

Present: De Sampayo J.

NALLA CARUPPEN CHETTY *v.* ASANA.

35—C. R. Colombo, 80,619.

Civil Procedure Code, s. 414—Answer professing to bring money into Court—Money not brought—Answer filed—Application to dismiss action.

When an answer professes to bring money into Court, but the money is, in fact, not brought into Court, the answer shall not be received. But where the answer was not rejected, but was received and filed as the defence, it is too late thereafter to apply section 414.

THE facts appear from the judgment.

H. V. Perera, for the appellant.

Tisseveresinghe, for the respondent.

May 12, 1922. DE SAMPAYO J.—

The defendant appeals from an order entering judgment for the plaintiff, on the ground that the defendant professed to bring a certain amount into Court and did not do so. The action is upon a promissory note made by the first defendant in favour of the second defendant, and endorsed by the second defendant to the plaintiff. The plaintiff, giving credit for a certain amount, claims Rs. 201.25. The first defendant, among other things, pleaded that only Rs. 25 was due to the plaintiff, and he proceeded to state, "and this defendant is prepared to bring this amount to the plaintiff." This pleading was filed by a proctor. What he meant by the words just quoted it is difficult to understand. But in favour of the defendant I would understand it in a sense most favourable to him, that is to say, the defendant probably meant that he was prepared to pay the amount to the plaintiff. The use of this language, however, misled the Court into applying section 414 to the case. Even as regards that section it should be observed that what it provides is that, when an answer professes to bring money into Court, but the money is, in fact, not brought into Court, the answer shall not be received. But in this particular case the answer was not rejected. It was received and filed as the defence of the defendant. I think, therefore, that it is too late now to apply section 414. The fact of the matter is that the Court should have ignored this objection taken on behalf of the plaintiff, and have heard the case on evidence.

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It is a simple question as to whether the answer disclosed any defence, or, if it did, what is the amount payable by the defendant to the plaintiff? These questions might have been disposed of in a very short time. The result of the objection and its being sustained by the Court is that the whole time hitherto taken has been wasted. The dismissal is set aside, and the case sent back to be proceeded with. I will not make any order as to costs.

Set aside.

