

ENDORIS v. HAMINE.

C. R., Balapitiya, 1,414.

1895.  
July 17.

*Civil Procedure Code, ss. 247 and 48—Date of institution of action—Return of plaint for amendment—Rejection of plaint—What facts to be specified by Judge in his order returning plaint for amendment.*

Where a plaint, presented within the time prescribed for the institution of an action under section 247 of the Civil Procedure Code, was returned for amendment, and was presented again duly amended, after the period of fourteen days from the time of the first presentation had expired—*Held*, on objection, that the action was not instituted too late.

When a Judge declines to entertain a plaint and returns it for amendment, he must make an order specifying the date when the plaint was presented, the name of the person by whom it was presented, whether such person was the plaintiff in person or a proctor, and the fault or defect constituting the ground of the return ; and every such endorsement must be signed by the Judge and filed of record.

*Semble, per BONSER, C.J.*—When a plaint is rejected and a fresh plaint has to be filed, the institution of the action must be dated the day on which the new plaint is presented.

THE facts of the case sufficiently appear in the following judgment:

*Asserappa*, for appellant.

*Seneviratne*, for respondent.

17th July, 1895. BONSER, C.J.—

This is an appeal from a decree of Mr. Woutersz, Acting Commissioner of Requests of Balapitiya, dismissing the plaintiff's action with costs, on the ground that it was not instituted within the period of fourteen days allowed by section 247 of the Civil Procedure Code.

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It appears that the plaint was dated and presented to the Court on the 11th February, 1895.

The Commissioner says that owing to certain inaccuracies in the plaint it was not entertained until the 20th February, 1895, and he considered that the latter date, being the date on which the plaint was presented to the Court corrected and perfected and the date on which the Court allowed it to be filed, was the date on which the action was instituted, and he therefore held the action to be out of time, and dismissed it accordingly.

It appears to me that the Commissioner was wrong in this decision; and that the date when an action is instituted is the date on which the plaint was presented.

It is true that, for certain minor defects, the Court may decline to entertain the plaint, and may return it to the plaintiff for amendment, but when it is duly amended it is still the same plaint: it still relates to the old action. It is not like a case where the plaint is rejected, in which event a fresh plaint altogether has to be presented, and it might be held—though it is not necessary to decide that point now—that the institution of the action must date from the presentation of the new plaint.

The case must therefore go back to be dealt with in the ordinary way. At the same time, the attention of the Commissioner should be called to the fact that the requirements of section 48 of the Civil Procedure Code have not been complied with. That section requires a Judge, when he declines to entertain a plaint and returns it for amendment, to make an order specifying the date when the plaint was presented, the name of the person by whom it was presented, whether such person was the plaintiff in person or a proctor, and the fault or defect constituting the ground of the return; and every such endorsement must be signed by the Judge and filed of record.

Nothing of that sort was done here. No record of any kind was made; all that appears to have been done was, that the Commissioner scribbled in pencil on the plaint some words which are now almost illegible. They look like "return for amendment," with his initials below.

