

1954

*Present : Weerasooriya J. and de Silva J.*

CENTRAL UNION INSURANCE CO., LTD., Appellant, and  
BOTEJU, Respondent

*S. C. 93—D. C. (Inty.) Colombo, 15,414 S*

*Liquid claim—Summary procedure—Instrument must bear stamp—Civil Procedure Code, ss. 703, 705 (2), 706.*

A condition precedent to the issue of summons in an action by summary procedure on a liquid claim is that the document on which the action is based should be properly stamped, as required by section 705 (2) of the Civil Procedure Code.

<sup>1</sup> (1888) 21 Q. B. D. 313.

<sup>2</sup> (1948) 51 N. L. R. 34.

**A**PP~~EAL~~ from an order of the District Court, Colombo.

*L. G. Weeramantry*, for the defendant appellant.

*J. C. Thurairatnam*, for the plaintiff respondent.

*Cur. adv. vult.*

October 27, 1954. WEERASOORIYA J.—

This is an appeal filed by the defendant Company against an order made by the learned District Judge under s. 706 of the provisions in Chapter 53 of the Civil Procedure Code relating to summary procedure on liquid claims, giving leave to the defendant-appellant to file answer on furnishing security in a sum of Rs. 5,000.

The plaintiff-respondent sought in this action to invoke the provisions of Chapter 53 in order to obtain judgment against the defendant-appellant on a document marked "A" and annexed to the plaint. The document in question which is dated the 1st August, 1953, and addressed to the plaintiff-respondent by the defendant-appellant is in the following terms :—

" Dear Sir,

This is to confirm that we owe you Rupees nine thousand three hundred and forty-seven and cents nine only (Rs. 9,347·09) up to this day, which sum we propose to pay you at an early date.

Yours faithfully,

The Ceylon Union Insurance Co., Ltd. "

It would appear that prior to the date on which this document was written there were certain transactions between the plaintiff-respondent and the defendant-appellant mostly in the nature of loans arranged by the plaintiff-respondent for the benefit of the defendant-appellant, and on the 1st August, 1953, the plaintiff-respondent forwarded a statement marked X2 to the defendant-appellant claiming a sum of Rs. 9,927·50 due to him on these transactions. The document "A" is said to have been written by the defendant-appellant with reference to this claim, and according to that document the defendant-appellant admitted liability in the sum of Rs. 9,347·09 only, which is less than the amount claimed in X2. The defendant-appellant subsequently sent to the plaintiff-respondent the letter X3 dated the 4th August, 1953, which is in the following terms :—

" Dear Sir,

Further to our letter of the 1st August, 1953, we have now to point out to you that the amount Rs. 9,347·09 mentioned in our letter is incorrect.

However, we will send you a statement of accounts early after checking up the accounts.

Yours faithfully,

The Central Union Insurance Co., Ltd. "

There is no evidence whether a statement as promised in paragraph 2 of X3 was sent by the defendant-appellant. This action was filed on the 2nd October, 1953.

The learned District Judge in making the order appealed from held that the document "A" is "a contract in writing for a liquidated amount of money" within the meaning of s.703 in Chapter 53 of the Civil Procedure Code and that the plaintiff-respondent could sue on it by way of summary procedure.

Learned counsel for the defendant-appellant cited to us the case of *Subapathipillai v. The Jaffna Trading Co.*<sup>1</sup> where it was held by de Sampayo J. (Schneider J. agreeing with him) that the instrument or contract in writing for a liquidated amount of money referred to in s.703 must be of the same nature as the documents referred to immediately before in that section, namely, a bill of exchange, promissory note or cheque, and that under s. 705 the Court is required to satisfy itself that the instrument is properly stamped before it allows summons.

In the present case it cannot be contended that the document "A" is in the nature of a bill of exchange, or a cheque. Whether it is in the nature of a promissory note seems to me to be extremely doubtful since according to Chalmers on Bills of Exchange<sup>2</sup> a document to constitute a promissory note must be such as to show the intention to make a note, a rule which is based on the view that parties are not precluded from making written contracts relating to the payment of money, other than bills and notes; and from the document in question and the circumstances, as already set out by me, in which it came to be written, and also from the subsequent letter X3, it would seem that the defendant-appellant did not intend it to serve as a promissory note.

It is however not necessary to decide the question whether the document "A" is in the nature of a promissory note because the order made by the learned District Judge is shown to be incorrect on another ground. Even assuming that this document is in the nature of a promissory note s.705 (2) of the Civil Procedure Code requires that it should appear to the Court to be properly stamped before issuing summons. As pointed out by de Sampayo J. in the case of *Sabapathipillai v. The Jaffna Trading Co.* (supra), this is a condition precedent to the issue of summons. The document "A" bears no stamp at all and it is not contended by learned counsel for the plaintiff-respondent that if it is a document of the nature referred to in s.703 it is not liable to any stamp duty at all.

The order of the learned District Judge is, therefore, set aside and the case is remitted to the lower Court so that a date may be given to the defendant-appellant to file answer unconditionally. The plaintiff-respondent must pay to the defendant-appellant the costs of this appeal and of the inquiry in the Court below.

DE SILVA J.—I agree.

*Order set aside.*

<sup>1</sup> 4 C. L. Rec. 210.

<sup>2</sup> 11th Ed. p. 261.