

1901.
December 21.

RAMASWAMY CHETTY v. UDUMA LEBBE MARIKAR.

D.C., Colombo, 15,815.

Civil Procedure Code, s. 704—Action on promissory note—Permission to appear and defend—Reasonable doubt as to good faith of the defence—Security to cover plaintiff's claim.

Where the defence set up by the defendant to an action on a promissory note appears on the face of his affidavit to be good in law, and no reasonable doubt exists as to the *bonâ fides* of the defence, it is the duty of the District Court to permit him to appear and defend without security.

A reasonable doubt means a doubt for which reasons could be given.

THIS was an appeal from an order made by the Court below under section 704 of the Civil Procedure Code, requiring the defendant to give security in full to cover the plaintiff's claim on two promissory notes as a condition to his being permitted to appear and defend the action. The Additional District Judge stated that he had reasonable doubts as to the good faith of the defence raised by the defendant.

H. J. C. Pereira, for defendant, appellant.—In this case the defendant has tendered an affidavit disclosing a defence, but the judge declined to allow him to appear and defend unless he gave security to the full extent of plaintiff's claim. The reason for the order was that the judge thought the defence was not a *bonâ fide* one. This is not a case in which defendant ought to be put on terms. Defendant discloses a valid defence, and it is not for the judge to say he thinks it is not a *bonâ fide* one unless he has reasons to think so and states the reasons. The District Judge had no materials, outside the affidavit, to go upon. In *D. C., Colombo, 319*, decided on the 7th November, 1900, the Supreme Court reversed a similar order. [WENDT, J.—There are cases where the Chief Justice has held that a reasonable doubt is a doubt for which reasons can be given.]

21st December, 1901. BONSER, C.J.—

This is an appeal from an order made by the District Judge of Colombo upon an application under section 704 of the Civil Procedure Code, requiring the defendant, as a condition to his being permitted to appear and defend the action, to give security for the full amount of the plaintiff's claim. The defence set up by the defendant in his affidavit is one that is good in law, but the District Judge says: "I have reasonable doubts as to the good faith

of the defence now raised," and that is all he says. It seems to me that that is insufficient. In *Annamalai v. Allien*, 2 N. I. R. 251, I said that in my opinion a reasonable doubt meant a doubt for which reasons could be given, and the District Judge in this case has given no reason whatever for his doubts. I can imagine a case in which a defence might be set up such as a defence of payment. but set up by the defendant so boldly without entering into particulars that the Court might well say: "It seems to me this is merely a defence which has been put in for the purpose of delaying the action, and not a *bonâ fide* defence, otherwise the defendant would have stated what the alleged payment was, the circumstances under which it was made, and all other such facts." In this case, however, the defendant has set out at length in his affidavit the circumstances of the case, and I see nothing upon the face of his affidavit to lead me to doubt the *bonâ fides* of the defence. That being so, I think leave ought to be granted without security.

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WENDT. J.—I am of the same opinion.

