

Defendant before pleading asked for 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 "defendant has all particulars referred to."

The defendant thereupon moved to set aside the statement of claim as not complying with Rule 268 and in particular paragraphs 4 and 5 as being embarrassing because indefinite; or for particulars. The only material in support was the statement of claim itself and the letter and telegram in reply already referred to.

H. E. Rose, K.C., for motion.

C. M. Garvey, for plaintiff contra.

CARTWRIGHT, K.C., MASTER:—This case is similar in its facts to those of the leading case of *Tipping v. St. Helen's Smelting Co.*, 4 B. & S. 608 and 616, and affirmed in the House of Lords, 11 H. L. C. 642. There the declaration used the words "wrongfully and injuriously," and it would seem that in the present case negligence need not have been alleged as the liability of the defendant company must depend on the facts and "locality and all other circumstances must be taken into consideration," in determining the right of the plaintiff to the relief asked.

The whole question of the right to particulars was fully discussed in *Smith v. Reid*, 17 O. L. R. 265. Here too, as in that case, the plaintiff may rely on the doctrine of *res ipsa loquitur*, leaving the defendants to escape liability if they can shew any grounds such as are indicated in the judgments in the *Tipping Case*.

This disposes of the motion so far as the 4th paragraph is concerned. The one material fact on which the plaintiff must rely is that damage has been caused to his property by the defendant's works. This is sufficiently and plainly alleged and no particulars are necessary at this stage. As to the 5th paragraph if the defendant company is held liable the damages payable to plaintiff would most probably be a matter of reference and would not be gone into at the trial, which no doubt will be taken by a Judge without a jury.