

1954

Present : Pulle J. and Fernando A.J.

M. GANAPATHY, Appellant, and M. RAMASAMY,
Respondent

S. C. 105—D. C. Colombo, 19,035

Postponement—Conflict of medical certificates—Proper assessment.

Where a medical certificate which was submitted on behalf of the plaintiff in support of an application for a postponement of the hearing of evidence was in conflict with the report of the medical practitioner who examined him on the next day on a commission issued by Court at the instance of the defendant—

Held, that the medical certificate should not be rejected unless it could be said that the medical practitioner who issued it and the plaintiff had conspired to conceal the true facts.

APPEAL from an order of the District Court, Colombo.

N. E. Weerasooria, Q.C., with *H. W. Jayewardene, Q.C.*, and *D. R. P. Goonetilleke*, for the plaintiff appellant.

C. Thiagalingam, Q.C., with *V. Arulambalam*, for the defendant respondent.

Cur. adv. vult.

December 15, 1954. PULLE J.—

The order from which this appeal is taken arises out of an application made by the plaintiff's counsel on the 18th December, 1952, for a postponement of the hearing fixed for that date on the ground of plaintiff's illness. The application was supported by a medical certificate dated the 17th December, which reads :

" This is to certify that Mr. M. Ganapathy is under my treatment for influenza with a temperature of 100 degrees and chest pain. He is confined to bed and unfit to move about. "

The certificate was challenged by defendant's counsel apparently on the ground that the statements therein were untrue and he obtained a commission on Dr. Cyril Fernando to have the plaintiff examined the same day. Dr. Fernando examined him on the 18th December at 12.45 p.m., and reported that his temperature was 98.2, pulse 84, and lungs and throat clear. In his opinion the plaintiff was not suffering from influenza and was fit to attend court. The case was called on the 19th December when defendant's counsel moved that it be fixed for trial *ex-parte*. This was resisted on two grounds, first, that an enquiry should be held on the medical reports and, secondly, that in any event the trial should proceed *inter partes*. The learned District Judge fixed the whole matter for

enquiry on the 9th March, 1953, and after hearing evidence he came to the finding that the plaintiff was fit to attend court on the 18th December and to continue his evidence and that his absence was without sufficient cause and made order that the case be set down for trial but that both on the plaintiff's claim and the defendant's claim in reconvention the plaintiff would not be entitled to be heard. The plaintiff appeals from this order.

The only evidence there is of the condition of the plaintiff on the night of 17th December is that of Dr. S. Chinniah. He was sent for to the house of the plaintiff on the 17th at about 7.30 p.m., and found him with a temperature of 100 degrees. The plaintiff complained of severe chest pain and pains all over the body. He prescribed a mixture, a powder and an ointment for the pain. The circumstances in which he gave to the plaintiff the certificate quoted earlier are spoken to by him as follows :

“ Plaintiff told me that he had a case and that he had to attend court the next day. I told him that, as he had a chest pain, it was better for him to be in bed and take the necessary medicine. He wanted a certificate and I gave him a certificate stating the condition that he was in at the time. ”

It is relevant at this stage to mention that the plaintiff claimed a sum of Rs. 26,012 and the defendant counter-claimed Rs. 35,002. The trial commenced with the evidence of the plaintiff on 23rd July, 1952, and was continued on 24th July, 13th and 14th October and 15th December, 1952. On the last mentioned date further hearing was put off for the 18th and 19th December, 1952. The cross-examination of the plaintiff commenced on 23rd July and was to be resumed on 18th December so that on five different dates he had appeared and submitted himself for cross-examination. I think there is considerable force in the contention that it was unlikely that the plaintiff having contested the case thus far would have taken the risk of forfeiting his claim and of having judgment entered against him on the counter-claim by simulating illness to avoid an appearance on the 18th December.

The District Judge has accepted the evidence of Dr. Chinniah that the plaintiff was not sufficiently well on the night of 17th December to leave his bed and that he had fever and pain : in other words, that the certificate was factually true.

It is in evidence that Dr. Chinniah again examined the plaintiff at about 10.30 a.m. on the 18th December and found that his temperature had returned to normal. He complained of pain in the leg and said that he could not go to court and “ was sending the certificate ”. Dr. Chinniah was satisfied that he was not in a fit condition to go to court and I have no reason to doubt that the plaintiff acted on the opinion of his medical adviser. If in fact that opinion was not well founded one can yet understand a medical adviser erring on the side of caution in telling his patient to lie up in bed some fifteen hours after he had found him suffering from influenza.

The opinion of Dr. Fernando which has been accepted, and rightly, by the Judge is that the plaintiff's condition at about 10.30 a.m. on the 18th December, which was the time of the second examination by Dr. Chinniah, would have been much the same in which he found him at 12.45 p.m. Now accepting the entirety of Dr. Fernando's evidence can it be said that the plaintiff's absence was without sufficient cause ?

It is definitely established that on the night of the 17th December the plaintiff was suffering from influenza. Assuming that Dr. Chinniah on the morning of the 18th December formed erroneously the opinion that the plaintiff was not fit to attend court it appears to me that the plaintiff acted reasonably in accepting the advice of a medical practitioner who had commenced to treat him only the night before for an illness which may recur, unless the patient lies up in bed for two or three days.

After describing the condition of the plaintiff as found by Dr. Chinniah on the 18th morning the learned Judge says in his order :

“ But that, even on Dr. Chinniah's evidence, was all that was wrong with him on the 18th morning. Why Dr. Chinniah says that even at that time he was satisfied the plaintiff was not in a fit condition to go to court I am at a loss to understand. As regards the pain, of course, he could have only gone on what the plaintiff told him. But when the plaintiff told him that he was sending the certificate granted on the 17th to the court I think Dr. Chinniah should have objected to such a course. ”

Dr. Chinniah may have made an incorrect assessment on the 18th morning of plaintiff's fitness to attend court immediately on the day following the onset of influenza but should the fact that the plaintiff acted on medical advice expose him to all the consequences, almost penal, of the claim made by him and that made against him being adjudicated upon without his being heard ? I do not think so. The purpose for which Dr. Chinniah made out his certificate on the 17th was undoubtedly to excuse plaintiff's absence on the 18th. If he believed on the 18th that the plaintiff was not in a fit condition to appear on that day, the propriety or otherwise of the use to which the certificate would have been put could hardly have occurred to him. I may even be permitted to add, with all respect, that in the circumstances Dr. Chinniah need not have objected to the certificate being produced when the plaintiff said that he was “ sending ” it. Besides, it is highly probable that at the time he examined the plaintiff (i.e., 10.30 a.m. on the 18th) the certificate was already in the hands of counsel with hardly any time to countermand it.

It is no doubt true that the condition of the plaintiff described in the certificate did not accord with the facts as they existed on the 18th but can the application be aptly described in the words of the learned Judge “ as a deliberate attempt by the suppression of the true facts, which it was essential that the court should have been apprised of, to have the trial delayed ” ? Unless it could be said that Dr. Chinniah and the plaintiff had conspired on the 18th morning to conceal the true state of affairs,

I think that a charge of deliberate suppression cannot be made out on the evidence.

For the reasons which I have stated I am of the opinion that the plaintiff had sufficient cause to be absent on the 18th. It is, therefore, not necessary to deal with the further submissions on behalf of the plaintiff that even if the finding of fact is accepted as correct the order cannot in law be supported.

I would set aside the order appealed from and remit the case for hearing in due course. The plaintiff will pay to the defendant the taxed costs of the 18th and 19th December, 1952, (including the expenses of the commission). Each party will bear his own costs of appeal and the costs of 9th March, 1953.

FERNANDO A.J.—I agree.

Order set aside.
