

1924
Feb. 27.

THE ROYAL TRUST COMPANY.....SUPPLIANT;
AND
HIS MAJESTY THE KING.....RESPONDENT.

Practice—Function of particulars—In what instances ordered—Object of examination for discovery.

- Held:* That the function of particulars is to limit the generality of allegations in a pleading, and define the issues to be tried; as distinguished from that of the examination for discovery, which is to get at the knowledge of the adverse party;
2. That particulars will not be ordered of facts within the knowledge of the party applying, nor particulars of the character of the act which produced the damage and the circumstances under which it was done.
 3. That while no precise rule can be laid down as to the degree of particularity required in any given case, in this case, the court, in the exercise of its discretion, having regard to the circumstances and nature of the facts alleged, ordered that particulars should be furnished of a lump sum claimed as damages, by allocating a certain amount to each item of damage.

(1) [1915] 21 B.C.R. 540; 17 Ex. C.R. 207. (2) [1921] 21 Ex. C.R. 226.

APPLICATION by respondent for an order for particulars of certain allegations of Petition of Right.

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Application heard by the Honourable Mr. Justice Audette in Chambers.

Geo. F. Macdonell for the suppliant.

W. Stuart Edwards for the respondent.

The facts and questions of law raised are stated in the reasons for judgment.

AUDETTE J. this 27th February, 1924, delivered judgment.

The function of particulars is to limit the generality of the allegations of the pleadings and thus define the issues which have to be tried and as to which discovery can be had (22 Hals. 453) and before an order is made to that effect, it must be shown to the satisfaction of the judge, that the respondent might be embarrassed in his defence or at trial without such particulars and that justice requires their delivery (Audette's Practice, 440).

Now, in the present case the application for particulars comes long after the issues have been joined,—the statement of defence was filed on the 15th October, 1923 without such particulars. Therefore the particulars are not needed for the preparation of the defence and it does not appear that an examination for discovery was resorted to.

After all, as said by the learned Chancellor in *Smith v. Boyd* (1):

Particulars are ordered with reference to pleadings and are distinguished from examination for discovery, which is to get at the knowledge of the adverse litigant.

The application is now made, about 9 days before the trial and an order for delivery of long detailed particulars would be burdensome at this stage.

There is no precise rule as to the degree of particularity required in any given case, however, regard must be had to the circumstances and nature of the acts or facts alleged. In the present case the petition of right sets out fully the material grounds or facts upon which relief is sought and shows the ground upon which damage is claimed. The

(1) 17 P.R. 467.

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petition discloses clearly what case the respondent has to meet and in the present instance these facts must be with- in the knowledge of the party applying, since the suppli- ant contends the damage is the result of their act or the act of those for whom they are answerable.

Particulars cannot be asked of the character of the act which produced the damage and the circumstances under which it was done. No party is bound to disclose his evidence before trial.

However, while the necessity of this application admits of doubt, I see no reason why the suppliant should not be ordered to give particulars showing how the sum of \$7,500 is made up (22 Hals. 454) that is the suppliant is hereby ordered to allocate a certain amount to each count or item of damages, mentioned in the petition of right which will ultimately show how that \$7,500 is made up. Such particulars to be supplied and served upon the re- spondent not later than the 4th March next.

Costs to be costs in the cause.

Ordered accordingly.