

SOCRATES NEARCHOU,
Appellant (Defendant),
v.
MARIA THEODOULOU,
Respondent (Plaintiff).
(Civil Appeal No. 4326).

*Practice—Pleadings—Writ of summons—General indorsement—
Claims on the writ for damages for breach of contract or for money
had and received—Fresh causes of action cannot be introduced
without leave in the statement of claim—Such as fraud and,
possibly, mistake, innocent misrepresentation—Civil Proce-
dure Rules, Order 2, r. 3, Order 20, r. 1A.*

The respondent (plaintiff) claimed on her writ damages for breach of contract or return of money had and received. Without leave of the Court to amend the indorsement of the writ, she included in her statement of claim three more causes of action, viz. fraud, mutual mistake and innocent misrepresentations. The appellant (defendant) applied to the lower court for the striking out of these fresh causes of action, but the court refused his application. On appeal, the High Court, reversing the order of the lower court:—

Held:— (1) Fraud is a completely different cause of action from breach of contract or money had and received appearing on the writ. Therefore, it cannot be included in the statement of claim without leave of the Court to amend the indorsement on the writ.

Statement of the law in *Halsbury's Laws of England*, 3rd Edition, Vol. 30, para. 67 at p. 32, *adopted*.

(2) Mutual mistake and innocent misrepresentation may possibly well be sufficiently distinct causes of action requiring leave of the court to amend the writ.

Appeal allowed. Order of lower court set aside. Order made in the following terms: The paragraph of the statement of claim containing the new causes of action, to be struck out unless within one month from to-day the plaintiff

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applies to and obtains from the District Court the appropriate leave for amendment.

Interlocutory Appeal.

Interlocutory Appeal by the defendant against the order of the District Court of Nicosia (Pierides, D.J.), dated the 29th December, 1960 (Action No. 1728/60) dismissing his application for an order to strike out paragraphs 2, 3, 4, 5, 6, 7(a) and (b) of the statement of claim in an action for damages for breach of contract dated the 24th September, 1959, and or for return of money had and received by defendant and costs.

G. Constantinides for the appellant.

A. Triantafyllides for the respondent.

The judgment was delivered by :—

O' BRIAIN, P. : In this case an appeal has been brought by the defendant against the order of the District Court of Nicosia on the 29th day of December, 1960, dismissing the defendant's application to the District Court. The defendant's application which was dismissed by that order was a notice of motion in the following terms :

“Let all persons concerned attend the District Court at Nicosia on the 13th day of June, 1960, at the hour of 9 o'clock in the forenoon on the hearing of an application whereby the above named defendant-applicant applies for an order striking out paragraphs 2, 3, 4, 5, 6, 6, 7 (a) and (b) of the plaintiff's, statement of claim”.

The order of the District Court refused that application, and this appeal has been brought on the ground that the statement of claim in the paragraphs mentioned has introduced one and possibly two or three additional causes of action quite distinct from the two causes of action that are set out in the indorsement of claim of the plaintiff's writ which is in the following terms :

“The plaintiff's claim is for damages of breach of contract dated the 24.9.59 and/or for return of money had and received by defendant and costs”.

We have had the advantage of hearing both Mr. Constantinides and Mr. Triantafyllides and we have come to the conclusion that the law is as contended for by Mr. Constantinides. Paragraph 67 of Vol. 30 at p. 32 of Halsbury's Laws of England, 3rd edition, to which he has referred us, correctly states the law applicable to this matter in this country as well as in England.

Mr. Constantinides' contention is that there are at least one, possibly two or three, fresh causes of action introduced in the statement of claim, which do not appear in the writ, and that without leave of the Court to amend the writ, the plaintiff was not entitled to do that. The Court considered the matter and is clearly of the opinion that the claim, based upon alleged fraud by the defendant, is a cause of action completely different from any appearing on the writ. Without expressing a concluded view on the matter it may well be that the other two causes of action now pleaded, mutual mistake and innocent misrepresentation, are also sufficiently distinct to require leave of the Court. But, having regard to the new plea of fraud, it is clear that the order of the District Court in refusing the application was wrong, and this Court proposes to make an order reversing the order of the District Court.

The Court, however, is prepared to make an order in the following terms, if the plaintiff so desires. Paragraphs 2, 3, 4, 5, 6, 6, 7 (a) and (b) of the statement of claim are to be struck out unless within one month from to-day the plaintiff applies to the District Court and obtains from the District Court an order giving him leave to make an appropriate amendment in the indorsement of the writ to cover such causes of action as he intends to pursue in the trial.

MR. TRIANTAFYLLIDES : Yes, Your Honour, I would like to apply.

COURT : We will give you a month within which to apply to the District Court. It is a matter for the District Court. Unless you apply to the District Court within that time the paragraphs mentioned will be considered as struck out.

The appellant will be entitled to his costs both here and in the Court below.

Appeal allowed. Order in terms.