

CARTWRIGHT, MASTER.

SEPTEMBER 23RD, 1903.

CHAMBERS.

BECKER v. DEDRICK.

Particulars—Statement of Claim—Information for Purpose of Pleading—Sufficiency of Particulars already Delivered—Trial—Examination for Discovery.

This action was brought to set aside a judgment on which a writ of fi. fa. was issued in 1891, and to set aside a sale made thereunder of a steam barge belonging to plaintiff, and also to set aside an alias fi. fa. issued under the same judgment on the 22nd February, 1902.

The defendants moved for an order for particulars, but, after service of the notice of motion, the plaintiff delivered particulars pursuant to a previous demand. Defendants, not being satisfied with the particulars delivered, pressed the motion.

H. L. Drayton, for defendants.

L. F. Heyd, K.C., for plaintiff.

THE MASTER referred to *Spedding v. Fitzpatrick*, 38 Ch. D. 410, and *Odgers on Pleading*, 5th ed., pp. 173, 178; and continued:—

Conceding that the particulars in the present case are not very artistically framed, can it be said that the applicant cannot tell what is going to be alleged, and if possible proved, against him? The main foundation for the action is the definite allegation in paragraph 4 of the statement of claim that plaintiff was never served with a writ of summons. If this can be proved, the judgment is irregular, and all proceedings founded thereon would be certainly voidable, apart from the question of lapse of time.

Then as to dates of sale of the barge, as well as of all the other proceedings, these are or should be matters of record in the Court itself, and can easily be ascertained by the defendants. . . .

I confess that I do not see how I can say that I am satisfied that the defendants cannot tell what is going to be proved against them.

In view of the decision of Meredith, C.J., in *Uda v. Algoma Central R. W. Co.*, 1 O. W. R. 246, I think the motion should be dismissed. On examination for discovery defendants will be able to obtain all the information they require for the trial. At present they have enough to enable them to plead, and that is all particulars are for: *Smith v. Boyd*, 17 P. R. at p. 467. . . .