

Present: Wood Renton A.C.J.

1913.

SILVA v. JONKLAAS.

392—C. R. Kegalla, 11,875.

Civil Procedure Code, s. 461—Action against a public officer based on contract—Notice not unnecessary.

The notice required by section 461 of the Civil Procedure Code to be given to a public officer before the institution of action against him is not unnecessary in actions based on contract.

THE facts are set out in the judgment.

E. W. Jayewardene, for plaintiff, appellant.—This is an action based on contract. No notice of action is necessary in respect of such actions. *Rajmal Manikchand Marwadi v. Hanmant Anyaba*.¹ Section 461 of the Civil Procedure Code does not apply to actions based on contract.

A. St. V. Jayewardene (with him *E. A. L. Wijewardene*), for defendant, respondent.—No distinction is drawn between actions based on contract and other actions in section 461 of the Civil Procedure Code. The latest pronouncement of the Indian Courts is in favour of requiring notice in actions *ex contractu*. See *Secretary of State for India in Council v. Rajlucki Debi*.²

November 12, 1913. WOOD RENTON A.C.J.—

The plaintiff-appellant sued the defendant-respondent, the District Engineer of Kegalla, for the recovery of a sum of Rs. 221.12½, the price of goods alleged to have been supplied by him to a third party at the defendant's request. The defendant pleaded that the action was not maintainable, inasmuch as the alleged request to supply the goods had been made by him as a public officer, that he had received no notice of the action as required by section 461 of the Civil Procedure Code, and that it was now prescribed. The learned Commissioner of Requests upheld this contention and dismissed the action. The plaintiff appeals.

The ground urged in support of the appeal is that section 461 of the Civil Procedure Code does not apply to actions *ex contractu*. There is no direct local authority on the point. It was held, under section 177 of the Municipal Councils Ordinance, 1865 (No. 17 of 1865), that the provision in that section for notice of any action against the Municipal Council, or any of its officers, "for anything done or intended to be done under the provisions of the Ordinance,"

¹ (1895) *I. L. R. 20 Bom. 697.*

² (1897) *I. L. R. 25 Cal. 29.*

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applied only to actions *ex delicto*. Compare *Walker & Co. v. Municipal Council of Kandy*,¹ *Jayasundera v. Municipal Council of Galle*,² *Sidambaram Chetty v. Municipal Council of Colombo*,³ and there are English authorities under similar enactments to the same effect. The language, however, of section 461 of the Civil Procedure Code is different. It speaks of "an act purporting to be done by the officer in his official capacity." These words are quite wide enough to include contracts, and I see no reason why they should not be held to do so. The Indian decisions are in conflict. In *Rajmal Manikchand Marwadi v. Hanmant Anyaba*⁴ it was held that section 424 of the old Civil Procedure Code (Act XIV. of 1882), which requires notice to be given to a public officer two months before the institution of a suit against him, does not apply where the suit is one *ex contractu*. An entirely different view of the same section was, however, taken by the High Court of Calcutta in *Secretary of State for India in Council v. Rajlucki Debi*.⁵ I prefer the reasoning in the latter of these authorities, and dismiss the appeal with costs.

Appeal dismissed.

