

LE MESURIER v. MURRAY.

C. R., Batticaloa, 4,406.

1898.

January 13.

Notice of action against Customs officer—Terms of notice—Ordinance No. 17 of 1869, s. 122—Civil Procedure Code, s. 461.

The provisions of section 122 of Ordinance No. 17 of 1869, as to notice of intended action against a Customs officer, are superseded by those of section 461 of the Civil Procedure Code.

A notice under section 461 of the Code is not vitiated by the statement of a claim for relief greater than that ultimately claimed in the action.

THE plaintiff sued the defendant, as Collector of Customs for the Eastern Province, for Rs. 300 as damage for unlawful detention of goods. In the notice of action given by the plaintiff, the damage sustained by him was estimated at Rs. 500. Objection was taken by the defendant in the Court below that the notice did not comply with the requirements of section 122 of Ordinance No. 17 of 1869, and the same was upheld by the Commissioner.

On appeal—

Van Langenberg, for appellant.

De Alwis, for respondent.

13th January, 1898. LAWRIE, A.C.J.—

The section 122 of the Customs Ordinance has, in my opinion, been superseded by section 461 of the Civil Procedure Code, which regulates that notice of intended action must be given to all public officers.

It is further my opinion that the notice to the defendant satisfied the requirements of section 461.

The notice stated the cause of action, and the name of the person intending to institute the action, and the relief which he claimed.

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The notice did not state his place of abode, but that was well known at Batticaloa, and no point has been made of that ; and the reference to the Carnac Mills, Batticaloa, in the notice is, I think, sufficient.

It seems to me that the notice was not vitiated by the statement that a greater relief would be claimed than the relief which was afterwards claimed in the action.

In his notice Mr. Le Mesurier estimated the damages at Rs. 500, in his action he claimed Rs. 300. The greater included the less. The diminution of the relief necessitated a change from an action in the District Court to one in the Court of Requests. I hold that the defendant had sufficient notice of an action for damages for unlawful detention of goods, and that the claim of a less amount of damages in a lower Court was not a change which vitiated the notice. The essential part remained.

The merits of this action have hardly been entered on. I think it is necessary that the case be sent back for trial on the merits.

The plaintiff is entitled to the costs of this discussion in the Court below and of this appeal. Other costs to be costs in the cause.

