

BLACK V. CANADIAN COPPER CO.—MASTER IN CHAMBERS—
SEPT. 25.

Particulars—Statement of Claim—Motion before Delivery of Defence—Absence of Affidavit—Nuisance—Damages.—This action was brought by a florist residing at Sudbury to restrain the defendants “from continuing to allow the escape of noxious vapours, gases, acids, smokes, etc., from their roastbeds and smelter on to the lands of the plaintiff and the vegetation thereon.” The plaintiff also claimed \$5,000 for damages already suffered. In the 4th paragraph of the statement of claim it was said that the defendants “wrongfully and negligently permitted and allowed the said noxious vapours, gases, acids, and smoke to escape,” and thereby caused the plaintiff great damage in respect of his plants, flowers, trees, etc. In the 5th paragraph it was said that the plaintiff, in consequence of the continued damage, had been obliged, at great sacrifice, to sell his property, and must move some miles from Sudbury if he was successfully to carry on his business, in case the defendants were permitted to continue their present methods of smelting. The defendants, before pleading, demanded particulars, under the 4th paragraph, of the negligence therein charged, as well as of the plants, etc., said to have been destroyed or injured. As to paragraph 5, particulars were asked as to what was meant by the sale of the lands at a great sacrifice. The plaintiff’s solicitors in reply sent a telegram saying, “Defendants have all particulars referred to.” The defendants thereupon moved to set aside the statement of claim, as not complying with Con. Rule 268, and in particular paragraphs 4 and 5, as being embarrassing because indefinite, or for particulars. The Master referred to *Tipping v. St. Helen’s Smelting Co.*, 4 B. & S. 608, 616, 11 H.L.C. 642; *Smith v. Reid*, 17 O.L.R. 265; and said that the one material fact on which the plaintiff must rely was that damage had been caused to his property by the defendants’ works. This was sufficiently and plainly alleged in the 4th paragraph, and no particulars were necessary at this stage. As to the 5th paragraph, if the defendants were held liable, the damages payable to the plaintiff would most probably be a matter of reference and would not be gone into at the trial, which would, no doubt, be before a Judge without a jury. The Master also drew attention to the absence of any affidavit by the defendants that the particulars asked for were necessary for pleading, and said that this omission was suggestive, in face of