

1947

*Present : Jayetileke J.*

SAIBO *et al.*, Appellants, and THE ATTORNEY-GENERAL,  
Respondent.

S. C. 59—C. R. Colombo, 3,424.

*Civil Procedure Code—Action against Attorney-General—Recovery of money from Principal Collector of Customs—Notice of action—Section 461.*

Plaintiffs sued the Attorney-General for the recovery of a sum of money alleged to have been unlawfully recovered from them by the Principal Collector of Customs. They had previously given notice to the Attorney-General that they would file action against the Principal Collector of Customs for the recovery of that sum.

*Held*, that the notice did not comply with the requirements of section 461 of the Civil Procedure Code and that the action was not maintainable.

<sup>1</sup> (1873) 20 *Sutherland's Weekly Reporter—Criminal Rulings at pp. 8 and 9.*

<sup>2</sup> *A. I. R. (1924) Allahabad 670.*

<sup>3</sup> 41 *Criminal Law Journal* 898.

**A** PPEAL from a judgment of the Commissioner of Requests,  
Colombo.

*C. Chellappah*, for the plaintiffs, appellants.

*V. Tennekoon, C.C.*, for the defendant, respondent.

*Cur. adv. vult.*

October 21, 1947. JAYATILEKE J.—

The plaintiffs instituted this action against the Attorney-General for the recovery of a sum of Rs. 25 alleged to have been unlawfully recovered from him by the Principal Collector of Customs as a penalty. Before instituting the action, they served on the Attorney-General a notice that they would file an action against the Principal Collector of Customs for the recovery of the said sum. At the trial, Crown Counsel took the objection that the plaintiffs could not maintain the action as they had failed to comply with the provisions of section 461 of the Civil Procedure Code. That section provides that no action shall be instituted against the Attorney-General as representing the Crown, until the expiration of one month next after notice in writing has been delivered to such Attorney-General, stating the cause of action and the name and place of abode of the person intending to institute the action and the relief which he claims. The learned Commissioner upheld the objection on the ground that the notice which the plaintiffs served on the Attorney-General was that they intended to institute an action not against him but against the Principal Collector of Customs.

In *Tampoe v. Murugesu*<sup>1</sup> Wood Renton J. held that the language of section 461 is imperative and absolutely debars a Court from entertaining a suit instituted without compliance with its provisions.

The object of the legislature in requiring the notice seems to be to afford to the Attorney-General an opportunity to reconsider his position with regard to the claim made, and to make amends or settle the claim, if so advised, without recourse to the trouble and cost of litigation. See *Secretary of State v. Kundan Singh*<sup>2</sup>. This opportunity was not given by the plaintiffs.

I am, therefore, of opinion that the judgment of the learned Commissioner is correct, and I would, accordingly, dismiss the appeal with costs.

*Appeal dismissed.*

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