

Present: Mr. Justice Grenier.

Mar. 7, 1910

PERERA v. SILVA.

C. R., Panadure, 9,252.

Civil Procedure Code, ss. 817 and 818—Action in Court of Requests for breach of contract—Failure to claim in reconvention amount due on an on demand promissory note—Bar to fresh action on the note.

A recovered judgment against B in the Court of Requests for advances and expenses made and incurred by A on an undertaking by B to lease certain property. B failed to claim in reconvention the amount due to him from A on an on demand promissory note for less than Rs. 300. B brought the present action in the Court of Requests against A on the note.

Held, that the claim was barred under section 817 of the Civil Procedure Code.

THE facts are fully set out in the judgment.

A. St. V. Jayewardene, for the appellant.

No appearance for respondent.

Cur. adv. vult.

March 7, 1910. GRENIER J.—

The facts are these. In case No. 9,196, C. R., Panadure, the plaintiff therein, M. Charles Silva, sued the defendant therein H. Elias Perera, to recover the sum of Rs. 175, with legal interest thereon, on account of certain advances and expenses which the plaintiff alleged he had made to defendant, and incurred, on an undertaking by the defendant to lease certain premises to the plaintiff for a term of six years. The plaintiff recovered judgment against the defendant for Rs. 66, and there was no appeal.

In the case now before me H. Elias Perera is the plaintiff, and his action is on a promissory not dated October 23, 1908, alleged to have been made by defendant, M. Charles Silva, in his favour. The defendant, in addition to impeaching the note as a forgery, pleaded that in case No. 9,196 instituted on or about August 25, 1909, against the plaintiff for the recovery of a sum of money for breach of a contract, the plaintiff as defendant therein filed answer, but did not make any claim in reconvention on the promissory note now sued upon, and by reason of such omission the plaintiff is now precluded from maintaining his present action.

Mar. 7, 1910 The section (817) of the Civil Procedure Code relied upon by the defendant in support of his objection runs as follows: "Where the defendant in an action for breach of a contract neglects to interpose a claim in reconvention, consisting of a cause of action in his favour for a like cause which might have been allowed to him at the trial of the action, he and every person deriving title thereto through or from him are for ever thereafter precluded from maintaining an action to recover the same."

GRENIER J.
Perera v.
Silva

The next section (818) limits the prohibition enacted in section 817, but we are not concerned on this appeal with the cases mentioned in section 818.

In my opinion the words of section 817 are comprehensive enough to include a claim on a promissory note, and the plaintiff in this case should therefore have interposed a claim in reconvention founded upon it in case No. 9,196. The promissory note is one payable on demand, and it was open to plaintiff to make his claim in that action. The claim in reconvention was one in the words of section 817: "which might have been allowed to him at the trial of the action," and not having made his claim, he is by the operation of the section precluded from maintaining his present action. The case might perhaps have been different if the plaintiff had a promissory not payable some months after date, and by reason of its not having matured he was not able to interpose a claim in reconvention, which would have been allowed to him at the trial of the action. A note, payable on demand becomes due immediately on demand being made, and the making of the claim in reconvention, just as much as the institution of an action upon the note, would constitute a sufficient demand in law. The appeal must be dismissed with costs.

Appeal dismissed.