1915.

Present: Wood Renton C.J. and De Sampayo A.J.

VELANTHAN CHETTY *v.* SATHUKA LEBBE.

20—D. C. Colombo, 40,106.

Action by way of summary procedure on note for Rs. 10,000—Endorsement on summons wrongly stated to be Rs. 1,000—Is irregularity fatal to plaintiff's right to proceed by way of summary procedure?

In an action by way of summary procedure on a note for Rs. 10,000, in the copy of the note endorsed on the summons the amount appeared both in words and figures as Rs. 1,000.

Held, that the mistake was not fatal to plaintiff's right to proceed on the note by way of summary procedure.

THE facts are set out in the judgment.

F. M. de Saram, for appellant.—The summons in this case was not in accordance with the strict requirements of section 703 of the Civil Procedure Code. That section enacts that the summons shall be in the form No. 19 contained in the second schedule to the Code. The form requires that the instrument sued on should be copied out, and where it is a negotiable instrument and carries endorsements, that the endorsements should also be copied out. In the present case the action is on a negotiable instrument purporting to be a promissory note for Rs. 10,000, but the instrument copied out in the summons is a promissory note for Rs. 1,000 only. The procedure under chapter LIII. of the Code being a special procedure for the benefit of persons holding promissory notes, &c., and when that summary procedure is resorted to, the plaintiff should strictly follow the requirements of the section. The summons, therefore, not being in the form required by the Code, it is a fatal irregularity, and entitles the defendant to come in and defend unconditionally.

February 11, 1915. WOOD RENTON C.J.—

This is an appeal from an order made by the learned District Judge of Colombo in an action by the plaintiff against the defendant, who is the appellant, on a promissory note for Rs. 10,000, that the action, which was one of summary procedure, should be relegated to the ordinary procedure. The ground of the application is that whereas the promissory note sued on was for a sum of Rs. 10,000., in the copy of the note endorsed on the summons under section 703 of the Civil Procedure Code the amount appears, both in words and in figures, as Rs. 1,000. The appellant filed an affidavit in support of his application, in which he called attention to this irregularity.

But in that affidavit he does not state that he was in any way misled by the error, nor does he even say what is his defence to the action. The question, therefore, arises whether we are compelled by law to treat a mistake, such as we have here to do with, as being fatal to the plaintiff's right to proceed on the promissory note by way of summary procedure. There has been no error in the procedure itself. The summons required by section 703 of the Code has been taken out, and it is not contested that it was duly served. But it is contended that the effect of section 703 is to render the use of the summons referred to in that section, and appearing as form No. 19 in the Schedule to the Code, imperative. The words in the form that deal with the copy of the instrument sued on are to be found in a note in italics at the end of the form itself. They are in these words: "Here copy the instrument sued on, and where it is a negotiable instrument and carries endorsements, with the endorsements." The construction of those words came before Sir Alfred Lascelles and myself in 20—D. C. (Inty.) Colombo, No. 33,475.[1] The application was identical. It was based on two grounds: in the first place, that the affidavit filed by the plaintiff did not state in terms that the sum claimed in the action was justly due, and in the next place, that there had been a failure on his part to copy an endorsement on the instrument on the back of the summons. With the first of these grounds we are not here concerned. But the second is directly applicable to the present case. It raised the question whether a mistake by inadvertence, for aught that appeared to the contrary, in preparing the copy which the form requires was fatal to the whole proceedings, and constituted a reason for relegating the plaintiff to a regular action. "There is nothing," said Sir Alfred Lascelles, "to show that the direction at the foot of the form is so imperative that failure to comply with it vitiates the whole of the procedure. There can be no misunderstanding as to the nature of the claim, because in the summons it is clearly stated that the claim is made by the plaintiff as the endorser and payee of the note." It seems to me that, *mutatis mutandis*, the reasoning embodied in the passage which I have just cited governs the present case. The object of the requirement of section 703 and of the form itself is to make the defendant clearly to understand the nature of the claim that is made against him, so that he may be in a position to make an effective appearance for leave to defend. In the present case, all the necessary particulars, with the single exception of a mistake in the amount of the note, are given in the copy endorsed on the back of the summons. I do not think that the defendant could have been under any misapprehension as to what the claim against him was. The correct amount, with the addition of the interest added to the principal, is set out in the summons itself. The appeal must, I think, in substance fail. At

[1] *S. C. Min., March 4, 1912.*

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the same time it may be that the defendant did not put forward his defence in the District Court case, but was relying on the strength of his legal objection. The proper order for us to make is to the same effect as an order made by Sir Alfred Lascelles and myself in the case with which I have just dealt, although with some variation in points of detail. The present appeal will be dismissed, although without costs, as it is *ex parte*. If within one week from the date of the receipt of the record in the District Court the appellant shall appear and satisfy the District Judge that he has a good defence to the plaintiff's action, the judgment which has already been given in favour of the plaintiff in the District Court will be set aside, and the appellant will have leave to appear and defend on such terms as the District Judge may think right. If the defendant is unable to satisfy the District Judge that he has a good defence to the plaintiff's action, the judgment now under appeal will stand affirmed.

De Sampayo A.J.—I agree.

Varied