

1946

*Present : de Silva J.*MUTUWA *et al.*, Appellants, *and* ALBERT, Respondent.269—*C. R. Matale, 8,586.*

*Court of Requests—Appearance of defendants on day specified in summons—Duty of Court to call upon them to admit or deny plaintiff's claim—Civil Procedure Code, s. 809.*

Where, in an action in a Court of Requests, some of the defendants appeared on the day specified in the summons but did not want to file answer—

*Held*, that the defendants should have been called upon to either admit or deny the plaintiff's claim in accordance with the provisions of section 809 of the Civil Procedure Code.

**A** PPEAL from an order of the Commissioner of Requests, Matale.

*G. T. Samarawickreme* (with him *Ivor Misso*), for the defendants, appellants.

*S. R. Wijayatilake*, for the plaintiff, respondent.

March 6, 1946. DE SILVA J.—<sup>4</sup>

In this case there has been an entire failure to observe the procedure laid down in section 809 of the Civil Procedure Code.

The plaintiff instituted this action against four defendants to recover a sum of Rs. 198 alleged to be due to him as his share of certain trees which had been cut down by the defendants. Summons was served on the first, third and fourth defendants and they appeared in Court on December 14, 1944. The record shows that on this day the first, third and fourth defendants were present and did not want to file answer.

Section 809 provides that on the appearance of the defendants, they should be called upon to admit or deny the plaintiff's claim. If they admit the claim the Commissioner should record such admission and shall require the defendants to sign the record. If on the other hand they deny the claim, they should be called upon to plead to the same forthwith or within such time as the court on cause shown may allow. This procedure has not in this case been followed by the Court because they have not been called upon to either admit or deny the claim.

In the circumstances I set aside the order and send the case back for proceedings in due course according to the procedure provided by the Code. What I have stated above applies to the second defendant as well. The appeal is allowed with costs.

*Appeal allowed.*