

ANAMALAY v. ALLIEN.

D. C., Colombo, No. 9,249.

1898.
October 30.

*Summary procedure under chapter LIII. of the Civil Procedure Code—
When defendant may be ordered to bring money into Court as a
condition of being allowed to defend—Affidavit by plaintiff—Its
requirements.*

In an action under chapter LIII. of the Civil Procedure Code, the Court cannot order the defendant to bring the money into Court as a condition of being allowed to defend, unless the defence set up is bad in law, or the Court has reasonable doubt (that is to say, doubt for which reasons could be given) as to its good faith.

In order to entitle the plaintiff to the summary procedure under chapter LIII., it is necessary that he should make an affidavit that the sum he claims is justly due to him from the defendant.

THE facts of the case sufficiently appear in the judgment.

Pereira, for defendant, appellant.

30th October, 1896. BONSER, C.J.—

The appellant appeals against the refusal of the District Judge of Colombo to allow him to appear and defend in a case which was brought against him on a promissory note for Rs. 1,000.

The action is brought under chapter LIII. of the Code. The defendant put in a long affidavit, which, if true, disclosed a good defence to the action. The District Judge has disallowed the application for leave to defend, except on the condition that the defendant brings Rs. 1,000 into Court. He gives no reason for his decision.

Now, 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: First, when the defence set up is bad in law; and secondly, when the defence set up is good in law, but the Court has reasonable doubt, that is to say, doubt for which reasons could be given.

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BONSEB, C.J. In the present case the District Judge has not given any reason for doubting the good faith of the defence set up, and for my own part I do not see anything upon the face of the defendant's story to throw doubt upon its good faith ; but however that may be, it appears that the plaintiff is not in a position to avail himself of this summary procedure. In order to do this he must make an affidavit that the sum he claims is justly due to him from the defendant. In my opinion the word "justly" is a material word.

In this case the plaintiff has merely sworn that the amount is due on the promissory note. He has not sworn that he has given any consideration for the note, and it may merely amount to a statement that by the promissory note the defendant undertook to pay him Rs. 1,000 and has not paid him any part of it.

I think that the requirements of this chapter must be strictly construed. The defendant must be allowed to defend the action unconditionally.

LAWRIE, J., agreed.
