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June 5.

## [CIVIL JURISDICTION.]

[ACTION No. 55, 1924.]

FRANK HICKES *v.* ELIZABETH MARY FADDY.

Summons under Order XIX, Rule 7 of the English Rules for further particulars of statement of claim—claim for rescission of contract &c., on the ground of fraudulent misrepresentation.

*Held*, allegations of fraud fully set out in the statement of claim—further particulars sought not essential for defence.

Sir ALFRED YOUNG, C.J. This is a Summons under Order XIX, Rule 7, of the English Rules (cf. A.P.) for further and better particulars of the Plaintiff's Statement of Claim filed the 10th February last.

Mr. Grahame of counsel in support of the summons cited paragraph 10 (2) of the Statement of Claim and submitted that the nature of the improvements referred to in that paragraph are an important factor in deciding a fair value for the freehold: and that the defendant is therefore entitled to the particulars asked for under paragraph 14 of the summons, so as to enable her to ascertain the half value of the improvements to which the lessee is entitled. Mr. Grahame further submitted that the defendant was entitled to particulars of the fraud alleged in the expressions "otherwise falsely and fraudulently represented to the plaintiff" occurring in paragraph 20 of the Statement of Claim.

In support of this contention he cited Order 19, Rule 6, which is to the effect that particulars of alleged fraud (with dates and items if necessary) must be stated in the pleading; and the note under Rule 15 of the same order headed "Fraud," was also cited: it is to the following effect, "Any charge of fraud or misrepresentation must be pleaded with the utmost particularity."

In paragraph 40 of the Statement of Claim it is stated that the true value of the plaintiff's interest in the estate of Schemmell is not less than £510; and further particulars are sought as to how that estimate is arrived at. Mr. Crompton of counsel for the plaintiff has resisted the application; it remains therefore for me to examine the arguments in support and in objection.

It has been laid down as a general principle "that the object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save

unnecessary expense and avoid allowing parties to be taken by surprise" (*Spedding v. Fitzpatrick*, 38 Ch. D., p. 413)—keeping this rule in sight, is the pleading complained of too general to enable the defendant to prepare his defence and does it admit of him being taken by surprise at the trial?

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In consideration of the question it is necessary to bear in mind the nature of the plaintiff's claim:—it is (1) for the rescission of a contract and (2) for the rescission of a certain document in so far as the plaintiff's interests is affected thereby. These rescissions are based on the general ground that the plaintiff's consent to the documents was obtained by the fraudulent representations of the defendant, which it is admitted are fully set out in the Statement of Claim. With reference to paragraph 14 of the Statement of Claim particulars are sought in respect of the buildings on the estate as to date and cost of erection as well as to an estimate of the interest of John Robertson & Co. As a general rule it may be stated that in actions where the plaintiff claims a lump or definite sum of money either for money due or by way of loss, expenses and other special damage, particulars showing how the sum claimed is arrived at will at once be ordered.

It is quite clear from the pleadings that the cause of action relied on is the fraud and fraudulent misrepresentation of the defendant; and not an action for a definite sum of money or for special damages. It cannot therefore be held that particulars are necessary to limit the inquiry, nor that the defendant would be embarrassed in her defence by reason of her having no knowledge of the case she had to meet, and moreover the material facts on which the plaintiff relies are equally known to the defendant—having arrived at the conclusion the onus is on the defendant to show by affidavit the special reasons why the particulars sought should be ordered, and this she has not done—in the words of Hawkins, Justice, in *Roberts v. Owen*, 6 L.T.R., p. 172, "*prima facie* she is not entitled and should be ordered."

Particulars are further sought as to the expression "otherwise falsely and fraudulently represented to the plaintiff." This is a form of pleading which is to be found in paragraph 7 of the Statement of Claim in the case of *Bibbs v. Guild*, 8 Q.B.D. p. 296. Under Rule 123 of the Rules of the Supreme Court it is sufficient to allege fraudulent intention as a fact without setting out the circumstances from which the same is to be inferred. The acts alleged to be fraudulent must be stated and from these acts fraudulent intent may be inferred, and it is sufficient to aver generally that they were done fraudu-

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lently (see Note A.P., p. 355 under heading "Fraudulent intention."). Does the pleading contained in paragraph 20 fulfil these requirements? In the first place it fully alleges the "fraudulent intent."

What is the act which is alleged to be fraudulent; is it not the causing of the letter to be delivered by her agent to the plaintiff and otherwise falsely and fraudulently representing to the plaintiff that the statements and representations contained in the letter were true and contained a full, complete and accurate statement of the facts material to be known by the plaintiff.

The delivery of the letter in itself would not necessarily establish a fraudulent intent, but it is the contents of the letter from which a fraudulent intent may be inferred: and the expression "otherwise falsely and fraudulently represented" clearly relates to the intention to be inferred from the statements and representations contained in the letter.

It seems to me therefore that paragraph 20 complies with the requirements of Rule 123: and that this form of pleading following, as it does, the form in *Gibbs v. Guild* is sufficient.

I am of opinion after reading the Statement of Claim, that to meet the allegation of fraud set out therein, it is not essential that the defendant should know how the estimate of the value of the improvements effected on the lease are arrived at, nor that she should know how the estimated value of certain other interests in the land are arrived at: the allegation is that by a series of false representations, and statements, the defendant induced the plaintiff to part with his interest in Sasolo or Nalobo.

This is the case the defendant has to meet not whether the amount paid to the plaintiff, if any, was a fair and reasonable price, but whether the plaintiff was well aware that in signing the two documents set out in paragraph 21 of the Statement of Claim he was transferring a one-fifth share in the estate of Emil Schemmell to the defendant: and that such transfer was not induced by the false misrepresentation of the defendants.

For the foregoing reasons the Summons is dismissed with costs.

Counsel certified.

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