

CASES
 DETERMINED BY THE
EXCHEQUER COURT OF CANADA
 AT FIRST INSTANCE

AND
 IN THE EXERCISE OF ITS APPELLATE JURISDICTION

O'BRIEN & DOHENY.....SUPPLIANTS;
 AND
 HIS MAJESTY THE KING.....RESPONDENT.

1924
 }
 Sept. 19.

Practice—Petition of Right—General allegations—Particulars.

Suppliants filed their petition to recover damages alleged to be due to a fire caused by the negligence of the servants of the Crown on the right-of-way of the Canadian National Railways, and respondent in its defence alleged that if "the fire occurred as alleged it was due to the fact that the suppliants failed and neglected to comply with the provisions of the law."

Held, that the words *failed and neglected* clearly connote acts and deeds on their part amounting to both failure of duty and negligence. The general allegation of irregularities as a means of justification on behalf of the respondent is not sufficient, the facts giving rise to such contention should be disclosed, and suppliants are entitled to obtain particulars thereof.

MOTION for particulars heard this 19th September, 1924.

Paul Leduc for the motion;

Robert Laurier, contra.

AUDETTE J. the same day delivered judgment.

This is an application for particulars of the allegation of paragraph 4 of the Statement in Defense, reading as follows:—

4. That if the fire occurred as alleged, it was due to the fact that the suppliants failed and neglected to comply with the provisions of the law.

This paragraph, which charges the suppliants with want of compliance with the law, also involves acts of negligence on their behalf. These words "failed and neglected" clearly connote acts or deeds on their part amounting to both failure of duty and negligence.

The application for particulars is now recognized by jurisprudence as a regular procedure every time there is occasion in the interest of justice to ask for better information than what is primarily conveyed by the pleadings.

The function of particulars is to limit the generality of the allegation in the pleadings and to define the issues which have to be tried. It would seem that each party is entitled to know the case that is intended to be made against him at the trial and to have such particulars of his opponent's case as will prevent him from being taken by surprise,—the whole without disclosing the names of witnesses.

1924
 O'BRIEN &
 DOHENY
 v.
 THE KING.
 Audette J.

The general allegation of irregularities as means of justification on behalf of the respondent is not sufficient. The facts that give rise to such contention must be disclosed.

See 22 Hals., pp. 453 et seq. Beauchamp Rep. Vol. 3—Nos. 2537, p. 1626; 2560, p. 1630; 2633, p. 1640; 2636, p. 1642; 2648, p. 1644; 2651, p. 1644; 2658, p. 1446. *Perreault v. Lacombe* (1); *Connolly v. Baie des Chaleurs* (2).

Having said so much the Court has come to the conclusion to exercise its judicial discretion by ordering the respondents to give particulars of the allegations in paragraph 4 of the said Statement in Defense, within 15 days from the service of this Order. The time for filing a reply being enlarged within 14 days after the filing of the said particulars.

Judgment accordingly.
