

17 P. R. 463: "particulars are ordered with reference to pleading, and primarily with a view to have the prior pleading made sufficiently distinct to enable the applicant to frame his answer thereto properly," per Boyd, C., at p. 467.

In the present case the whole issue is on the plaintiff, which he may find some difficulty in proving unless there is some documentary evidence on which he can succeed. In that case it must either be in the defendants' possession or appear in plaintiff's affidavit of documents. In the latter event defendants would easily obtain leave to amend if desired. A further ground for refusing the order is that of delay. On the previous motion all the facts were as fully set out as they are now, especially the verbal arrangements made with Judge Clark—of this I said (at p. 178, *supra*): "It is apparently out of that verbal agreement or understanding that the action arises." It was on this point of the verbal agreement that most of the present motion was pressed. I think that if particulars of this are necessary now, they were equally necessary on 25th October, and that all particulars required for pleading should have been asked for.

It is also to be observed that pleadings are now governed by Consolidated Rule 268, which it would be wise to repeat before settling any pleading. That Rule says "Pleading shall contain a concise statement of the material facts upon which the party pleading relies, but not the evidence by which they are to be proved."

No doubt it is sometimes difficult "to decide what are the facts to be proved and what is only evidence of those facts. The question is often one of degree. The difference although not so easy to express, is perfectly easy to understand (per Brett, L.J., in *Philipps v. Philipps*, 4 Q. B. D. at p. 133," see Odgers on Pleadings, 5th ed., p. 103.

It is always necessary to deal with a motion for particulars as not to bring back thereby the old form of chancery pleading—a danger which a late learned Judge is said to have foreseen as possible and to be guarded against.

The motion will be dismissed with costs to plaintiff in the cause—without prejudice to any motion that defendants may consider necessary after examination of plaintiff for discovery or before the trial if plaintiff is not examined. The statement of defence was said by counsel to be ready and should be delivered not later than the 28th inst.