

1947

Present : Soertsz S. P. J. and Jayatileke J.

PEIRIS, Appellant, and PEIRIS, Respondent.

*S. C. 1—D. C. (Int'y.) Colombo, 15,795.**Wrongful dismissal—Action for damages—Motive for dismissal—Relevance of issue.*

In an action for damages for wrongful dismissal, the motive for the dismissal does not affect the question of damages and an issue on it should not be allowed.

APPEAL from a judgment of the District Judge of Colombo.

H. V. Perera, K.C., with *D. W. Fernando*, for the defendant, appellant.

N. E. Weerasooria, K.C., with *E. G. Wikramanayake* and *Vernon Wijetunge*, for the plaintiff, respondent.

November 26, 1947. SOERTSZ S.P.J.—

This is an appeal from an order made by the District Judge of Colombo allowing a certain issue to be framed at the instance of the plaintiff's Counsel notwithstanding an objection taken to the issue by the defendant's Counsel on the ground that it was irrelevant.

The action was one in which the plaintiff, who had been employed by the defendant as an accounts clerk, alleging that he had been "wrongfully and unlawfully and without cause dismissed" on September 30, 1944, sought to recover certain sums of money on account of balance salary, dearness allowance, Provident Fund dues, and damages sustained by

him by reason of the wrongful dismissal. The defendant, in her answer, stated that "as she lawfully might, she discontinued the plaintiff's services in August, 1944", giving him one month's salary in lieu of notice, as well as the salary for August, 1944, and the money to his credit in the Provident Fund, all of which she alleged the plaintiff refused to accept and all of which she brought into Court. In this state of the pleadings, the substantial issue was whether the plaintiff's services were terminated lawfully or unlawfully. The plaintiff, however, averred in paragraph 4 of the plaint that "the only reason for the dismissal of the plaintiff was that the plaintiff when requested by the new Superintendent . . . and Assistant Superintendent . . . to make false entries in the books refused to do so". Relying upon this averment, the plaintiff's Counsel, when the case came up for trial suggested the issue "Was the reason for the dismissal the fact that the plaintiff refused to make false entries in the books?". This issue was objected to by the defendant's Counsel as being irrelevant and calculated to "a lot of irrelevant evidence being led". The judge overruled the objection and adopted the issue.

I am clearly of opinion that that issue is irrelevant inasmuch as it raises a question of motive which cannot arise in a case of this kind. The action was upon a contract of service and was liable to be terminated by either party giving reasonable notice. The sole question is whether the plaintiff had been given such notice. If such notice had been given and the contract, in that way, lawfully terminated, it is immaterial that the defendant was actuated by improper motives, just as it would be immaterial that an unlawful termination of the contract was influenced by most unimpeachable motives. Assume that the plaintiff's averment in paragraph 4 is true, but suppose that it is also true that reasonable notice was given and the Court so found, what is the relief the Court could have given the plaintiff by reason of its finding that the lawful termination of the contract was due to improper and even wicked motives? In this connection it would be useful to refer to what was said in the House of Lords in the case of *Addis v. Gramophone Co. Ltd.*¹ Lord Loreburn said: "My Lords, it is difficult to imagine a better illustration of the way in which litigation between exasperated litigants can breed barren controversies and increase costs in a matter of itself simple enough. To my mind, it signifies nothing in the present case whether the claim is to be treated as for wrongful dismissal or not. In any case, there was a breach of contract in not allowing the plaintiff to discharge his duties as manager, and the damages are exactly the same in either view . . . I cannot agree that the manner of dismissal affects these damages."

I would set aside the order appealed from with costs and remit the case for trial on issues 1, 3, and 4.

JAYETLEKE J.—I agree.

Order set aside.

¹ (1909) A. C. 488.