

Present : Grenier J.

June 20, 1910

MOHIDEEN v. GNANAPRAKASAM *et al.*

126—C. R. Jaffna, 7,978.

*Plaint—Acceptance of—Court has no power to reject plaint after service of summons on defendant—Civil Procedure Code, s. 46.*

It is not competent for a Judge to reject a plaint after having once accepted it and ordered summons, if the summons had been duly served; he should leave it to the defendants to raise any questions as to its legal sufficiency to support the intended action.

THE facts appear sufficiently from the judgment.

*Pahivasingham*, for appellant.—The plaint when once accepted and filed cannot be rejected. Section 46, Civil Procedure Code, gives the Court power to reject a plaint only before it is allowed to be filed. The Court has no power to reject the plaint after service of summons. Counsel cited *Fernando v. Soyza*<sup>1</sup>, *Ratwate v. Owen*.<sup>2</sup>

*J. Joseph*, for the respondents.—Section 46 does not restrict the power of the Court to reject a plaint after it has been filed. If the plaint has been improperly admitted, the Court may reject it at any time. It has been held in India that a plaint could be rejected, after it has been registered, at any stage of the suit. *Kenhere Singh v. Abdul Singh*,<sup>3</sup> *Venketesar Tawker v. Rama Samy Chettiar*,<sup>4</sup> *Brihama v. Rubisingh*.<sup>5</sup>

*Cur. adv. vult.*

June 20, 1910. GRENIER J.—

The question debated on this appeal was whether it was competent for the Commissioner, after having once accepted the plaint and ordered summons, which has been duly served, to reject it. If the order accepting the plaint was one which *improvide emanavit*, I cannot see any objection to such a course before service of summons, because the order would *ex necessitate* be in the nature of an *ex parte* order, which can be recalled without involving any question of notice. In the present case certain proceedings have followed upon the acceptance of the plaint, one of the defendants having asked for time to file answer, and another defendant having given a proxy to a proctor, which, in my opinion, render it desirable that the sufficiency or otherwise of the plaint, which has no defects on the face

<sup>1</sup>(1896) 2 N. L. R. 40.

<sup>2</sup>(1890) I. L. R. 12 All. 553.

<sup>3</sup>(1896) 2 N. L. R. 141.

<sup>4</sup>(1895) I. L. R. 18 Mad. 338.

<sup>5</sup>(1900) I. L. R. 27 Cal. 376.

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of it, should be contested and determined in the regular way. The Indian authorities to which I was referred by respondents' counsel do not help me. According to the judgment of Rampini and Wilkins JJ., the Judges of the High Court of Calcutta and Allahabad do not appear to have agreed as to whether when a suit has once been registered the plaint could be rejected. I do not know what the process of registration in the Indian Courts is, or whether summons had or had not been issued and served in the case cited. The local cases of *Fernando v. Soyza*<sup>1</sup> and *Ratwatte v. Owen*<sup>2</sup> are fairly in point.

To me it seems only reasonable that where a plaint which is not defective *ex facie* is presented and accepted, and summons is duly served on the defendants, the Court loses its control over the document, and should leave it to the defendants to raise any questions as to its legal sufficiency to support the intended action. If after summons has been served, and the defendants have been put to the expense of retaining and instructing pleaders, the Court is able to make order rejecting a plaint, then it necessarily follows that, as the Court cannot in the circumstances make any order as to costs, the defendants will, firstly, by the action of the plaintiff in presenting a bad plaint, and secondly, by the action of the Court in accepting it and ordering summons, be absolutely without remedy in the matter of costs and expenses incurred by him. And that is what has actually happened in this case. The Court has rejected the plaint and has given no costs, for the very good reason that it had no power to do so. In my opinion the order appealed from is wrong and must be set aside, and the case sent back for the defendants to contest the plaintiff's action in the regular way, by filing answer and raising proper issues upon the pleadings. There will be no costs in this Court. The costs in the Court below will abide the final event.

*Appeal allowed.*

<sup>1</sup>(1896) 2 N. L. R. 40.

<sup>2</sup>(1896) 2 N. L. R. 141.