

1954

Present: Swan, J., and de Silva, J.

PELIS SINGHO, Appellant, and THE ATTORNEY-GENERAL,
Respondent

S. C. 217—D. C. Colombo, 24,910

Civil Procedure Code—Section 461—Action on contract—Requirements of notice of action—Ingredients of such notice.

Under section 461 of the Civil Procedure Code notice must be given to the Attorney-General before an action can be instituted against him for breach of contract.

Action was instituted against the Crown for Rs. 3,532.50, whereas the notice given under section 461 of the Civil Procedure Code stated the figure to be Rs. 3,192.69.

Held, that the slight variation in the quantum of relief claimed did not render the notice invalid.

APPPEAL from a judgment of the District Court, Colombo.

S. W. Jayasuriya, for the plaintiff appellant.

B. C. F. Jayaratne, Crown Counsel, for the Attorney-General.

Cur. adc. vall.

October 20, 1954. SWAN, J.—

The appellant instituted this action to recover from the Crown Rs. 3,532 alleged to be due to him as the balance on certain bricks supplied to the Land Development Officer at Polonnaruwa. The respondent filed answer denying liability and pleading that the action was not maintainable as due notice of action as required by section 461 of the Civil Procedure Code was not given. At the trial, among the issues raised was the following:—

6. Has the plaintiff given proper and sufficient notice of this action to the Attorney-General as set out in section 461 of the Code?

At the suggestion of learned Crown Counsel this was tried as a preliminary issue, was decided against the appellant and the action was dismissed with costs.

At the hearing of the appeal learned counsel for the appellant took a point not raised in the petition of appeal, namely that notice was not necessary in actions based on contract. A reading of the section makes it quite clear that no distinction is drawn between actions on contract and other actions. But the matter is covered by authority. In the case of *Silva v. Jonklaas*¹ Wood Renton A.C.J. held that the notice was not unnecessary in actions founded on contract.

Section 461 of the Civil Procedure Code requires that the notice shall state, "the cause of action, the name and place of the abode of the person

¹ (1913) 17 N. L. R. 377.

intending to institute the action and the relief which he claims". In this case the first two requirements were fulfilled. The third was fulfilled in part only. The nature of relief was the same as that stated in the notice, but the quantum was slightly more. The action was filed for Rs. 3,532·50, whereas the notice stated the figure to be Rs. 3,192·69. In the case of *Le Mesurier v. Murrah*¹ it was held that a notice under section 461 was not vitiated by the statement of a claim for greater relief than that ultimately demanded in the action. This case was cited to the learned District Judge but while accepting the correctness of it he thought that the converse did not hold good.

I think the learned District Judge has taken too strict a view. The nature of the relief set out in the notice is substantially the same as that claimed in the plaint. In my opinion the slight variation in the quantum of relief would not make the notice bad. I set aside the judgment of the learned District Judge and remit the case to the lower court for adjudication on the other issues. The appellant will be entitled to the costs of appeal.

DE SILVA, J.—I agree.

Appeal allowed

¹ (1898) 7 N. L. R. 113.
