

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and
Mr. Justice Middleton.

1907.
October 2.

SUPRAMANIAN CHETTY *v.* KRISTNASAMY CHETTY.
D. C., Jaffna, 5,236

Civil Procedure Code, ch. LIII.—Summary procedure on liquid claim—Promissory note—Defence of partial failure of consideration and payment—Failure to give particulars—Reasonable doubt as to the good faith of defence.

Where in an action on a promissory note for Rs. 2,000 under summary procedure, the defendant applied for leave to defend upon an affidavit admitting the making of the note, but alleging that the plaintiff paid him only Rs. 1,500, out of which sum he had paid Rs. 1,300, leaving only a balance sum of Rs. 200 due, and where the defendant filed no particulars with his affidavit in support of his defence,—

Held (affirming the order of the District Judge), that there were reasonable grounds for doubting the good faith of the defence, and that the defendant should only be allowed to defend the action, if he deposits in Court the amount of the claim or gives security for it.

THE plaintiff sued the defendant on a promissory note dated September 26, 1904, for Rs. 2,000 under chapter LIII. of the Civil Procedure Code. The defendant moved for leave to defend the action, and in support of his motion filed the following affidavit:—

“ 1. I am the defendant in this case.

“ 2. I admit that I and my brother K. K. Thuraiappa granted the promissory note sued upon in this case for Rs. 2,000, but deny that we received the full amount mentioned in the said promissory note.

“ 3. The plaintiff paid only Rs. 1,500, out of which sum I have paid to the plaintiff the sum of Rs. 1,300, as will appear more fully on reference to the account of dealings had between me and the plaintiff, which account ought to be produced and filed in Court by the plaintiff. I undertake to file my account with my answer.

“ 4. There is now due and owing to the plaintiff upon the said note the sum of Rs. 200 and some interest, which amount I am ready and willing to pay.

“ 5. I further affirm and declare that the above are the true facts of the case. ”

1907.
October 2.

The District Judge (W. R. B. Sanders, Esq.) gave him leave to defend the action only on condition that he deposited the amount of the claim or gave security for it.

The defendant appealed.

H. A. Jayewardene, for the defendant, appellant.

Van Langenberg, for the plaintiff, respondent.

Cur. adv. vult.

October 2, 1907. HUTCHINSON C.J.—

This action was commenced on April 19, 1907, the claim being for Rs. 1,812 due on a promissory note dated September 26, 1904, for Rs. 2,000 and interest. The plaintiff proceeded under chapter LIII. of the Civil Procedure Code with summons and affidavit as required by section 705. The defendant applied for leave to defend upon an affidavit admitting the granting of the note, but alleging that "the plaintiff paid only Rs. 1,500, out of which sum I have paid Rs. 1,300, as will appear more fully on reference to the account of dealings had between me and the plaintiff, which account ought to be produced and filed in Court by the plaintiff. I undertake to file my account with my answer." On these materials the District Judge said: "I have reasonable doubts as to the *bona fides* of the defence. He signs a promissory note for Rs. 2,000. He states in his affidavit that he received only Rs. 1,500. He states in his affidavit that he has paid only Rs. 1,300, and that only a balance of Rs. 200 is due by him. Before I allow him to answer he must either deposit the sum for which he is sued, or give security therefor." The defendant appeals against that order, and claims that he is entitled to unconditional leave to defend.

There are several reported decisions on cases more or less similar under sections 704 and 706. But the law is quite clear; the question in each case is whether, in the words of section 704, there is any "reasonable doubt as to the good faith of the defence," or, as it is expressed in section 706, whether the defendant's affidavit "is satisfactory to the Court." The defendant gives a formal acknowledgment in September, 1904, that he owes Rs. 2,000; when he is sued on that in April, 1907, he swears that the acknowledgment is not true, and that he only owed Rs. 1,500; and he also swears that he has paid Rs. 1,300. He produces no receipts and no accounts. In the case of *Wallingford v. The Mutual Society*¹ under order 14 of the English rules—similar to but not identical with chapter LIII. of our Code—Lord Blackburn said that a defendant who sets up such a defence must give particulars: that it is not enough to say "I owe nothing;" he must satisfy the Judge that there is reasonable ground for saying so. In this case I think there were reasonable grounds for the Judge doubting the good faith of the defence.

¹ (1880) 5 App. Cas. 704.

I think, therefore, that the appeal should be dismissed with costs, and that defendant should only be allowed to answer if he deposits, in Court the sum for which he is sued, or gives security for it within a fortnight from this date.

1907.
October 2.
HUTCHINSON
C.J.

MIDDLETON J.—

In this case it was objected that upon the face of the affidavit furnished by the defendant the District Judge ought to have allowed unconditional leave to defend the action, which was on summary procedure on a promissory note.

The cases reported in 2 *Browne* 267 and 395 were relied on, and it was argued (1) that there were no reasonable grounds for the doubt expressed by the Judge; and (2) that if the Judge felt reasonable doubt as to the good faith of the defence under section 704 of the Civil Procedure Code, he should have expressed his reasons on the record. This he is not specifically ordered to do in section 704, but under section 187 a judgment must contain the reasons for a Judge's decision. Under the interpretation clause of the Code (section 5) a judgment means the statement given by the Judge of the grounds of a decree or order. In the present case the appeal is from an interlocutory order of the Court, which is admittedly appealable. Here no formal order was drawn up, but a short note made by the Judge, which in effect is a judgment, and which therefore should contain the reasons for the Judge's decision. In most instances the reason in cases of this kind can be ascertained by any one who reads the plaint and the plaintiff's and defendant's affidavits.

In my opinion, therefore, the Judge should state the grounds for the reasonable doubt he feels, in order that the Supreme Court may be in a position to judge of their adequacy at once. If he does not do so, unless they are apparent to the Appeal Court, his order will have to be reversed.

On the other points I entirely subscribe to the ruling of Bonser C.J. in *Annamalay v. Allicn*¹ and *Meyappa Chetty v. Chittambalam*² that there are only two cases in which the Court can order the defendant as a condition of being allowed to defend to bring the money into Court: (1) when the defence set up is bad in law, (2) when the defence set up is good in law, but the Court has reasonable doubt, i.e., doubt for which reasons can be given, as to the *bona fides* of the defence. In *Meyappa Chetty v. Chittambalam*² Bonser C.J. laid it down "that the rule would appear to be that when the defendant does swear to facts which, if true, constitute a good defence, he should be allowed to defend unconditionally, unless there is something on the face of the proceedings which leads the Court to doubt the *bona fides* of the defence."

¹ [1896] 2 N. L. R. 251.

² (1902) 2 *Browne* 396.

1907

October 2.

MIDDLETON
J.

The Judge has not given his reasons here, but I think on the face of the affidavit of the defendant there is reason to doubt its *bona fides*, (1) because the defendant therein admits his acquiescence in a mistaken claim under a promissory note for some three years; (2) there is no allusion to receipts for the alleged payments on account; (3) the offer to file an account with the answer, which it is suggested is only obligatory on the plaintiff doing the same thing, does not bear the impress of good faith.

I would therefore dismiss this appeal with costs.

Appeal dismissed.

