Privy Council Appeal No. 96 *of* 1929.

N. R. M. N. Ramanathan Chetty - - - - - *Appellant*

v.

M. K. A. Meera Saibo Marikar - - - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1930.

Present at the Hearing :

LORD ATKIN.
LORD RUSSELL OF KILLOWEN.
LORD MACMILLAN.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

This is an appeal from a decree of the Supreme Court of the Island of Ceylon reversing a decree of the District Court of Colombo. The relevant facts can be briefly stated. The parties to the action were both of them creditors of Nana Moona Mohamado Rawther & Co., who carried on business as tea merchants at Nos. 35 and 65, Second Cross Street, Colombo; and who may be conveniently referred to as " the firm." On the 18th June, 1925, the firm filed their petition in insolvency.

The respondent, who carried on business at No. 69, Second Cross Street, and had heard of the insolvency, observed that tea was, on the 21st June, 1925, being removed from the firm's premises at 65, Second Cross Street.

The tea was on that day being removed in pursuance of an agreement which had been come to between the firm and the appellant on the 16th June, 1925, whereby tea and other goods were invoiced by the firm to the appellant at a sum of Rs. 21,700, the appellant being debited with that amount in account.

In fact, large quantities of tea had already, in pursuance of this arrangement, been removed on the 16th and 17th June from the firm's premises to the appellant's premises, No. 102, Sea Street.

The respondent and certain other creditors of the firm became, not unnaturally, suspicious, and on the 21st June, 1925, they entered into an agreement to take the necessary Court proceedings, by appointing one of themselves as " leading person." The respondent appears to have been selected for this purpose.

Before referring to the Court proceedings which were taken by the respondent, it is convenient to state at once, that by a judgment delivered in the District Court of Colombo on the 14th September, 1925, it was decided (and the matter is *res judicata* between the parties to this appeal) that the tea in question was sold by the firm to the appellant on the 16th June, 1925, and was the property of the appellant.

On the 22nd June, 1925, the respondent presented a petition to the District Court of Colombo asking (amongst other relief) that the Fiscal might be ordered to seize the goods specified in the petition at the respective places therein specified. The petition specified the goods and places in the following words :—

> " The insolvents have after their insolvency removed the following goods and deposited them in the several places set out hereinafter. Tea of the approximate value of Rs. 5,000/- has been removed by the insolvents to No. 42, Prince Street, Colombo, the store of K. M. S. Sego Mohamado. Nana Rawanna Mana Nana Suppiah has from 19th to 21st June removed tea of the value of about Rs. 30,000/- to his store at Sea Street, Colombo, flour, sugar and maldive fish were removed to Gampola on the 18th June, and I understand that M. S. H. Abdul Ally was handed over 29 bags of flour, tea and maldive fish."

An affidavit sworn by the respondent in support of the petition contained an allegation in identical words. The reference to Nana Rawanna Mana Nana Suppiah is a reference to the appellant's agent, Supranamian, who had removed the tea to 102, Sea Street.

As a result of his application, the respondent obtained the issue of a search warrant to the Fiscal on the 22nd June, 1925. The warrant, after reciting that there was reason to suspect and believe that property of the firm was concealed " at No. 65 and 35, Second Cross Street, No. 42, Prince St. Skinners Road, and at Sea Street," proceeded in the following terms :—

> " These are therefore by virtue of the Insolvent Ordinance, 1853, to authorize and require you with necessary and proper assistants to enter in the day time into the premises aforesaid and there diligently to search for the said property and if any property of the said insolvents shall be there found by you on such search that you seize the same to be disposed of and dealt with according to the provisions of the said Ordinance."

The Fiscal executed the said warrant by entering No. 102, Sea Street and seizing large quantities of tea there, which tea must, as hereinbefore mentioned, be taken to have been at the

time of the seizure, not the property of the firm, but the property of the appellant.

That the respondent was the cause of the Fiscal seizing these goods seems clear. The appellant's agent, Supranamian, in his evidence in chief, said: "In his petition the defendant asked that among other goods the tea removed to my store also should be seized. Certain goods left at my stores at 102, Sea Street were seized. Defendant came with the Fiscal's officer to our store and pointed out the goods which were seized." There was no cross-examination as to this.

It is true that the respondent, in the course of his own cross-examination, denies this, but their Lordships are satisfied that he or someone on his behalf must have given the information which the Fiscal and his officer necessarily required, to enable them to ascertain not merely the goods which were to be seized, but also the particular house in Sea Street in which the goods would be found.

The goods which were seized were ultimately sold, and on the 10th May, 1926, the appellant commenced the present action against the respondent, claiming damages for the wrongful seizure of his goods.

The District Judge gave judgment for the appellant for Rs. 8,274.80, with interest and costs.

The basis of his judgment was that the respondent had acted maliciously in causing the appellant's goods to be seized, the malice being, in his opinion, established by the fact that the respondent had intentionally made a false allegation in order to obtain the issue of the warrant, viz., that the tea had been removed to Sea Street *after* the insolvency.

The judgment of the District Judge was set aside in the Supreme Court, and judgment was entered for the present respondent with costs there and below. The foundation of the Supreme Court's decision was that no malice on the part of the present respondent had been proved.

In the opinion of their Lordships the facts of the present case relieve the appellant from any necessity to establish malice on the part of the respondent.

Assuming, in the respondent's favour, that he had grounds for suspecting the conduct of the firm and the appellant, and that in obtaining the issue of the search warrant he acted in good faith and without malice, nevertheless, the fact remains that he was the cause of the appellant's property being wrongfully seized.

That in itself is, in their Lordships' opinion, sufficient to give the appellant a cause of action, and to entitle him to recover from the respondent whatever damage he can establish to have been caused to him by the wrongful seizure.

A distinction must be drawn between acts done without judicial sanction and acts done under judicial sanction improperly obtained. If goods are seized under a writ or warrant which authorized the seizure, the seizure is lawful, and no action

will lie in respect of the seizure, unless the person complaining can establish a remedy by some such action as for malicious prosecution.

If, however, the writ or warrant did not authorize the seizure of the goods seized, an action would lie for damages occasioned by the wrongful seizure without proof of malice.

These propositions not only state the law of this country upon the subject, but they are supported by decisions in the Courts of countries where the Roman-Dutch law prevails.

Authorities of this class which may be referred to are *Hart* v. *Cohen* (16 Buchanan 363), a decision of the Supreme Court of the Cape of Good Hope, and *De Alwis* v. *Murugappa Chetty* (12 Ceylon New Law Reports, 353), a decision of the Supreme Court of Ceylon.

In the case before the Board, once it was shown as it has been to their Lordships' satisfaction, that the respondent was the cause of the appellant's goods having been seized by the Fiscal under a warrant which only directed him to seize property of the firm, the case against the respondent was complete, and he became liable to the appellant in damages without proof of malice.

The District Judge assessed the damages at Rs. 8,274.80. Their Lordships see no reason for suggesting that this sum is other than a fair and proper amount fixed by the District Judge after due consideration of the evidence.

For the reasons above stated, their Lordships are of opinion that this appeal should be allowed and the decree of the District Court restored, and they will humbly advise His Majesty accordingly.

The respondent must pay the appellant's costs of the appeals to the Supreme Court and to His Majesty in Council.

In the Privy Council.

N. R. M. N. RAMANATHAN CHETTY

v.

M. K. A. MEERA SAIBO MARIKAR.

DELIVERED BY LORD RUSSELL OF KILLOWEN.

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