1946 *Present :* **Canekeratne and Dias JJ.**

RAMIAH, Appellant, *and* RAYNER, Respondent.

19—D. C. Hatton, 3,140.

Tort—Wrongful search of house—Claim for damages—Circumstances when proof of malice is not necessary.

Where the defendant had complained to the police, on quite inadequate information, charging the plaintiff with theft, and the police, without making further inquiry, searched the house of the plaintiff for the articles alleged to have been stolen—

Held, that it was not necessary to prove malice in the defendant to entitle the plaintiff to recover damages for the unjustified search.

APPEAL from a judgment of the District Judge of Hatton.

N. E. Weerasooria, K.C. (with him *Walter Jayewardene* and *V. Joseph*) for the plaintiff, appellant.

C. E. S. Perera (with him *S. R. Wijayatilake*), for the defendant respondent.

Cur. adv. vult.

November 21, 1946. DIAS J.—

The plaintiff says that the defendant on March 4, 1944, made a false complaint of theft of three copper cauldrons against him to the Maskeliya Police which led to the search of the house where he was residing. He claimed a sum of Rs. 1,000.00 as damages. No stolen property was discovered at the search. One of the missing cauldrons was subsequently found in a ravine on the estate, but there is nothing to suggest that the plaintiff hid it there. No charge has been made in any Court against the plaintiff and we must proceed on the assumption that he is innocent of the charge of theft.

The defendant is the Superintendent of Alton estate belonging to the Ceylon Tea Plantations, Limited. The plaintiff was originally the clerk tea-maker and lattely the tea-maker on the estate. The defendant took charge of the estate as superintendent in November, 1943. Shortly after taking charge the defendant thought the plaintiff had too many assistants and he discontinued two men from the factory. It is obvious from the evidence that the defendant formed an unfavourable opinion of the plaintiff's work. He found that the plaintiff allowed the dhoby washing to be dried on the withering loft. He also was of opinion that the plaintiff took too long an interval for his meals. A state of friction, therefore, arose, and I believe the plaintiff when he says that the situation made it impossible for him to carry on his duties under the defendant.

His story about the manner in which the defendant is alleged to have abused him is, I think, exaggerated. Equally, the defendant's version appears to be an under-statement. The situation, however, was an impossible one, and the plaintiff gave notice and left the estate with his belongings on March 1, 1944. I cannot believe that the defendant was actuated by malice, spite, or ill-will against the plaintiff. The fact that a few hours after the plaintiff left the estate, the defendant, finding him stranded on the road, endeavoured to assist him, negatives such a suggestion.

On March 4, 1944, that is to say three days after the plaintiff left, the defendant sent a telephone message to the Maskeliya Police which was recorded in the telephone register, P2, as follows:—

> "On Wednesday 1st the tea-maker left here from Alton to Eildon Hall estate, Lindula. *He has taken the three rice boiling pots without my knowledge,* and I want to get them back as the value is about Rs. 200.00—made of copper. The name of the tea-maker is Therumiah."

A police officer proceeded to Alton estate on the same day and recorded the statement of the defendant—P3. In the course of that statement the defendant said :—

> "When I took charge of this estate in November last . . . . I saw three copper boiling pots in use daily to feed the children These pots were last used on January 5, 1944, for mass anchy treatment. At the . . . . time the tea-maker left the estate he did not give these to the estate. I learnt that these are estate property . . . . I did not come across any entry (*i.e.*, in the inventory)

with regard to the pots . . . . I presume these pots are not entered *deliberately in order to steal them. I learnt that these pots were removed by him to his present place* . . . . The tea-maker was responsible for all the articles in the estate as they were given to his care . . . . These pots are not in the estate now."

Taking the two statements P2 and P3 together, it is clear that the defendant was making a charge against the plaintiff of committing theft of these cauldrons. On that statement the police had no option but to proceed to the plaintiff's residence and search the place.

It is to be noted that in making these statements the defendant did not disclose to the police that on March 2, 1944, he had received from Jalaldeen, the clerk of the estate, the document D3. The kanakapulle had reported to Jalaldeen that the three cauldrons had been brought for anchylostomiasis treatment at the request of the estate apothecary. The kanakapulle says in D3 "It seems that the same were returned to Mr. Ramiah, the late tea-maker." The kanakapulle also stated that when Ponnambalam Kangany was sent to the plaintiff to get them back, the latter told him that the cauldrons had been given to the defendant. The kanakapulle says that he has "*now learnt*" that the plaintiff had removed them and he requests Jalaldeen to inform the defendant. The Kanakapulle's information that the plaintiff had removed these articles was derived from Selvadurai's cook, who has not been called.

The defendant, instead of telling the police that the cauldrons were missing, and handing over D3 to them, and requesting them to make the necessary inquiries, charged the plaintiff with theft. The information on which the defendant acted was quite inadequate to make a definite charge against the plaintiff. The direct result of the defendant's action was that the police, without making further inquiry, went straight to the plaintiff's residence and searched the house of an innocent man.

Both sides appear to have proceeded under the belief that it was an ingredient of the plaintiff's cause of action that "malice" on the part of the defendant had to be established to entitle the plaintiff to succeed—see paragraph 4 of the plaint and issue I. It is clear, however, from the authorities that for this kind of action the proof of "malice" is not essential. The principle is that any unjustified or wrongful act of the defendant which causes a trespass on the plaintiff's person or property is an actionable wrong, and if the plaintiff is able to prove that he thereby sustained assessable damages, the law will give him relief. Whether in such an action the plaintiff must go further and prove that the defendant acted "maliciously" the law draws a distinction between acts done without judicial sanction and those done under judicial sanction improperly obtained. *Ramanathan Chettiar v. Meera Saibu Marikar*[1]. McKerron says:—"*Malicious Arrest*—It is an actionable wrong to procure the arrest of anyone by setting the law in motion against him maliciously and without reasonable and probable cause. This species of wrong must be distinguished from that of false imprisonment or arrest. In false imprisonment the imprisonment is the act of the defendant or his agent. In malicious arrest, the interposition of a judicial act between

[1] *(1930) 32 N. L. R. at p. 195. Privy Council.*

the act of the defendant and the imprisonment makes the imprisonment no longer the act of the defendant, but the act of the law . . . . The importance of the distinction is that in an action for false imprisonment neither malice nor absence of reasonable and probable cause need be shown[1]."

Once it has been established that the act complained of was the act of the defendant or his agent, the only question which remains is—Was the act justified or not? If the defendant acted "maliciously", that will be an element in the estimation of damages; but the mere false imprisonment, illegal arrest, illegal seizure, or even an unjustified search gives a cause of action to the aggrieved person[2]. Our law reports contain many examples of this principle[3]. In *Fernando v. Perera*[4] the facts of which are almost identical with those of the present case, the defendant charged the plaintiff before the police with the theft of two cart wheels. The police searched his house and found two cart wheels. He was charged with theft and acquitted. The plaintiff, confining his claim to only so much damage as was sustained by reason of the defendant's action in having his cart wheels seized and detained by the police, sued the defendant. It was held that in such an action it was not necessary to prove malice in the defendant to entitle the plaintiff to recover damages.

The Privy Council put the matter clearly in *Ramanathan Chettiar v. Meera Saibo Marikar* (*supra*). "If goods are seized under a writ or warrant which authorised 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*[5]. 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." *A fortiori* when the wrongful arrest, seizure or search is done without judicial sanction, no malice need be proved. In the present case, the facts, which the District Judge accepted, prove that the defendant on totally inadequate materials set a ministerial officer in action. No judicial act was interposed between the charge made by the defendant and the search of the plaintiff's residence. The only question remaining is whether the defendant was justified in so setting the police in motion. I think he was not. Had the defendant handed the document D3 to the police and left it to them to make the requisite inquiries and take the requisite action the position would have been different. In the result the plaintiff is absolved from the necessity of proving that the defendant was actuated by "malice".

Counsel for the respondent cited the case of *Chitty v. Peries*[6]. In that case the third defendant made a complaint to the police charging the plaintiff with the theft of certain property. As a result of that complaint

[1] *McKerron on the Law of Delicts (2nd Edit.) p. 247.*
[2] *McKerron on the Law of Delicts, pp. 152–153.*
[3] *See de Alwis v. Murugappa Chettiar (1909) 12 N. L. R. 353; Abdulla v. Lushington (1909) 13 N. L. R. 38; Fernando v. Peris (1916) 19 N. L. R. 264.*
[4] *(1913) 16 N. L. R. 73.*
[5] *Cf. Kandasamypillai v. Selvadurai (1940) 42 N. L. R. 19.*
[6] *(1940) 41 N. L. R. 145.*

the police visited the house of all the four defendants and recorded their statements. Thereafter, the police decided to arrest the plaintiff. The plaintiff sued all four defendants alleging (as the plaintiff has done in the present case) that the four defendants wrongfully, maliciously and without reasonable and probable cause caused the police to arrest her on a charge of theft. The two questions which were argued were whether on the facts it could be said that the defendants instigated the plaintiff's arrest, and whether in a civil action it was open to the defendants to impeach the credit of the plaintiff by a statement of hers recorded in the Police Information Book. The plaintiff in *Chitty v. Peries* (*supra*) undertook an onus and proved an ingredient she was not strictly bound to prove.

In my opinion the trial Judge has reached a wrong conclusion on the acts established in this case. The decree appealed against must be set aside and judgment entered for the plaintiff.

I do not consider it necessary to send the case back for the assessment of damages, because all the materials are before us. The plaintiff claimed a sum of Rs. 1,000 as damages. It was laid down in *de Alwis v. Murugappa Chettiar*[1] that in assessing damages in a case like this the Court will properly take into account the position in life of the parties and the circumstances under which the wrongful act was done, and whether the defendant acted in good faith or not, and whether the act was likely to be an affront to the plaintiff's dignity or to damage his reputation. In *Abdulla v. Lushington*[2] where the Fiscal wrongly arrested the plaintiff, Wood Renton J. said :—" The damages (Rs. 250.00) are heavy. But no plea for their reduction was embodied in the petition of appeal, and I think we ought to treat them as if they had been assessed by a jury." In the present case the plaintiff was not arrested. In all the circumstances of the case I think that a sum of Rs. 250 as damages would be adequate compensation for the wrong done to the plaintiff.

I, therefore, set aside the decree appealed from and enter judgment for the plaintiff for a sum of Rs. 250 with costs in the Court of Requests class both here and below.

CANEKARATNE J.—I agree.

Decree set aside.