a coca-cola bottle with petrol in it and some hemp stuffed in the top. In our view that is not an article or substance or liquid which falls within paragraph (a) of Regulation 53. It is not the kind of article whose possession would preclude an accused person from raising the defence of innocent possession and innocent purpose. It is quite clear from the judgment that the learned trial Judge thought that the bottle in this case was an article which fell within the purview of paragraph (a) and he, therefore, considered to be irrelevant the appellants' defence that their possession was innocent.

Since then we are of opinion that the bottle in this case is not an article, liquid or substance within the purview of paragraph (a) we consider that this conviction and sentence must be quashed and the appellants discharged.

[HALLINAN, C. J. and ZEKIA, J.]
(October 11, 1956)

MICHALAKIS CHRISTODOULOU, *Appellant,*

v.

OLYMPIA EROTOKRITOU, *Respondent.*

(Civil Appeal No. 4190).

Practice — Application for summary judgment — Civil Procedure Rules, Order 18—Calling of plaintiff's evidence disapproved — Cross-examination of defendant — Mala fides established.

Plaintiff applied for summary judgment under Order 18. The application was opposed and the Court heard the evidence of the plaintiff and a witness and then the defendant was cross-examined on his evidence. The application was granted.

Upon appeal,

Held: The evidence of the plaintiff and his witness should not have been heard. However the affidavit of defendant was sufficiently suspect to warrant the Court allowing cross-examination thereon. This revealed the *mala fides* of his defence.

Appeal dismissed.

Appeal by defendant from the judgment of the District Court of Limassol (Action No. 743/56).

K. C. Talarides for the appellant.

G. Cacoyannis for the respondent.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C. J.: In this case the plaintiff-respondent sued the defendant-appellant on a bond and for a further sum of money lent. The plaintiff moved for summary judgment under Order 18 and the defendant filed an affidavit that he had a good defence to the action. His defences were two: First, that the amount owned was not £150 but £140 and, secondly, that he had given the plaintiff £10 and in consideration of that sum the plaintiff had agreed to his paying the debt by instalments.

At the hearing of the application for summary judgment the trial Judge proceeded to hear the evidence of the plaintiff and a witness and then heard the evidence of the defendant-appellant, who was cross-examined. He came to the conclusion that the defendant's grounds of defence were not *bona fides* and he entered judgment for the plaintiff.

We may say at once that the procedure of calling the plaintiff and her witness was wrong. Normally if a defendant states that he has a good defence on the law or the merits and gives particulars which give no reason to think that his defence is *mala fides*, then the Court must refuse the application for summary judgment and allow the action to go for trial. But in this case, even on reading the affidavit of the defendant, it would not be unreasonable for a judge hearing the application to suspect the *bona fides* of the defendant and allow the defendant to be cross-examined on his affidavit. Moreover, even if we completely disregard the evidence of the plaintiff and her witness, the cross-examination of the defendant does, in our view, reveal his *mala fides*.

Although we accept the submission of counsel for the appellant that the procedure in calling the plaintiff and her witness was wrong, nevertheless for the reasons already explained, *we consider that the learned judge was right in giving the plaintiff her order for summary judgment; as there was an irregularity upon the hearing of the application which it was quite proper to have argued on appeal, we consider that no order should be made as to the costs of the appeal.*