

plied warranty under the 16th section of the Sale of Goods Act, would still remain unless, as provided in sub-s. (d), the express warranty was inconsistent with the implied warranty under sub-s. (a). The learned judge, having found on the evidence that the machinery was reasonably fit for the purposes for which it was sold,

*Held*, that it was not necessary to decide whether such warranties were consistent or not.

*Held*, also, that the plaintiffs were only entitled to interest at the statutory rate of 5 per cent. per annum, although it was stipulated that, if notes were given, they would carry interest at a higher rate. The notes were not given, and the plaintiffs' right to recover depended on the further provision in the agreement making the whole purchase price in that event due and payable forthwith. In this latter event there was no provision for the payment of interest.

*Fullerton* and *Blackwood*, for plaintiffs. *Burbidge*, for defendants.

Mathers, J.]

[May 2.

RAT PORTAGE LUMBER CO. v. EQUITY FIRE INSURANCE CO.

*Practice—Particulars—Order for, when and for what purpose made.*

Appeal from an order of the referee requiring plaintiffs to furnish particulars of their reply to the statement of defence. The only material filed in support of the motion was an affidavit identifying the pleadings.

*Held*, that, the pleadings being closed, particulars could not be required with a view to have the prior pleading made distinct enough to enable the applicant to frame his answer thereto properly: *Smith v. Boyd*, 17 P.R. 467.

After the pleadings are closed, particulars may, in a proper case, be ordered for the purpose of saving expense, or for the purpose of presenting surprise at the trial. But it must be shewn by affidavit or otherwise, independently of the pleadings, that particulars are needed for either of those purposes.

*Gourond v. Fitzgerald*, 37 W.R. 55, 265; *Thompson v. Berkeley*, 31 W.R. 230; *Bank of Toronto v. Insurance Co. of North American*, 18 P.R. 27, followed.

Appeal allowed and order for particulars, discharged with costs.

*Anderson*, for plaintiffs. *Clarke*, for defendants.