

Jan. 31, 1911

Present : Hutchinson C.J. and Van Langenberg A.J.

RENGASAMY v. PAKEER.

181—D. C. Kandy, 20,752.

Action of summary procedure on liquid claims—Unconditional leave to defend—"Reasonable doubt"—Civil Procedure Code, ss. 703 and 704—Expediting trial.

Where the defendant, in an action by summary procedure on a liquid claim, has sworn to things which, if proved, will be a good defence, he should be allowed to defend unconditionally, unless there is something on the face of the proceedings which leads the Court to doubt the *bona fides* of the defence. The Court may impose terms as to framing and recording issues, expediting the trial, or other wise, but it should not require payment into Court of, or security for, the amount claimed.

"Reasonable doubt" in section 704, Civil Procedure Code, does not mean doubt for which reason could be given; although a Judge should always be able to give a reason for his belief.

THE plaintiff, who was endorsee of a promissory note, sued the defendant on it by way of summary procedure. The defendant filed an affidavit denying his making of the note, and applied for unconditional leave to defend. The learned District Judge (F. R. Dias, Esq.) made the following order: "I have a very serious doubt as to the truth of the defendant's denial of the note, which appears to be a perfectly genuine document. Leave to appear will be allowed only on defendant giving security for the plaintiff's claim on or before November 29."

The defendant appealed.

Vernon Grenier, for the appellant.—The plaintiff is only an endorsee, and knows nothing as to the making of the note. The defendant in his affidavit denies that he made the note. He ought to have been given unconditional leave to defend. The District Judge does not give any reason for his doubt. "Reasonable doubt" in section 704 has been explained to mean a doubt for which reason could be given. Counsel referred to *Annamalai Chetty v. Ali Marikar*,¹ *Meyappa v. Chittambalam*.²

Cur. adv. vult.

January 31, 1911. HUTCHINSON C.J.—

This is an appeal by the defendant from an order allowing him to appear and defend the action only on giving security for the

¹ (1901) 2 Br. 267.

² (1902) 5 N. L. R. 265; 2 Br. 394.

plaintiff's claim ; he contends that he is entitled to unconditional leave to defend.

The plaintiff's claim is on a promissory note signed by the defendant and endorsed to the plaintiff. The defendant filed an affidavit, in which he swears that he did not make the note, and that he was never indebted to the payee or to the plaintiff. The Judge said that he had very serious doubts as to the truth of the defendant's denial of the note, which appeared to be a perfectly genuine document.

The principles on which the Court should give or refuse leave to defend in actions of this kind under chapter LIII. of the Code are, of course, well known to the learned Judge, who must have dealt with a large number of applications similar to this. The appellant contends that, when he filed his affidavit, against which there is only the affidavit of the plaintiff stating that the defendant made the note—a statement which (the plaintiff being the endorsee) is probably not founded on his own personal knowledge—the Court was bound to give leave to defend.

The proviso to section 704 says that the defendant shall not be required, as a condition of his being allowed to appear and defend, to pay into Court the sum mentioned in the summons or to give security for it, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith. This seems to be meant to apply where there is no affidavit by the defendant ; for section 706 enacts that the Court shall, on application by the defendant, give leave to defend on affidavits satisfactory to the Court which disclose a defence, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

The appellant's counsel contends that section 704 applies, and that the words " reasonable doubt " there mean doubt for which a reason can be given. That, however, is not the meaning of " reasonable " ; no such meaning will be found in any dictionary, and I do not think that anyone has ever used the word in that sense, although, no doubt, a Judge should always be able to give a reason for his belief.

The section which applies here is 706. The Judge did not consider the defendant's affidavit satisfactory. The reason which he gives is that the note appears to be perfectly genuine ; which is perhaps not a very cogent reason, since one would expect a forged note to look genuine.

The law says that even when the affidavits are satisfactory and disclose a defence the Court may impose such terms as to security as it thinks fit. There is a good deal to be said for the view that the Legislature intended to give to the Judge in every such case a discretion as to imposing terms with which the Appeal Court should not interfere. But I think that it is too late to urge that view now.

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Having regard to the decisions of the Court in *Annamalai Chetty v. Ali Marikar*¹ and *Meyappa Chetty v. Chittambalam*,² I think that we are bound to hold that in such a case as this, where the defendant has sworn to things which, if proved, will be a good defence, he should be allowed to defend unconditionally, unless there is something on the face of the proceedings which leads the Court to doubt the *bona fides* of the defence. I cannot reconcile this rule with section 706, which authorizes the Court to impose such terms as it thinks fit ; but it is the rule laid down by two Judges in the last-mentioned case, and we are bound to follow it. The defendant must therefore be allowed to appear and defend unconditionally. At the same time, I do not think that the Judges meant to say that the Court could not impose terms as to framing and recording issues, expediting the trial, or otherwise, but only that it should not require payment into Court of, or security for, the amount claimed.

VAN LANGENBERG A.J.—

Following the decisions referred to by my Lord, I think we must allow the defendant to appear and defend unconditionally.

Appeal allowed.



¹ (1901) 2 Br. 267.

² (1902) 5 N. L. R. 265, 2 Br. 394.