
Present: Pereira J.

1914.

ARUNACHALAM *v.* MOHAMADU.

2—C. R. Colombo, 33,295.

*Claim in reconvention—Cause of action accruing after the filing of action—
Civil Procedure Code, s. 75.*

A claim in reconvention may be made in respect of a cause of action that accrued at any time before the filing of the answer. It is not necessary that the cause of action should have arisen before the institution of the action.

THE facts are as follows. The appellants were sued in case No. 33,295 of the Court of Requests of Colombo on a promissory note to recover the sum of Rs. 268.10, further interest, and costs of suit.

Judgment was entered against the appellants without their knowledge, and when the second appellant was arrested on a warrant issued in the case, he deposited the whole amount of the claim, and the appellants filed affidavit averring that the summons in the case had not been served on them, and moved to re-open judgment.

The judgment was re-opened, and the appellants filed answer denying their liability on the note sued on, and the second appellant

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claimed from the respondent a sum of Rs. 300 in reconvention by way of damages sustained by him by reason of wrongful arrest under the warrant issued in the case.

On the day of trial the following five issues were suggested:—

- (1) Has the note sued upon been discharged?
- (2) Whether the note was duly presented at the Bank of Madras for payment?
- (3) Was there service of summons and writ in this case on the defendants?
- (4) If not, was the arrest of the second defendant on the warrant illegal?
- (5) If so, what damages is the second defendant entitled to?

The learned Commissioner made the following order:—

After hearing argument I adopt the first two issues, and leave the remainder for the defendants to bring another action if they choose. I hold that a claim in reconvention can only be allowed on the relative position of the parties as they were at the time of the institution of action, and not on any cause of action arising since.

The parties went to trial on the first two issues, and judgment was entered for the plaintiff.

The defendants appealed.

Arulanandam, for defendants, appellants.—Section 75 of the Civil Procedure Code makes it clear that a claim in reconvention is to be regarded as a cross-action. There is therefore no reason why the defendants should not claim damages on a cause of action which was in existence at the time of the filing of the answer. Counsel cited 396—C. R. Panadure, 11,165¹ *Beddall v. Maitland*² is an express authority on the point. The underlying principle of our Code is the prevention of a multiplicity of actions.

Bartholoméusz, for respondent, relied on 2 S. C. R. 83.

Arulanandam, in reply.—The English section interpreted by *Beddall v. Maitland*² is in substance the same as section 75 of our Code.

Cur. adv. vult.

February 24, 1914. PEREIRA J.—

Judging from the principles laid down in the case of *Beddall v. Maitland*². I think that a claim in reconvention may be made in respect of a cause of action that accrued at any time before the filing of the answer. I set aside the decree, and remit the case to the Court below for adjudication on the claim in reconvention and for final judgment and decree thereafter. The evidence already recorded will remain as evidence in the case. The appellant will have his costs of appeal, but other costs will abide the event.

Sent back.

¹ S. C. Civ. Min., Dec. 8, 1913.

² L. R. Ch. D. 174.