SCIENCE HOUSE (CEYLON) LTD.

v.

IPCA LABORATORIES PRIVATE LTD.

COURT OF APPEAL.
DIAS BANDARANAYAKE, J. AND WIJETUNGA, J.
CA (LA) No. 147/82.
OCTOBER 20, 22 AND 28, 1986.

Civil Procedure – Summary procedure on liquid claims – Chapter 53 of the Civil Procedure Code – Civil Procedure Code, ss. 181, 703 and 705 – S. 34(1) of Companies Ordinance – Affidavit of Company – Security.

Section 703 and 705 of the Civil Procedure Code taken together provide the path to reach out to s. 34(1) of the Companies Ordinance of 1938 and this latter section read with s. 181 of the CPC provides for the making of an affidavit of facts by a company or corporation. The law as it stands permits a corporation or a company the option of instituting an action by way of summary procedure under Chapter 53 of the Civil Procedure Code for recovery on liquid claims.

The order that security in a sum exceeding the principal sum claimed to be deposited as a condition of the grant of leave to appear and defend is not bad in law as interest was also being claimed.

Bank of Madras v. Ponnusamy (1891) 9 S.C.C 169 not followed.

Cases referred to:

(1) *Bank of Madras v. Ponnusamy – (1891) 9 SCC 169.*
(2) *Bank of Montreal v. Cameron – 46 L.J. Q.B. 425*
(3) *Seaford Court Estates Ltd. v. Asher – [1949] 2 KB 481.*
(4) *J. L. Peiris & Co., Ltd. v. L. C. H. Peiris – 74 NLR 261.*
(5) *Minister of Home Affairs v. Fisher – [1956] 3 All ER.*
(6) *Collette's Case – [1984] 2 SLR 253.*
(7) *L. Bolton Engineering Co., Ltd. v. Graham – [1956] 3 All ER 624.*

APPEAL from order of the District Court of Colombo.

P. Nagendran, with *C. Cadiramanpillai* and *Mrs. K. S. Ratnavel* for petitioner.

K. N. Choksy, P.C. with *S. C. Parathalingam, Miss I. R. Rajepakse* and *Nihal Fernando* for respondent.

Cur. adv. vult.

December 18, 1986.

BANDARANAYAKE, J.

The plaintiff-respondent, a company incorporated in India and based in Bombay filed this action in the District Court of Colombo in summary procedure under Chapter 53 of the Civil Procedure Code on two Bills of Exchange given by the defendant-appellant company being value for drugs imported by the defendant-company to Sri Lanka.

Bill of Exchange marked 'A' dated 10.11.78 was for a sum of Rs. 54,175 Indian rupees equivalent to Rs. 121,915.42 Sri Lankan rupees with Bank charges and interest thereon at 15% per annum.

Bill of Exchange marked 'B' dated 5.1.79 was for a sum of Rs. 86,055 Indian rupees equivalent to Rs. 193,658.17 Sri Lankan rupees with charges and interest as aforesaid. The plaintiff claimed that an aggregate sum of over Rs. 425,000 Sri Lankan rupees was now due and owing on the said transaction.

The defendant-appellant applied for leave to appear and defend the action unconditionally before the District Court. Two main grounds were urged by the defendant:

(1) that there was a patent want of jurisdiction in the District Court to proceed with an action by way of summary procedure on liquid claims under Chapter LIII of the Civil Procedure Code brought by a corporation or company, for the reason that s.705 of the Civil Procedure Code required that a plaintiff seeking to utilise the provisions of Chapter LIII *must make affidavit* but that, the plaintiff being a juristic person and not a natural person cannot make affidavit as the Civil Procedure Code as it now stands contains no provision for a corporation etc. to swear or affirm to an affidavit. There *was* such a provision in the former Civil Procedure Code, viz. s.829A *which stood in Part X Chapter LXVI of the Code regarding actions in the Courts of Requests* which extended the provisions of s.655 relating to the provisional remedies of arrest and sequestration before judgment enabling others to make affidavit in lieu of the plaintiff to affidavits required by s.705 relating to summary procedure on liquid claims; but that Code had been repealed by s.3 of The Administration of Justice (Amendment) Law No.25 of 1975. The Courts Ordinance had also been repealed. Then by Civil Courts Procedure Special Provisions Law No.19 of 1977 reference to the Civil Procedure Code as a repealed enactment in s.3 of the Administration of Justice Law was *omitted* which resulted in a situation as if the former Civil Procedure Code of 1889 had never been repealed. Next came Civil Procedure Code (Amendment) Law No.20 of 1977 which by s.124 repealed Chapter LXVI of the parent law dealing with *Courts of Requests*. Courts of Requests were not recognised by the new Judicature Act. With it was repealed s.829A aforesaid. Its provisions have thus not been revived in the current reprint of the Civil Procedure Code.

Defendant's counsel had in the above context referred to the Judgment of the Supreme Court in *Bank of Madras v. Ponnusamy* (1) decided in 1891 which held that a corporation could not take advantage of summary procedure being incapable of making an affidavit. This decision resulted in the amendment of the Civil Procedure Code in 1895 and s.829A aforesaid was introduced into the Code. Affidavits were permitted under the amendment. That

provision does not now exist. Counsel also took objection to this matter of law being raised for the first time in written submissions as it was not raised in the defendant's affidavit; and that the Court must act only on the affidavits filed – vide 58 C.L.W. 106;

(2) that the goods received were of poor quality and were in deterioration and same had to be destroyed.

At an inquiry counsel for the plaintiff urged that in regard to (1) above the judgment in the *Bank of Madras Case (supra)* (1) cited ante had been delivered at a time when there were no companies in Sri Lanka and no provision existed to subscribe to documents on behalf of a company but that by s.34(1) of the Companies Ordinance 1938 there was provision made for authentication of a document, which provision read with s.181 of the Civil Procedure Code enabled a corporation to apply for summary procedure. Thus a company could avail itself of summary procedure. With regard to the other question of the quality of the goods supplied referred to in (2) above, the plaintiff relied on documents C1 to C11 where there was no allegation made by the defendant that the goods were of poor quality.

The District Court held that:

(*a*) as the judgment delivered in the *9 S.C.C. case* in 1891 was prior to the Companies Ordinance 1938 it was inapplicable as s.34(1) of the latter Ordinance made provision for the authentication of a corporation's documents and that the plaintiff company therefore had filed a good and valid affidavit despite the absence of provision similar to s.829A of the Civil Procedure Code and that in any event the court cannot examine anything not averred in the defendant's affidavit;

(*b*) that the correspondence indicates that the defendant accepted the amount due to the plaintiff but that the delay in payment was due to reasons such as failure to comply with Exchange Control Regulations and not because the goods were of poor quality. This affected the bona fides of the defendant. The court therefore held that the defence was not prima facie sustainable and that the court had a reasonable doubt as to its good faith.

Upon these findings the District Court made order dated 24.9.82 that the defendant-appellant deposit a sum of Rs. 400,000 as

security in the case on deposit of which the defendant was allowed leave to appear and defend the action. This appeal is from that order with leave.

The main argument of learned counsel for the defendant-appellant addressed to this court concerned the right of a public or private company, or a corporation etc., to utilize the existing provisions of *summary* procedure contained in Chapter LIII of the Civil Procedure Code where the claims related to claims of assets or securities easily convertible into cash (liquid claims). If such a company or corporation could not have recourse to the use of summary procedure, then it was submitted, there was a patent lack of jurisdiction in the District Court to entertain the plaint filed in this case and the appeal must be allowed and the trial judge's order set aside. It was also submitted that the trial judge has ordered security in a sum in excess of what had been claimed and that the order was thus bad in law and unenforceable as the quantum of security must be restricted to the sum claimed.

I will now deal with the several aspects of the main argument of the appellant. It was contended that in application for summary procedure on liquid claims s. 705 (1) of the Civil Procedure Code requires that the plaintiff–

> "who so sues and obtains such summons.... must on presenting the plaint produce to the Court the instrument on which he sues, and *he must make affidavit* that the sum which he claims is justly due to him from the defendant..."

Former s. 829 (A) which was an amendment brought consequent to the decision of the Supreme Court in *Bank of Madras v. Ponnusamy (supra)* (1) ante permitting affidavits by a principal officer of a corporation, company etc. *in lieu of* an affidavit by the plaintiff to be led has been repealed. The sequence of turns the law of Civil Procedure took since 1975 has been recounted earlier in this judgment. Since such repeal however there is no other similar provision available enabling the presentation of an affidavit in substitution for the affidavit of the plaintiff where the plaintiff is a juristic person. We are therefore back to the situation prior to June 1891 and the decision of the Supreme Court cited is binding on this court. (I shall return to a consideration of that decision in the course of this judgment). So upon such liquid claims a corporation or company etc. must now come by way of regular action. Counsel sought to support the above submission with reference to several criteria.

Conceptually he submitted the Civil Procedure Code dealt with *natural* persons. Thus regular action is commenced under s. 39 of the Civil Procedure Code. By s. 40(*h*) the *residence* of the plaintiff must be given in the plaint. In the case of a corporation there is no place of residence but only a place of business. Again by s. 46(1) in the absence of a Proctor the plaint must be subscribed and *signed* by the plaintiff. A company cannot sign; it only has an official seal. Again an affidavit requires an *oath or affirmation* which can only be done by an animate or natural person and not by a corporation or company. So the Code whilst dealing with *natural* persons made specific provision for juristic persons under s. 470 and s. 471 in Chapter 33. But these sections apply only to plaint and answer and not to any other step. A company being a juristic person could not make or swear an affidavit.

Appellant's counsel also contended that s. 34(1) of the Companies Ordinance 1938 has nothing to do with the question in hand as the section says only that a document or proceeding requiring authentication may be *signed* by those persons mentioned therein. Mere signing he submitted does not authenticate such a document as an affidavit wherever that is required. Section 34(1) does not envisage an affidavit. Authenticate there meant nothing more than confirming that the document is genuine. Affidavit means not only signing but something more. There must also be a 'swearing' on oath or an affirmation – a solemn acknowledgement of truth. That takes the place of evidence on oath. That is what distinguishes 'affidavit' from a mere authentication by signature under s. 34(1) of the Companies Ordinance, which provision is applicable in a different context to another class of documents meant for that Ordinance to deal with, e.g. minutes of a company, Register of Members, company contracts. But when a company has to come to court it must comply with the Civil Procedure Code. The specific rule of procedure in summary actions was that the plaintiff must file an affidavit. The word has acquired a legal meaning and is used in a special sense. "Where words used have acquired a legal meaning then prima facie, the legislation has intended to use them with that meaning" – Bindra, 7th Ed., Interpretation of Statutes, p. 323.

It was also contended that the decision of the Supreme Court in *Bank of Madras v. Ponnusamy (supra)* (1) (ante) that a corporation could not swear an affidavit was correctly decided. At that time there was the Joint Stock Companies Act No. 4 of 1861 (*see* Legislative Enactments of Ceylon 1856 – 1879 – Vol. 1) p. 11. Sections 16 and

65 of that Ordinance contained provisions similar to s. 34(1) of the Companies Ordinance 1938. Section 16 dealt with the effect of registration that–

> "Upon the declaration of incorporation being registered the subscribers..... shall be a body corporate....and the declaration of incorporation shall be conclusive evidence that all the requisitions have been complied with...."

Section 65 dealt with authenticating of Notes of Company thus:

> "Any summons, notices, writ or *proceeding* requiring authentication by the company may be signed by any Director, Secretary or other authorised officer.... and need not be under the common seal....and may be in writing or in print etc."

It was therefore wrong to say that there was no company law in existence in the country at the time. These sections were apparently not cited in the 1891 case and there is no reference to them in the judgment either, probably because they were not considered relevant to the question for decision. Legal luminaries of the day participated in that appeal. It would be too simplistic to say that they all casually overlooked s. 16 and s. 65 of the Joint Stock Companies Ordinance 1861.

In *Bank of Madras v. Ponnusamy (supra)* (1) the judges adopted the principles set out by the English Court of Appeal in *Bank of Montreal v. Cameron* (2) which held that–

> " ....when the plaintiffs are a Corporation, an order calling upon the defendant to show cause why final judgment should not be signed under Order 14 Rule 1 of the (English) Rules cannot be obtained because that rule requires an affidavit to be made by the *plaintiff himself as to his own belief* that there is no defence to the action; and an affidavit by an officer of the Corporation was not sufficient."

It is appropriate that I set down the provisions of Order 14 Rule 1. It reads thus:

> "....where the defendant appears on a writ of summons specially endorsed under Ord. 3 Rule 6, the plantiff may, on affidavit verifying the cause of action, and *swearing that in his belief there is no defence to the action,* call upon the defendant, etc....."

Bramwell, L.J. in the course of his judgment stated that:

"The words are simply 'the plaintiff may upon affidavit swearing that in his belief' do so and so; that may well mean only a plaintiff who is capable of swearing to his belief—It may exclude Corporations if the context does not admit of that construction; or it may include them if the context will admit it. The only way it can include Corporations is by construing the words 'in his belief' to mean 'his, the deponent's belief....' In such an event, however, it could mean that a plaintiff might make his affidavit by his clerk....but that is not a possible (construction) reading this rule in its plain meaning. Therefore it should be left to the legislature. It is very much better to abide by the meaning of the words than to stretch them to meet a case which they obviously do not suit. He preferred to let the oversight, if it be one, be set right by the proper authority. Brett, L.J. said 'a Corporation cannot *swear to belief*'. It was thus contended that three different matters emerge from the opinions expressed by the Court in *Cameron's Case* and adopted by our Supreme Court in 1891, viz.:

(1) that where there is a casus omissus in the law the Court should not fill in the gap but leave it to the legislature to do so;

(2) it pointed to the perils ahead if the Courts were to write in words into a statute;

(3) where the legislature has provided for the filing of affidavits by Corporations in other situations (as in regular actions), what is the inference to be drawn from omission of the legislature to provide for it in this situation? Submission—apply the maxim—*expressio unius personae vel rei, est exclusio alterius*. Thus it must be presumed that the legislature did not intend to provide for an affidavit by a Corporation as far as summary procedure is concerned. Referring to the judgment of the Supreme Court itself given in 1891 counsel referred in particular to two passages in Clarence, J's judgment, to wit:—

"(*a*) *The Bank of Montreal v. Cameron* which like the present case was touching special summary procedure;...here as in that case the question concerns a special summary procedure on bills and notes....

(*b*) The words of the English rule '..... swearing that' '..... in his belief' do not occur in our s. 705. The words of s. 705 are 'he must make affidavit that' etc. A Corporation cannot make affidavit. It is capable of satisfying a Court by the affidavit of some individual person where the Court is at liberty to accept such an affidavit, but it is not capable itself of making affidavit. Therefore if we are to give the words of s. 705 their plain and ordinary meaning the affidavit...offered in the present case does not satisfy the requirement."

Dias, J. also stated "the case of the *Bank of Montreal v. Cameron* is on point". Several references to rules of construction found in "Bindra's Interpretations of Statutes"–7th Ed. dealing with omissions were also made. I will give the references to the more important ones. They are at pages 33, 358, 360 and 354. In this background Counsel also contrasted the provisions of Chapter 53 with those of Chapter 47 of the Civil Procedure Code dealing with arrest and sequestration before Judgment. In the earlier Chapter in both sections 650 and 653 there was a reference to the plaintiff being required *by his own affidavit* to support a motion for the arrest of a defendant about to quit Ceylon or sequester the property of the defendant in the circumstances set out. The words "his own" excluded a Corporation. Therefore that Chapter catered for the situation by special provision (i.e.) s. 655–which enabled the Court to allow another person (a principal officer) to make affidavit in lieu of the plaintiff where the action was brought by a Corporation, Company, etc. It highlighted the fact an affidavit has to be sworn by a *person*. Swearing a false affidavit is punishable. The *person* had to be a *principal officer* not any officer. So there was a special rule of procedure to be complied with. So what is sufficient for purposes of the Companies Ordinance was not sufficient for litigation under the Civil Procedure Code. It was observed that there was no such special provision making such substitution possible in actions in summary procedure on liquid claims. This omission was intentional and the Court was without power to fill the gap.

Yet another submission of petitioner's counsel was that the pronoun 'he' as used in s. 705 (1) must be confined to a natural person of either masculine or feminine gender and must not extend to include a juristic person by extension to the neuter gender. "He" cannot be construed to mean "it". That would do violence to the

section. This submission and all that went before in regard to 'casus omissus' and rules of statutory construction was to meet a submission of Mr. Choksy for the respondent that the pronoun 'he' in s.705 (1) must be given a contextual interpretation as s. 705 is immediately referable to s.703 so that 'he' must mean the 'plaintiff' in s.703 and that a plaintiff could be a natural or juristic person.

Submission: There was thus a lacuna in the law. Chapter LIII did not cater for claims by juristic persons as such a juristic person could not make an affidavit as required. The Judges in 1891 recognised this. They correctly followed *Cameron's Case (supra)* (2) which besides, correctly set out the rules of statutory interpretation. If the Court were now to give a contextual meaning to s. 705 (1) and extend it to juristic persons and after doing so solicit the application of s.34 (1) of the Companies Ordinance the Court would be filling in a legislative gap without justification and the Court is not at liberty to do so. The Court should rather limit itself to giving the words of s. 705 (1) simply their grammatical and literal meaning and confine the language to natural persons. That was the intention of Parliament. The provisions of the Companies Ordinance thus do not fit into the scheme of the Procedure Code. It has nothing to do with it. The reference to s. 34 (1) is irrelevant.

A further submission concerned the relevance of the Supreme Court decision in the *Bank of Madras Case (supra)* (1). That decision was the decision of a coeval Court. There was no appeal preferred against it to the Privy Council. There could have been as appeals to the Privy Council were allowed since 1799 by Proclamation dated 14.10.1799. The decision stood as recognised authority ever since. It had the effect of compelling the legislature to amend the law four years later in 1895. It therefore assumes the status of a cursus curiae. At least it must have great persuasive effect. Finally counsel made a passing reference to a recent report of a Committee appointed by the Minister of Justice to examine and report on the law and practice relating to debt recovery. It was the recommendation of the Committee that there was a lacuna in the law which precluded a Company or an unincorporated association from coming into Court under Chapter 53.

For all these reasons the decision of the Court below must be struck down and the plaintiff's action dismissed.

I will now turn to the main contentions of President's Counsel for the plaintiff-respondent who supported the trial judge's decision. It was the assertion of learned counsel that a company can in the present state of the law maintain an action by way of summary procedure under the Civil Procedure Code and that the present action is good under Chapter 53. The amendment to the Code by the inclusion of s. 829(A) in 1895 consequent to the Court's decision in *Bank of Madras v. Ponnusamy (supra)* (1) (ante) was an unnecessary amendment. The decision of the Supreme Court in the *Bank of Madras Case (supra)* (1) is not binding on this Court as that Supreme Court was not the final Court. There was an appeal available to the Privy Council.

The judgment in the *Bank of Madras Case (supra)* (1) nevertheless requires reconsideration as it–

(i) did not take into account the provisions of s. 703 (of the Civil Procedure Code.) It dealt with s. 705 by itself and not in conjunction with the other sections in its setting as it should have. Section 703 was the governing provision in relation to summary actions;

(ii) it failed to consider the provisions of ss. 16 and 65 of the Joint Stock Companies Ordinance No. 4 of 1861 which was a relevant provision at the time;

(iii) it is based on the decision in *Cameron's case* in which an English statutory procedural provision to wit: Order 14 Rule I – "the plaintiff himself should swear that "in his own belief" ..was applicable which is different to our provisions of s. 705 which does not have those words but should be read as "the plaintiff who so sues must make affidavit". This difference though cursorily seen in Clarence, J's judgment quoted however failed to make proper impact on the Judges who should have realised that our law admitted juristic persons as plaintiffs by s. 703 and therefore the complementary provisions contained in the Companies Ordinance, to wit: s. 34 (1) which enabled the affidavit required by s. 705 (1) to be made could have been availed of. They had not because they construed s. 705 as the empowering Section leaving no room to admit of the possibility that by s. 703 a juristic person was being recognised as a person entitled to sue in summary procedure.

To expand the argument reference was made to regular actions. Section 470 was a complementary provision dealing with actions by Corporations and Companies etc. The name and style of the Corporation may be inserted as the name and style of the plaintiff or defendant; and the plaint and answer may be subscribed by a member, director, secretary, manager or other principal officer able to speak to the facts of the case. Now s.703 gives the right to a plaintiff to file an action in summary procedure–

"All actions may in case the plaintiff desires to proceed under this Chapter be instituted by presenting a plaint....etc...." So how does a Company file a plaint?

Answer: Through a principal officer.

So a Company can file a plaint. Section 470 is a general section which applies equally to regular as well as summary procedure. There is no difficulty here.

So we come to s.705 (1).

How does a Company file an affidavit? Is there an analogous section provided for the making of an affidavit? There is. It is s.34(1) of the Companies Ordinance–Cap. 145. Now the question arises–how does one get to it. Is there something in the Code which enables the Court to reach for s.34(1) of the Companies Act? There is. It is by looking at the intention or purpose or the context of s.705(1). Give s.705 a contextual interpretation and not the singular narrow one that was given in 1891. Counsel cited 'Statutory Interpretation' by Francis Bennion, 1st Edition–(1984) pp. 657–659, and Lord Denning in "Discipline of the Law" where his Lordship complained that his judgment in 1948 applying purposive construction rules in *Seaford Court Estates Ltd. v. Asher* (3) was struck down by Lord Simmonds–pp. 11–14. What justifies such an exercise? It is the fact that the governing section in Chapter 53 is s.703 (i.e.) the recognition of the right of a Corporation or Company to sue in summary procedure *as plaintiff*. Once that is understood the reference to the words "who so sues" in s.705(1) must be seen in its context (i.e.) it must refer to the plaintiff who sues in summary procedure by s. 703. So it is *that plaintiff* that must make affidavit under s. 705 be it a natural person or a juristic person. Therefore the pronoun 'he' in s.705(1) in the sentence "he must make affidavit" should not be used in a literal sense only meaning an

individual. The draftsman has used 'he' at this point in the sense of the 'plaintiff' in s.703. So the pronoun must be understood in its legal sense as including a juristic person. If the pronoun 'he' is understood only in its literal sense and a Company regarded as incapable of offering an affidavit it would result in for instance–

(i) the doctrine of res judicata being rendered inoperable against a company;

(ii) under s. 102 of the Civil Procedure Code a company can say they are not obliged to make discovery;

(iii) a company will not be able to come within the Rules of the Supreme Court requiring a petition to be supported by affidavit when asking the Court of Appeal for a writ or revision under Chapter XVI of the Constitution; or special leave to appeal to the Supreme Court in fundamental rights cases;

–all or any of which would result in mischief. So when Clarence, J. says that a company cannot swear an affidavit, in its literal sense yes–but not in a legal sense where legal concepts come into play. So if the plaintiff is a natural person he himself will make affidavit. If on the other hand, the plaintiff is a juristic person, then is there provision for a juristic person to make affidavit? There is in s.34(1) of the Companies Ordinance. There is no rule that such provision must be in the Procedural Code itself. So we come to consider the meaning of the word 'affidavit' in s.705(1). The Oxford Dictionary defines 'affidavit' as a written statement confirmed by oath to be used as judicial proof. Osborne's Concise Law Dictionary–7th Edition defines it as a written statement voluntarily made by the deponent (mostly) from his personal knowledge and signed by him and confirmed by oath or affirmation to be used as judicial proof. Affidavits are of infinite variety. Now, does s.34(1) of the Companies Ordinance satisfy this definition of affidavit? Or is it something less than proof of truth. It uses the word 'authenticate'. The section runs:– A *document* or *proceeding* requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company and need not be under its common seal; Submission: Authenticate means to establish the truth of; it must be noted that the section refers to a 'proceeding' requiring authentication. 'Discovery' is a proceeding. Summary procedure is a proceeding. Reference s.5 of the Civil Procedure Code an 'action' is a proceeding. So a 'proceeding' is authenticated under s.34. Authentication does not mean mere 'subscription'. Under

s. 470 of the Civil Procedure Code a 'plaint' may be subscribed. There you require merely a signature. The legal term for signing is subscribing. But 'authenticate' means something more. It establishes truth—not mere signing. You establish truth by giving sworn testimony or swearing an affidavit. So authenticate means to sign and swear or affirm. So when one authenticates it is sufficient to comply with the Oaths Ordinance. Contrast s. 34 with ss. 30, 31, 32 of the Companies Ordinance where mere signing of simple documents is enough.

So distinguish 'authenticate' in s. 34 of the Companies Ordinance with subscribing in s. 470 of the Civil Procedure Code. When the Civil Procedure Code speaks of affidavit it means authenticate. 'Affidavit' and 'authenticate' mean just the same thing. Authentication can be done by a director, secretary or authorised officer. This has been done in the instant case. The affidavit has been sworn by an authorised officer. In the case of *L. J. Peiris & Co., Ltd. v. L. C. H. Peiris* (4) the word 'authenticate' in s. 34 was construed to mean "establish the truth of". So verification by affidavit can be done under this section. There was analogous provision in 1891 to be found in s. 16 and s. 65 of the Joint Stock Companies Ordinance which the Supreme Court could have considered and applied. But it was never even raised as the influence of *Cameron's case (supra)* (2) dealing with Order 14 Rule 1 was apparently overpowering and the court failed to consider our Civil Procedure Code in its own terms. Clarence, J. also treated s. 655 as an empowering section which it is not. That Chapter 47 dealt with extreme remedies of arrest and sequestration of property. When s. 829A attracted its use to Chapter 53 it did not mean that s. 655 became an empowering section to s. 705. Sections 650 and 653 speak of the plaintiff's own affidavit. That is why in the case of a company the authentication needs to be made by a principal officer. Section 655 is a restrictive provision in view of the extreme nature of the remedy it provided for. Chapter 53 can exist quite independently of Chapter 47. So that learned appellant's counsel's submissions aforementioned contrasting the two sections is not an aid to interpretation in this case. Clarence, J. has not addressed his mind to this aspect of s. 655. Therefore the 9 S.C.C. Judgment is lacking in that it has not analysed s. 703 which is the dominant provision or the enabling provision of law making it possible for companies to swear an affidavit as aforesaid.

Respondent's counsel submitted that summary procedure was not intended to leave out a large and vital segment of the community such as the world of business, finance and commerce. In support of his plea for a contextual interpretation Counsel further cited a constitutional law case from Bermuda – *Minister of Home Affairs v. Fisher* (5) where the word 'child' was given a contextual interpretation where the Privy Council was influenced by the doctrine of purposive construction. Yet another justification for the application of a contextual interpretation was the modern view of Lord Denning that the Directors of a Company are the ego of the company itself. The company can therefore swear an affidavit. *Collette's case* (6) also set a new line of thinking. Other cases cited were Lord Denning's judgment in *L. Bolton Engineering Co., Ltd. v. Graham* (7) adopted by Lord Reid in a subsequent case, that a company is not vicariously liable. He is the company. His mind is the mind of company and if it is a guilty mind then the company has a guilty mind. – 1971. 2 A.E.R. 127. Above is the current view in England and adopted by the Supreme Court in Sri Lanka in *Collette's case (supra)* (6). Therefore a contextual interpretation is valid. Therefore it was submitted the statement of Clarence, J. that a company cannot swear an affidavit needs rethinking in the light of new judicial thinking. Counsel submitted that the District Judge's order is in accordance with the law and in conclusion urged that the appeal be dismissed.

The point of contest between the parties is whether a juristic person such as a corporation or company can make the affidavit required for an action in summary procedure to commence.

The view that was expressed by the Judges in the *Bank of Madras case (supra)* (1) cited was a binding decision and in 1895 resulted in legislation to bring the code in accordance with that decision and supply what was thought to be necessary to permit a fairly large segment of society to take advantage of what was intended to be simplified procedure.

Learned counsel for the appellant have sought to support the premises on which the decision in *Bank of Madras case (supra)* (1) rested – that Chapter 53 of the Civil Procedure Code and no other determines and requires an affidavit to be tendered and thus where the plaintiff is a body corporate it is not possible for such to tender an affidavit.

This Court is however attracted to the guidelines suggested by counsel for the respondents. He submitted that s. 703 is the dominant and governing section in that chapter dealing with summary procedure. That section sets out the manner in which such an action can commence by the presentation of a plaint. It provides the means for an application to a Court for relief or remedy obtainable through the exercise of the Court's power or authority. Summary procedure is a special procedure provided by the Court. So any person recognised by law has access to such special procedure. Thus section 703 entitles any person whether natural or juristic to seek his remedy under Chapter 53 by filing plaint. Thus a juristic person is recognised by the Code as competent to seek a remedy in summary procedure by filing a plaint. He would thus be the plaintiff. There was no argument to the contrary adduced at this hearing. But that plaint must be accompanied by an affidavit. Section 705 requires that both must co-exist. So a person cannot have the plaint he presents accepted under Chapter 53 procedure unless an affidavt is also presented together with the plaint verifying the claim. So section 703 provides for a beginning of an action but it must be supported by the requirements of section 705 at the same time. The two sections are therefore co-related; they are inseparable and must co-exist; they either exist together or not at all. Both provide the context in which summary procedure is made possible. That they stand together must hence be presumed to be the intent of the legislature. This is doubtless because the affidavit is at the foundation of the action. It provides the 'truths' upon which the plaintiff petitions the Court. Thus it is the affidavit which governs the plaint. When they stand together the words of each section must relate to the other. In this sense what I have just said would amount to a 'purposeful construction'. In section 703 the only reference to a party is "plaintiff". There are no pronouns used with reference to a party in that section. Having settled on the *plaintiff* seeking to introduce a plaint in s. 703 the other legal requirements prescribed by the Code expected to be fulfilled by the plaintiff before institution of his action are contained in s. 705. Institution has a special legal meaning. It means acceptance by a Court of an action. So in spelling out those other requirements to be fulfilled before acceptance of the plaint s. 705, avoiding repetition of the word 'plaintiff' uses the pronoun 'he' instead. This is permissible draftsmanship. It is quite regular. Otherwise everywhere, the pronoun 'he' is used in s. 705 the word 'plaintiff' would have had to be used That would result in monotonous

unnecessary dull repetition at the expense of a proper use of language. In the result I hold that the word 'he' as used in s.705 cannot be given any meaning in isolation. The word cannot even refer to a natural person in isolation. In other words, s.705 cannot stand in the Code in isolation as no meaning can be given it in such circumstances. But some meaning has to be given as it is there. Clarity is achieved by considering it beside s.703 taking both together. I therefore hold that the pronoun 'he' wherever it is used in s.705 refers to the plaintiff recognised in s.703. Such a plaintiff under our law can either be a natural person or a person created by law. So the word 'he' in s.705 must be used in that broad legal sense. It must include a juristic person. One has next to consider whether there is provision for such a juristic person tendering a plaint to make affidavit and thus comply with s.705 and have his plaint accepted. The Court has been referred to s.34(1) of the Companies Ordinance which speaks of authentication of a *pleading*. Pleading there must again be taken in a legal sense. It relates to a document. What sort of document could be taken in a legal sense to constitute a pleading? I would venture to say the filing of a plaint would constitute such a pleading. So s.34(1) provides for such a pleading to be authenticated. Authentication according to the Oxford Dictionary means to establish the truth of, or make valid, or prove to be genuine, prove beyond doubt the origin or authorship by oath. It recognises, confirms, establishes or proves. It is reduced to writing, signed and sworn. It thus has all the attributes of an affidavit. An affidavit is also a written statement, signed and confirmed by oath. They both mean the same thing. So I say that the provision for 'authentication' of a document made by the Companies Ordinance fulfills the requirements of Chapter 53 of the Civil Procedure Code and could provide the affidavit insisted upon for the institution of a plaint in summary procedure. I say with the greatest respect that the construction put on the language of s.705 of the Civil Procedure Code by their Lordships in the *Bank of Madras case (supra)* (1) is unacceptable. That Court has not considered the implications of s.703 and 705 taken together. It was probably not so argued. The consideration of s.705 in isolation in that case is unwarranted. Reliance on *Cameron's case (supra)* (2) as being in point was misleading. Influenced by the findings in *Cameron's case (supra)* (2) and in the English Rule and in the absence of argument the Court may have been misled into contrasting the provisions of s.655 of the Civil Procedure Code which required an affidavit in summary

proceedings to be made in the deponent's belief thus introducing the belief of the deponent as having a bearing on the affidavit thus excluding a juristic person as one capable of making an affidavit in summary proceedings, under s. 705 and thus looking for a provision within the code itself which would permit the making of an affidavit on behalf of a corporation not realising that s. 655 provided for extreme situations but that the general rule lay elsewhere. That Court was obviously not directed to the provisions of the Joint Stock Companies Ordinance and to the connection of s. 703 which could have brought things into a proper perspective. I accordingly do not accept the findings of the Supreme Court in the 9 S.C.C. case as binding on this Court or that they have any persuasive effect. I reject the arguments raised by appellant's counsel that s. 705 should be considered by itself and the pronoun 'he' given its literal meaning; that would be a wrong construction quite without justification. I also reject his arguments that consequently there is a gap in the law and that the Court should not try to fill that gap by bringing in the provisions of the Companies Ordinance. There is no gap in our law in this context. Sections 703 and 705 of the Civil Procedure Code taken together provide the path to reach out to s. 34(1) aforesaid and this latter section read with s. 181 provides for the making of an affidavit of facts. The English Rule regarding the making of an affidavit is thus irrelevant.

Those references to statutory construction made by the learned Judges in *Cameron's case (supra)* (2) when faced with the English Rule have no application or relevance to construing the provisions of the Civil Procedure Code under discussion. The decision in *Cameron's case (supra)* (2) has no bearing on the instant case. Nor do the contents of the report of the Committee appointed by the Minister of Justice in regard to the law and practice of debt recovery where they have stated that there is a lacuna in the law which precludes a company or an unincorporated association from coming into Court under that chapter and referred to in the course of submissions by appellant's counsel make any difference. The Committee's reasons for its recommendations are unknown. Nor is it known whether that Committee considered the several matters in depth as were the arguments urged by counsel at this hearing. Whilst I disagree with the Committee's recommendations they are in any event irrelevant. The Court in recognition of the importance of the matter has given earnest consideration to the submissions of counsel and recognises the assistance they have rendered.

In conclusion I say that the law as it stands permits a Corporation or a Company etc. to the option of instituting action by way of summary procedure under Chapter 53 of the Civil Procedure Code for recovery on liquid claims. An amendment to the Civil Procedure Code by a provision similar to repealed s.829A is in my view unnecessary.

On the other question of the quantum of security that has been ordered to be deposited by the trial judge, the said sum of Rs.400,000 is not in excess of the claim as interest has also been claimed on the principal amount. That part of the order is therefore not bad in law.

The order of the learned District Judge is affirmed and the appeal is dismissed with costs fixed at Rs.525.

WIJETUNGA, J. – I agree.

Appeal dismissed.