

1953  
Nov. 19

BETWEEN :  
EMPIRE DOCK LIMITED ..... SUPPLIANT;  
AND  
HER MAJESTY THE QUEEN ..... RESPONDENT.

*Practice—Pleadings—General Rules and Orders, Rule 88 and following—Requirements as to proper pleading—Reference to documents—Prayer for relief—Motion to strike out a pleading as being embarrassing.*

*Held:* That proper pleadings should set out the basic facts upon which a litigant purports to make his claim. He may refer briefly to documents on which he may intend to rely at trial. His prayer for relief should be concise and state specifically the relief claimed against the other party.

2. That when a pleading is so confused that it is impossible for the Court or a Judge to ascertain the exact nature of the claim put forward, it ought to be struck out.

MOTION to strike out the whole of a Petition of Right or to stay the proceedings on the ground that it is embarrassing and an abuse of the process of the Court.

*K. E. Eaton* for the motion.

The suppliant was authorized by the Court to reply in writing.

The facts and questions of law raised are stated in the reasons for judgment.

CAMERON J. at the conclusion of the hearing of the motion (November 19, 1953) delivered the following judgment:

I have before me three Notices of Motion in this matter. The first is by the respondent in which I am asked to make an order striking out the whole of the Petition of Right and either dismissing the Petition with costs or staying proceedings on such terms as may seem just, on one or more of the grounds that the said Petition discloses no reasonable cause of action, is vexatious, frivolous, and an abuse of the process of the Court. Then follows an alternative claim that if the first claim be not allowed, certain specific sections of the Petition of Right be struck out on various grounds.

Secondly, I have a Notice of Motion by the Canadian Pacific Railway Company, which was served with a copy of the Petition of Right, to strike out the Petition of Right or in the alternative such portions thereof as may constitute claims or allegations against it on the ground

that this Honourable Court has no jurisdiction to try an action as between the suppliant and the respondent the Canadian Pacific Railway.

Finally, there is a further Notice of Motion by the Northland Terminal Company, Limited, also served with the Petition, for an Order striking out the Petition of Right or in the alternative such portions thereof as may constitute claims or allegations against it on one or more of the grounds

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that this Honourable Court has no jurisdiction to try an action between the suppliant and the respondent Northland Terminal Company Limited or that the Petition discloses no reasonable cause of action, is vexatious, frivolous, and an abuse of the process of the Court and for such further Order as this Court may deem just.

Notices of Motion were duly served upon the suppliant and I have before me written replies by it. The suppliant requested permission under Rule 277A of this Court to dispense with its personal appearance either in person or by an attorney on the return of the Motion and that consideration of its representations in writing be approved of. That permission was granted and I have before me its various representations in reply to the Notice of Motion.

In view of the disposition which I propose to make of the first Motion which I have heard, that is the Motion by the Crown, it will not be necessary to consider separately the Notices of Motion made by the Canadian Pacific Railway and the Northland Terminal Company Limited.

Now I have looked at the Petition of Right and have gone through it with considerable care. It consists of a total of 114 pages. Pages numbered 104 to 114 are headed "Redress" and I assume from that, that they purport to contain the normal prayer for relief.

The main application by the respondent is to strike out all of the Petition of Right (but not to dismiss it) on the ground that it is embarrassing. I am of the opinion that that contention is well warranted. As I say, I have gone through the Petition of Right on several occasions, and on each occasion I was left in the greatest confusion as to the nature of the claim attempted to be put forward by the suppliant. Obviously it was not prepared by a solicitor or by counsel, but by someone who had access to legal reports, the Rules and the like, but who had no knowledge whatever of the requirements of this Court as to the form in which pleadings should be presented. It is prolix to an amazing degree. It is repetitious. It contains page after page of references to previous decisions, matters which, of course,

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do not appear in a Petition of Right or in any other pleading. There are pages and pages of argument, of lengthy extracts from reports made in other matters such as commissions and the like, and from documents, all of which, of course, should not appear in a pleading of this sort at all. Because the suppliant was not represented on the motion, I have endeavoured to find out whether any portions of the Petition of Right were expressed with sufficient clarity as to convey their proper meaning, to find out whether any such clauses should remain in the Petition of Right. But the whole pleading is so mixed up and confused that it was impossible for me, and I think for counsel who appeared before me, to ascertain what exactly is the nature of the claim put forward, and just what relief is claimed against the various parties served with the Petition. For that reason I have come to the conclusion that the Motion by the Crown should be allowed and the entire pleading as such struck out.

I have been referred by Mr. Eaton, counsel for the respondent, to the Rules of the Court and to certain well known decisions which set out the requirements as to a proper pleading. They should, of course, set out the basic facts upon which the suppliant purports to make his claim. He may refer briefly to documents on which he may intend to rely at trial and finally his prayer for relief should be concise and state specifically the relief that he claims against the respondent or other interested parties.

I do not think that I have at any time seen a pleading which so completely offends the requirements of what should be a proper pleading as the present one. As I have said, the Crown originally asked that the action be dismissed but that part of the Motion has been abandoned and I think rightly so. It is, of course, not necessary for me to find at this time that the suppliant has or has not a cause of action. It may have a cause of action and for that reason I shall not dismiss the Petition of Right but will direct that the pleading as such be entirely struck out. Secondly, all counsel consenting, I direct that the suppliant will have leave within six months from the date of service upon it of the Order to be taken out on this Motion to file an amended statement of its claim as it may be advised. I should point out that the time which I have fixed at six

months is in accordance with the application of the suppliant and is a much longer period than would normally be allowed.

Finally, the costs of the Motions made by the Crown, by the Canadian Pacific Railway and by Northland Terminal Company, Limited, will be costs against the suppliant. In view of the particular circumstances of this case, and that there is a possibility that some of the parties now moving before me may not be parties in the amended claim if made by the suppliant, I direct that the costs on the three motions be payable by the suppliant forthwith after taxation.

*Judgment accordingly.*

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