

MASTER IN CHAMBERS.

OCTOBER 30TH, 1912.

WALL v. DOMINION CANNERS.

4 O. W. N. 214.

Pleading — Statement of Claim — Motion to Strike out Portions — Irrelevancy — Embarrassment — Motion for Particulars before Pleading — Practice — Affidavit — "Arrangement" for Transfer of Shares — Particulars of Time, Place, Persons, etc.

Motion by defendants for particulars of certain paragraphs of the statement of claim and for an order striking out certain other paragraphs. The action was brought against defendant company and two of its directors on an alleged agreement to give plaintiff 100 shares of defendant company's common stock for services rendered by him.

MASTER-IN-CHAMBERS ordered that particulars of the time and place and the persons negotiating the alleged agreement should be given and refused to strike out portions of the statement of claim which set out facts which would make the alleged agreement natural and convenient.

Costs to plaintiffs in cause, as motion was launched without awaiting an answer to the demand for particulars served.

An affidavit in support of a motion for particulars should be made by the party moving or its officer and not by a solicitor's clerk and should shew that the particulars sought are necessary for pleading not for preparation for trial.

Smith v. Boyd, 17 P. R. 463, and

Todd v. Labrosse, 10 O. W. R. 772, referred to.

This action was brought by plaintiff against the company and two other persons requiring "the defendants to transfer to him 100 shares of common stock in the defendant company." The company moved, before pleading, for particulars of the statement of claim—to strike out paragraphs 5, 6 and 7 as embarrassing.

M. Lockhart Gordon, for the motion.

Frank McCarthy shewed cause.

CARTWRIGHT, K.C., MASTER:—The motion is supported only by an affidavit of a clerk in the office of the defendant company's solicitors. This states that the deponent has charge of this matter, that he has read over the statement of claim, and has been advised by counsel and verily believes, that it would be impossible for the defendants to proceed with the trial or to have a fair trial of the action until the said particulars have been delivered. He is also advised by counsel and verily believes that paragraphs 5, 6 and 7 are embarrassing and should be struck out. There are two serious objections to the sufficiency of this affidavit.