

1978 December 1

[A. LOIZOU, J.]

ALPAN (TAKI BROS.) LTD.,

Plaintiffs,

v.

NAKUFREIGHT LTD.,

Defendants.

(Admiralty Action No. 143/77).

Admiralty—Practice—Pleadings—Whether cause of action should be specifically pleaded in plaintiff’s petition—Pleadings must contain only averments of material facts and not law—Nor must they contain the evidence to prove facts—Rule 87 of the Cyprus Admiralty Jurisdiction Order, 1893 and Order 19 rule 4 of the Civil Procedure Rules. 5

The plaintiff company in this action alleged in its petition that in spite of an agreement between the parties for the carriage of goods by sea at a certain rate the defendant company claimed and the plaintiff company was compelled to pay an amount 10 of U.S. dollars 758.67 in excess of the agreed rate; and that as a result it had to pay import duty on that freight amounting to U.S. dollars 182.08 making a total of U.S. dollars 940.75 which the plaintiff company claimed from the defendants by way of damages. 15

On the question raised by the defendant company in its answer, to the effect that the petition did not disclose a cause of action because the legal nature of same, that is whether the damages claimed are for breach of contract, quasi contract or otherwise, was not set out therein: 20

Held, that the pleadings must contain only averments of material facts and not law, nor must they contain the evidence to prove the facts; that though the pleading in the present case may not be in the best of forms it sufficiently discloses a cause of action; and that, accordingly, the objection will be 25

dismissed and the action will proceed for hearing (see rule 87 of the Cyprus Admiralty Jurisdiction Order, 1893 and Order 19 rule 4 of the Civil Procedure Rules).

Objection dismissed.

5 Cases referred to:

N. W. Salt Company Ltd., v. Electrolytic Alkali Co. Ltd. [1913] 3 K.B. 422;

Lever Bros., Ltd., v. Bell [1931] 1 K.B. 557;

Shaw v. Shaw [1954] 2 Q.B. 429 at p. 441.

10 **Objection.**

Objection by defendants that the petition filed on behalf of the plaintiff company does not disclose any cause of action.

G. Mitsides for *L. Papaphilippou*, for the plaintiffs.

L. Clerides, for the defendants.

- 15 A. LOIZOU J. gave the following ruling. The defendant company has raised by its answer the point that the petition filed on behalf of the plaintiff company in these proceedings does not disclose any cause of action, as the legal nature of same, that is whether the damages claimed are for breach of
20 contract, quasi contract or otherwise is not set out therein.

By virtue of Order 19 rule 4 of our Civil Procedure Rules, which corresponds to Order 19 rule 4 of the old English Rules as set out in the *Annual Practice* for the year 1958, "Every pleading shall contain, and contain only, a statement in a
25 summary form of the material facts of which the party pleading relies for his claim or defence, as the case may be, ...". Likewise, rule 87 of the Cyprus Admiralty Jurisdiction Order 1893 provides that "Every pleading ... shall state concisely the facts on which the party relies ...". The interpretation given to Order 19,
30 rule 4, and there is no reason why the same should not apply to rule 87, is that the pleadings must contain now only averments of material facts and not Law, nor must they contain the evidence to prove the facts (see *N. W. Salt Company Ltd., v. Electrolytic Alkali Co., Ltd.*, [1913] 3 K.B. 422). More-
35 over as stated in the case of *Lever Bros., Ltd., v. Bell* [1931] 1 K.B., 557, the practice of the courts is to consider and deal with the legal result of pleaded facts, although the particular result alleged is not stated in the pleading. So in *Shaw v. Shaw*

[1954] 2 Q.B. 429, 441, Denning L.J. held that if the material facts are alleged it is not necessary to plead the implied warranty.

In the present case sufficient facts are pleaded to disclose a cause of action to the effect that inspite of an agreement alleged to have been duly concluded between the parties, for the carriage of goods by sea at a certain rate, the defendant company claimed and the plaintiff company was compelled to pay an amount in Cyprus pounds equal to U.S. Dollars 758.67 in excess of the agreed rate. As a result they were compelled to pay import duty on that freight amounting to U.S. Dollars 182.08. This makes a total of U.S. Dollars 940.75 which the plaintiff company by the present proceedings claims from the defendants by way of damages.

This pleading may not be in the best of forms but it cannot be said that it does not comply with the requirements of Order 19, rule 4. It sufficiently discloses a cause of action.

For all the above reasons the objection raised is dismissed and the action may proceed to hearing.

Objection dismissed.