

1907.
October 2.

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

KUMARAPPA CHETTY *v.* KRISTNASAMY CHETTY.

D. C., Jaffna, 5,226.

Civil Procedure Code, ch. LIII.—Action on promissory note—Bona fides of defence—Materials in support of defence—"Reasonable doubt as to good faith."

Where in an action on a promissory note under summary procedure the defendant applied for leave to defend the action, filing an affidavit in which he admitted the making of the note, but denied that there was any consideration, alleging that the note was given as security for any balance that might be found due to the plaintiff upon an account which the plaintiff agreed to open in the plaintiff's name, and that after the making of the note the plaintiff went away to India without opening such account, so that there was no money due on the note,—

Held, that the circumstances were such as to create reasonable doubt as to the good faith of the defence, and that the defendant was not entitled to leave to defend the action unconditionally.

A Judge should give reasons for his decisions.

THE plaintiff sued the defendant on a promissory note for Rs. 1,100 dated March 25, 1906. The defendant moved for leave to defend the action, filing the following affidavit:—

" 1. That I am the defendant in this case.

" 2. That I admit having granted the promissory note in question, but deny that any consideration passed at the time of my making the said note.

" 3. That I further affirm and declare that, as usual and customary with the Natukottai Chetties in Jaffna, the note in question was granted by me and accepted by the plaintiff only as a mere security for any balance that may ultimately be found due and

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owing to the plaintiff from me upon an account which the plaintiff agreed and undertook to open in my name.

" 4. That subsequent to the granting of the said note the plaintiff went away to India without opening the said account, and so there is no money due from me to the plaintiff upon the said note.

" 5. That I further affirm and declare that the above are true facts of the case, and I did not borrow or receive any money upon the promissory note in question, and I owe plaintiff no money on it."

The District Judge (W. R. B. Sanders, Esq.) gave the defendant leave to defend only on his paying into Court the amount of the claim, or giving security therefor.

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.—

The plaintiff sues on a promissory note given by the defendant dated March 25, 1906, for Rs. 1,100 and interest. The plaint was filed on April 16, 1907, and the plaintiff proceeded under chapter LIII. of the Civil Procedure Code. On May 28 the defendant applied for leave to defend, filing an affidavit in which he admitted having given the note, but denied that there was any consideration, and said that the note was given as security for any balance that might be found due from him upon an account which the plaintiff agreed to open in the plaintiff's name, and that after the granting of the note the plaintiff went to India without opening the account, and so there was no money due on the note.

On this the Judge, without giving any reasons, allowed the defendant to defend on giving security for the amount claimed. The defendant appeals against that order, and says that on his affidavit he is entitled to unconditional leave to defend.

We have just given judgment in a similar case in which the same defendant was sued in the same Court by another plaintiff on a promissory note, and, as I said in that case, the sole question is whether the defendant's affidavit is "satisfactory to the Court" (section 706), or, as it is put in section 704, whether there is any "reasonable doubt as to the good faith of the defence."

In my opinion, when the defendant has given a formal acknowledgment in a promissory note that he owes a certain sum, it is not enough for him to say he did not owe anything. He must satisfy the Judge that he has reasonable ground for saying so. The Judge ought to have given his reasons for the decision, but, though his omission to do so is an irregularity, it does not invalidate his decision. In a case where we thought it necessary we might call upon the Judge to give his reason, but I do not think it is necessary here. I think

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that the affidavit is not satisfactory, and I would dismiss the appeal with costs, giving the defendant a fortnight from to-day to pay into Court or give security.

MIDDLETON J.—

The appeal in this case is the same as in 68, D. C. (Interlocutory), Jaffna, 5,236, and the points raised are the same.

I have already expressed my opinion in that case on questions submitted to us, and I do not propose to repeat them. I would only say here that I think, although the Judge's reasons are not expressed as they ought to have been, that the defendant's affidavit on the face of it, (1) from the fact that he has got no goods on account; (2) that the plaintiff went to India without protest from the defendant; (3) his delay in getting back the note, show that there are reasons patent to this Court for the Judge's refusal to give unconditional leave to defend.

I would dismiss this appeal with costs.

Appeal dismissed.

