

GEO. S. HOLMESTED, K.C.

NOVEMBER 13TH, 1912.

CHAMBERS.

## FULLER v. BONIS.

4 O. W. N. 306.

*Practice—Particulars—Motion to Strike out Certain Paragraphs of Statement of Claim—Breach of By-law Pleaded—Inability of Plaintiff to give Further Particulars—Motion Dismissed—Costs.*

Motion for particulars of certain paragraphs of the statement of claim and to strike out certain other paragraphs as irrelevant in an action for an injunction against a nuisance in the working of a quarry. The paragraphs sought to be stricken out alleged breach of a municipal by-law by defendants, and plaintiff had been examined for discovery and had claimed, on oath, that he could give no further particulars other than certain already given in answer to defendants' demand.

HOLMESTED, K.C., in Chambers, dismissed motion, costs to plaintiff in any event of cause.

"Whether the non-performance of a statutory duty which causes injury to an individual gives him a right of action, depends on the purview of the legislature in the particular statute, and the language which they there employed."

*Cowley v. Newmarket*, L. B. 1892, A. C. 352; *Saunders v. Holborne, Dis. Bd.*, 1895, 1 Q. B. 64, and *Baron v. Portslade Dis. Ct.*, 1900, 2 Q. B. 588, referred to.

Motion by defendant for particulars of the statement of claim.

E. C. Cattnach, for the defendant.

S. S. Mills, for the plaintiff.

GEO. S. HOLMESTED, K.C.:—This is an action for an injunction to restrain the defendants from so working their quarry as to be a nuisance to the plaintiff. The defendant moves for better particulars of the various specific wrongful acts mentioned in the statement of claim. He also moves to confine the particulars already delivered to acts occurring antecedently to the issue of the writ. And to strike out paragraph 17, which alleges the provisions of a municipal by-law, and that part of 18, which claims that the defendants have acted in violation thereof.

The plaintiff has delivered certain particulars prior to the motion in answer to a demand of the defendants' solicitors; and the plaintiff has also been examined for discovery and questioned particularly as to the allegations concerning which