

Order made for prohibition with costs.

R. R. Loscombe, Bowmanville, solicitor for plaintiffs.

Simpson & Blair, Bowmanville, solicitors for defendant.

MEREDITH, C.J.

APRIL 10TH, 1902.

CHAMBERS.

UDA v. ALGOMA CENTRAL R. W. CO.

*Particulars—Statement of Defence—Material on Application for—
Order after Issue Joined.*

Action by servant against master for negligence causing personal injuries. The defendants alleged (3) that the injury was caused by the negligence of the plaintiff, and (5) that it was caused by the negligence of the plaintiff's fellow-servant. The Master in Chambers ordered the defendants to give particulars of these defences. The defendants appealed.

W. E. Middleton, for defendants.

H. L. Dunn, for plaintiff.

MEREDITH, C.J.—The material was an affidavit of the plaintiff's solicitor stating that the particulars were required for the purpose of pleading, there being no affidavit from the plaintiff that the nature of the defence intended to be set up was not known to him. Having regard to the nature of the action and these circumstances, the order should not have been made, and I am unable to see what good purpose it can serve except to add to the costs of the litigation. . . . Also, it is manifest that the particulars were not needed for the purpose of pleading, for when the notice of motion was served the pleadings were closed and the cause was at issue.

Appeal allowed; costs to the appellants in any event.

Denton, Dunn, & Boulton, Toronto, solicitors for plaintiff.

Hamilton, Elliott, & Irving, Sault Ste. Marie, solicitors for defendants.

MEREDITH, C.J.

APRIL 10TH, 1902.

CHAMBERS.

PENNINGTON v. MORLEY.

*Mechanics' Liens—Action begun by Statement of Claim—Service out
of Ontario—Statutes and Rules—Powers of High Court of
Justice.*

Application by defendants Crosby and Nordyke in an action to enforce a mechanic's lien, which was commenced by