Present: De Sampayo and Porter JJ.

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KANDASAMY *v.* SINNATAMBY.

7—D. C. Hatton, 1,185.

*Civil Procedure Code, s. 13—Note endorsed for debt due to a firm—Action by manager on the note in his own name—Motion to add the firm as party-plaintiff—*Bona fide *mistake.*

Plaintiff brought this action on a note made by defendant in favour of M. S. A. Aravandi Kangany, and alleging that it was endorsed by the payee to plaintiff. In answer to interrogatories, the plaintiff admitted that he himself gave no consideration for the endorsement to him, and that the consideration was a debt due by the payee to the firm of M. A. R. Vythilingam Pillai, of which plaintiff was manager and kanakapillai. At the trial defendant raised the question of competency of the plaintiff to bring the action. Plaintiff then moved that the firm be added as party-plaintiffs.

Held, that, as plaintiff had not made out that it was due to a *bona fide* mistake that the action was brought by him, the District Judge was justified in refusing the application.

THE facts appear from the judgment.

H. H. Bartholomeusz (with him *Garvin*), for plaintiff, appellant.

Samarawickrema (with him *R. L. Pereira*) for defendant, respondent.

March 24, 1924. DE SAMPAYO J.—

This case involves a point of civil practice. At the conclusion of the argument of the appeal on March 24, 1924, we expressed our opinion that the appeal should be dismissed, but took time to state our reasons. The action is by one Seena Tana Kandasamy Pillai on a promissory note made by the defendant in favour of one M. S. A. Aravandi Kangany, and endorsed by the payee to the plaintiff. In answer to interrogatories administered at the instance of the defendant, the plaintiff admitted that he himself gave no consideration for the endorsement to him, and that the consideration was a

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debt due by Aravandi Kangany to the firm of M. A. R. V. Vythilingam Pillai, of which the plaintiff was the manager and kanakapillai. On the day of trial the defendant's proctor raised the question of the competency of the plaintiff to bring the action. M. R. A. V. Vythilingam Pillai then appeared by proctor, and the plaintiff moved that the firm be added as party-plaintiffs. The District Judge refused the application, and from that order the plaintiff has appealed.

The law applicable to this matter is that contained in section 13 of the Civil Procedure Code which corresponds to the English Order XVI. r. 2. That section gives power to the Court to add or substitute a party in a case where the action had been instituted in the name of the wrong person, or where it is doubtful whether it has been instituted in the name of the right persons, " if satisfied that the action has been so commenced through a *bona fide* mistake. " The decisions cited on behalf of the appellant are against him rather than for him. In *Somittare v. Jasin*[1] the incumbent of a Buddhist temple sued in respect of a land belonging to the temple, and a motion was made to add a person who was alleged to be the trustee. Wood Renton J. there observed "if it had bsen shown that a trustee had been duly appointed, and that by a *bona fide* mistake as to the requirements of the Buddhist Temporalities Ordinance, the appellant had sued in his own name, I see no reason why the trustee should not have been a substituted party under section 13. " An unreported judgment of Hutchinson C.J. in D. C. Kandy, 20,433,[2] was also cited, but there, too, the learned Chief Justice said that the action was obviously commenced in the name of the wrong person through a *bona fide* mistake, and the application to add was allowed. Similarly in the English case (*Hughes v. The Pump House Hotel Co., Ltd.*[3]) which was relied on for the appellant, the ground of the decision was that the action had been commenced in the name of the wrong person through a *bona fide* mistake. This being the law, the plaintiff in this case can only support the appeal if the Court below had been satisfied that there was a *bona fide* mistake. The District Judge, however, so far from being satisfied on that point, has stated that there was nothing before him to enable him to hold that the action was brought by the plaintiff himself by a *bona fide* mistake. Consequently, I think that the opinion we formed at the conclusion of the argument was right, and this appeal should, therefore, be dismissed, with costs.

Porter J.—I agree.

Appeal dismissed.

[1] *A. C. R. 167.*

[2] *S. C. Min, December 12, 1910.*

[3] *(1902) 2 K. B. 485.*