an answer may perform the office of either an affirmative or negative plea, or of both. In short, the plaintiff tries to make out a case within the general circle, and the defendant tries to show either that there is no such general circle, or that the plaintiff is not in it, or that he is within some of the circles of exception.

Pleas in bar and pleas in abatement are not distinguished in this article, for the reason that pleas in abatement are subject to the general principles herein discussed. The office of a plea in abatement, whether affirmative or negative, being to show that if the general rule is as supposed by the plaintiff, nevertheless the court, for some reason shown in the plea, has no jurisdiction to enforce that general rule, under the circumstances disclosed by the plea.

8 *Ex facto jus oritur.*

9 It has been quaintly said, "Truth is the goodness and virtue of pleading as certainty is the grace and beauty of it." 2 Saund. Pl. and Ev. 659.
is to frame the allegations and denials of the parties with such legal and logical precision as, first, to present the real question in controversy; second, to limit the range of evidence and focalize the facts; and, third, to enable the court to see the points in issue, unclouded by extraneous matters, and unmixed with unnecessary circumstances.\(^\text{10}\) And to do this well the pleader must understand the philosophy of pleading.

\(^\text{10}\) It is sometimes said that one of the objects of pleading is to have a record which will prevent the same matter being relitigated after having been once adjudicated on its merits; but this is one of the useful results of pleading rather than one of its objects. The object of pleading has reference to the litigation pending, and not to a litigation that may be instituted in the future.