

asked for by the plaintiff after the pleadings had been closed. The action was for damages for the death of the plaintiff's husband caused by alleged negligence of the defendants. The defendants set up contributory negligence on the part of the deceased and the plaintiff amended her statement of claim in reply to that defence. Afterwards, and pending an examination of one of the defendants' officers for discovery, the plaintiff made this motion for particulars of the alleged negligence of the deceased.

*Held*, that, in the absence of special circumstances, particulars will not be ordered after the close of the pleadings.

The practice in England is based on the provisions of Order 19, Rule 6 and 7, to which there is no corresponding rule in the "King's Bench Act," and the Judicature Act has made no change in the practice formerly prevailing in this Court with regard to ordering particulars: *Smith v. Boyd*, 17 P.R. 467.

*Semble*, if the plaintiff had failed, upon the examination for discovery, to elicit the particulars she wanted, that might have been a special circumstance warranting an order to furnish them: *Dunston v. Niagara*, 4 O.W.R. 218; *Bank of Toronto v. Ins. Co. of N.A.*, 18 P.R. 29.

The fact that the person charged with the negligence was killed as a result of the accident, and that the plaintiff has therefore no means of ascertaining what the negligence charged consisted of except discovery from the defendants, cannot be treated as a special circumstance to warrant the order, as the plaintiff was in the same position when pleading over.

Appeal dismissed without costs, Richards, J., dissenting.

O'Connor, for plaintiff. Coyne, for defendants.

Full Court.]

WILSON v. GRAHAM.

[May 7.

*Contract — Construction — Discrepancy between written and printed portions of contract—Covenant to convey land clear of incumbrances—Real Property Limitation Act, R.S.M. 1902, c. 100, s. 24.*

Action commenced May 30, 1903, to recover damages for breach of covenants against incumbrances contained in a written agreement dated April 3, 1893, for the sale of land by defendant to plaintiff by which defendant undertook to give a deed of the land to the plaintiff