

set forth in the declaration, the plaintiff may avoid the effect of such plea, by restating his cause of action with more particularity, consistently however with the more general statement set forth in the declaration.

106. One new assignment only shall be pleaded to any number of pleas to the same cause of action; and such new assignment shall be consistent with and confined by the particulars, if any, delivered in the action, and shall state that the plaintiff proceeds for causes of action different from those which the pleas profess to justify, or for an excess over and above what the defences set up in such pleas justify, or both.

New assignment.

107. No plea which has already been pleaded to the declaration, shall be pleaded to such new assignment, except a plea in direct denial, unless by leave of the court; and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial upon the merits.

Leave of court required.

TITLE SECOND.

RULES WHICH MAKE THE ISSUE A CERTAIN ONE.

ARTICLE 1st.

OF NAMES OF PERSONS.

108. The declaration as well as the summons shall set forth accurately the christian names and surnames of both parties, and the christian names and surnames of persons not parties to the action: but where the name of a person, not a party to the action, shall not be known, an allegation of the fact shall be sufficient.

Shall set forth name.

109. Wherever a party shall be sued by a wrong christian name or suaname, or both, upon affidavit or other proof to the satisfaction of the Court, at any time before trial, that the writ or process has been served upon the person intended to be sued, the court shall, upon motion, direct any writ, declaration or other pleading, or any entry, to be amended, by inserting therein, the true name of the party, on such terms as the court shall deem fit.

Suit brought in a wrong name may be amended.

110. A mistake in the name either of a party to the action, or of a person not a party to the action, may be objected to as a variance, at the trial.

May be objected to at trial.