

CARTWRIGHT, MASTER.—“The motion was supported on two grounds:—Firstly, it was said that charges of misrepresentation are made against the chairman of the Commission and those acting under his authority whereby the council was misled on a material point. It was argued that this was improper because the Commission is not a party to the action. Secondly, it was said that the statement of claim attacks the validity of the By-law No. 2920 although it is therein set out that it has been validated by the legislature. It was said in answer that the paragraphs which are complained of are mainly historical (as in *Morley v. Canada Woollen Mills* (1903) 2 O.W.R. 457-478) and that the relief sought is asked on two grounds: 1st, that the contract is not such as the by-law authorizes; and 2nd, that the council were induced to enter into it through the advocacy and erroneous statements of the agent of the Commission, and it was confidently submitted that the statement of claim contains nothing that is not relevant to these grounds of attack.

The statement of claim is a good deal longer than usual, but is not necessarily objectionable on that account. On the contrary, it gives a full and clear statement of the facts out of which the action proceeded; and of those other facts on which the plaintiff relies to prove his case. It is quite clear that pleadings are not to be reformed in Chambers unless hopelessly bad (and perhaps not always then). As was said by Bowen, L.J., in *Knowles v. Roberts*, 38 Ch. Div., at p. 270: “The court is not to dictate to parties how they should frame their case” though they “must not offend against the rules of pleadings.”

After consideration of the statement of claim it does not appear to me to be open to attack. The validity of the by-law is not in any way attacked. This could scarcely be seriously attempted when the fact of its having been validated is fully set out in paragraph two. Nor is it any objection that the Commissioners or their agents are stated to have misled the council as set out in paragraph nineteen. These are statements, in conformity with the rules of some of the material facts on which the plaintiff will rely and on proof of which he hopes to succeed. The fact that the Commission is not a party is no objection as no relief is asked against that body or any one connected with it.

The motion will be dismissed with costs to plaintiff in the cause.

*DuVernet*, K.C., for the motion. *Middleton*, K.C., and *J. M. McEwen*, for plaintiff.