

HON. MR. JUSTICE RIDDELL.

OCTOBER 9TH, 1912.

BLACK v. CANADIAN COPPER CO.

4 O. W. N. 111.

Particulars—Negligence—Statement of Claim—Damage to Stock of Florist by Noxious Gases — Particulars Unnecessary — Motion Premature.

Motion for particulars of negligence and damage alleged in statement of claim. Action was for damage to the business and stock of plaintiff, a florist, by noxious gases, vapors, acids and smoke alleged to have been wrongfully and negligently permitted to escape from defendant's works.

MASTER-IN-CHAMBERS, 23 O. W. R. 20; 4 O. W. N. 62, held, that as the allegation of negligence was unnecessary to plaintiff's case, he need not give particulars of it.

Tipping v. St. Helen's Smelting Co., 4 B. & S. 608, 616; 11 H. L. C. 642, referred to.

That particulars of damage were premature. Motion dismissed, costs in cause, without prejudice to plaintiff's right to renew application after discovery.

RIDDELL, J., affirmed above order.

An appeal by the defendants from an order of the Master-in-Chambers, 23 O. W. R. 20; 4 O. W. N. 62.

H. E. Rose, K.C., for the defendants.

C. M. Garvey, for the plaintiff.

HON. MR. JUSTICE RIDDELL:—The facts of this matter appear in the judgment of the Master in Chambers now appealed from. So far as is made to appear, the telegram of the plaintiff's solicitor may be absolutely correct—the defendants may have been fully informed of all the acts of negligence on their part, and the fullest particulars of damage may have been given to the defendants.

But aside from that consideration, it is quite too early to move, and I think, the order of the Master in Chambers is the right one. I agree that the case will probably be tried by a Judge without a jury—but in any case the defendants are not at present injured.

Costs to the plaintiff in any event.