

BETWEEN:

BERT W. WOON, ..... APPELLANT;

AND

MINISTER OF NATIONAL REVENUE, ..... } RESPONDENT.

1948  
Nov. 20  
Dec. 22

*Practice—General Rules and Orders, Rules 95 and 96—General denials—Evasive denials—Specific denials—Pleadings.*

*Held:* That in this case these paragraphs of the statement of defence cannot be deemed general denials of the facts alleged in the statement of claim. They are specific in denying each and every one of the allegations referred to in the specifically named paragraphs of the statement of claim. The appellant is not left in doubt as to what is meant by these clauses in the defence. They mean that he will be required to prove each statement of fact which is so denied.

MOTION to strike out certain paragraphs of the statement of defence—or alternatively for particulars—as contrary to the provisions of Rules 95 and 96 of the General Rules and Orders of this Court.

The motion was heard before the Honourable Mr. Justice Cameron at Toronto.

*John Jennings, K.C.* for the motion.

*G. W. Mason, K.C. contra.*

1950.  
 WOOD  
 v.  
 MINISTER  
 OF  
 NATIONAL  
 REVENUE  
 Cameron J.

CAMERON J. now (December 22, 1948) delivered the following judgment:

Clauses 5 and 8 of the statement of defence herein are as follows:

5. Denies the allegations set forth in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 thereof.

8. Denies the allegations contained in paragraphs 17, 18, 19, 20, 21, 22 and 23 thereof.

The appellant moves to strike out the statement of defence—or alternatively for particulars—on the ground that the pleading in this form is contrary to the provisions of Rules 95 and 96 of the General Rules and Orders of this Court. These Rules are as follows:

95. *Allegations of fact must not be demed generally.* It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the information, petition of right or statement of claim, but he must deal specifically with each allegation of fact of which he does not admit the truth.

96. *Allegations not to be denied evasively.* When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. And when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

It is alleged that the clauses are merely general denials of the allegations in the statement of claim, that they are evasive and do not answer the point of substance, and that therefore the appellant and his counsel are unable to understand the issues they will be called upon to meet at the trial “unless and until the respondent sets forth in a proper pleading the facts and circumstances upon which he relies by way of defence to the allegations set forth in the statement of claim.”

I have carefully read the statement of claim and the statement of defence, and in my opinion the facts and circumstances on which the respondent proposes to rely at the trial to support his denial of the allegations in the statement of claim are clearly set forth and should present no difficulty to counsel for the appellant in ascertaining what he is required to approve or to meet at the trial. The respondent makes certain admissions of fact, admits others

with qualifications and corrections as to date, asserts the validity of the assessment now in appeal and concludes with the following paragraph:

1950  
 WOOD  
 v.  
 MINISTER  
 OF  
 NATIONAL  
 REVENUE  
 Cameron J.

9. With respect to the whole of the Statement of Claim, the Respondent says that on the winding-up, discontinuance or re-organization of the business of Arrow Bedding Limited the Appellant was deemed to have received a dividend of \$78,165 87 in 1944 on the distribution of the property of the said Arrow Bedding Limited in accordance with the provisions of subsection 1 of section 19 of the Income War Tax Act; that therefore the Appellant was correctly assessed for Income Tax under the provisions of the said Act.

I have read carefully all the cases to which I have been referred by counsel for the appellant. In *Merriman v. Diamond* (1), Orde, J., in considering an appeal from the Master, held that a paragraph in the statement of defence reading, "But save as hereinafter expressly admitted denies all the other allegations contained therein and puts the plaintiff to the proof thereof," should be struck out as offending against the provisions of Rule 142 of the Rules of Practice of Ontario (which in many ways is similar to Rule 95 of this Court) in that it was a general denial. In the same proceedings a new statement of defence was delivered, and therein the defendant denied specifically the allegations contained in seven named paragraphs of the statement of claim and put the plaintiff to the proof thereof. The Master allowed this statement of defence to stand and his decision was affirmed by Lennox, J. Notwithstanding certain comments made by Mowat, J., who gave leave to appeal, the Court of Appeal confirmed the order of Lennox, J.

Orde, J., in that case dealt with certain other paragraphs of the statement of defence and at p. 357 said:

Counsel for the plaintiff contended that in answering the allegations of the plaintiff as to the defendant's alleged false and fraudulent statements, it was incumbent upon the defendant to set forth the statements which the defendant is willing to admit or asserts that he did in fact make. But this must depend upon the nature of the defence which the defendant intends to make out at the trial. The burden of proof in an action of deceit is upon the plaintiff, and as a matter of pleading the defendant may make out a sufficient defence if he denies the allegations of the plaintiff in accordance with the Rules. He must not deny generally, which means that, if he denies, his denial must be specific. The real vice of para. 2 is not so much that the denial is of a general character, but that it is evasive.

(1) (1922) O.L.R. 354.

1950  
 }  
 WOON  
 v.  
 MINISTER  
 OF  
 NATIONAL  
 REVENUE  
 ———  
 Cameron J.  
 ———

It appears, therefore, that what the defendant must set forth depends upon the nature of the defence which the defendant intends to make out at the trial. In this appeal the burden of proof is on the appellant and as a matter of pleading the respondent may make out a sufficient defence if he denies specifically the allegations in the statement of claim, without evasion and in accordance with the Rules. If, for instance, one is charged with something which he has not done and with which he has had no connection whatever, the only allegation of fact which he can plead is that he did not do it.

Paragraphs 5 and 8 of the statement of defence, in my view, cannot be deemed "general denials" of the facts alleged in the statement of claim. They are specific in denying each and every one of the allegations referred to in the specifically named paragraphs of the statement of claim. The appellant is not left in any doubt as to what is meant by these clauses in the defence. They mean that he will be required to prove each statement of fact which is so denied.

It may be convenient to consider paragraphs 5 and 8 of the statement of defence with regard to the paragraphs in the statement of claim to which they refer. Generally speaking, they fall into two classes. Paragraphs 5, 6, 7, 8, 9, 13, 14, 15, 16 and 17 set out certain circumstances in the affairs of the appellant and the companies with which he was formerly connected. These are all matters entirely within the knowledge of the appellant and not within the knowledge of the respondent. Particulars in regard to these matters could not, therefore, be directed. Nor does the respondent desire to set up any facts or circumstances in connection therewith beyond those raised by the appellant himself. He merely puts the proof thereof on the appellant, as he is entitled to do.

Paragraphs 10 to 12, and 19 of the statement of claim refer to certain interviews with the former Commissioner of Taxation and the Deputy Minister (Taxation) at which certain rulings, suggestions and proposals are alleged to have been made, and one or more of these rulings or offers are said to have been acted on by the appellant and his company. Paragraph 18 alleges that by reason of what occurred the respondent is estopped from questioning the

legality and sufficiency of the steps taken, and from including in the income of the appellant the sum now added by the respondent. Again, all of these alleged facts are within the knowledge of the appellant. The respondent denies them all, not generally, but specifically as to each allegation in each of the paragraphs. The appellant cannot be in any doubt as to what he will be required to do at the trial—he must prove each of the allegations which he has made. The issue of estoppel is raised by the appellant and clearly met by the respondent in his denial that the respondent is estopped. No doubt objection will be taken to any evidence as to what was said or done by either of the two gentlemen referred to and the question of estoppel as against the Crown will be argued. But those matters are clearly raised in the proceedings and can cause no surprise to appellant's counsel.

1950  
 WOOD  
 v.  
 MINISTER  
 OF  
 NATIONAL  
 REVENUE  
 ———  
 Cameron J.  
 ———

If, for example, the respondent desired to rely at the trial on the fact that the officials named had given rulings or offers other than those put forward by the appellant, that would be a fact or circumstance that the respondent would have to refer to in his statement of defence. But he has not chosen to do so, and as admitted by Mr. Mason, could not introduce evidence on that point in the present state of the pleadings.

Paragraphs 20, 21 and 22 contain allegations that the appellant has paid all income tax to which he could be properly assessed for the year 1944. Paragraph 23 contains a statement that the appellant proposes to pay into Court a certain sum of money without prejudice to his claim that he is not liable to any tax beyond what had previously been paid. All these allegations are properly dealt with by the denial contained in clause 8 of the Statement of Defence, coupled with clause 9 thereof which I have quoted above.

On the facts of this particular case I find that the statement of defence is in conformity with the rulings of this Court. The motion will therefore be dismissed, with costs to the respondent in the cause.

*Judgment accordingly.*