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NUSSERWANJEE v. FIELD.

D. C., Colombo, 13,648.

Jurisdiction of District Court—Illegal arrest at Malé (in the Maldivé Islands) and false imprisonment on board a warship—Release in Colombo harbour—Damages.

The defendant, who was the Commander of a British man-of-war which had been commissioned by the Government of Ceylon to proceed to the Maldivé Islands to ascertain whether a letter purporting to have been sent by the Sultan to the Lieutenant-Governor of Ceylon was a genuine document or not, caused the plaintiff, a British subject, to be arrested, under the belief that the plaintiff had created a disturbance among the people of the Maldivian State by interfering with its political affairs, and brought the plaintiff in the defendant's ship to the Colombo Harbour, and discharged him after two and a half hours' detention there—

Held that, by reason of the detention in the Colombo Harbour, the District Court had jurisdiction in respect of the plaintiff's claim for damages for such detention, and that in assessing such damages the antecedent acts of arrest at Malé and the conveyance of the plaintiff as a prisoner thence might be taken into consideration.

Held further, that no man, not even the Sovereign, could arrest and imprison a British subject except under and by virtue of due process of law, and except in accordance with express legislation, and that the arrest and detention of the plaintiff was contrary to the principles of the British constitution, and rendered the defendant liable in damages.

THE plaintiff, who alleged himself to be a native of Bombay and a British subject resident in Ceylon, sued the defendant, who was Commander of H.M.S. "Marathon," for the recovery of Rs. 75,000 as damages under the following circumstances:—The plaintiff was appointed Private Secretary of His Highness the Sultan of the Maldivé Islands through his Prime Minister, Mohamad Didi, who came on an embassy to the Government of Ceylon in May, 1899. On the 22nd June, 1902, the plaintiff went on board the ss. "Vasna" and landed at Malé on the 24th June for the purpose of taking up his appointment. The defendant, who had also gone to the Maldivé Islands, arrested the plaintiff at Malé on the 25th June, forcibly took him on board the "Marathon" and conveyed him as a prisoner to Colombó, where the ship arrived at 5.30 p.m. on the 27th, and the plaintiff, being detained on board at the Colombo Harbour for about two and a half hours, was released and allowed to go on shore about 8 p.m.

The defendant, objected to the jurisdiction of the Court, and denied that plaintiff had been appointed Private Secretary to His Highness the Sultan, and justified the arrest and transport of plaintiff to Colombo, alleging that he had unlawfully interfered with the political affairs of the Maldives, and had thereby caused

disturbances among the people, and that the defendant had acted in his capacity as a Commander in the Royal Navy for the purpose of preventing the plaintiff from causing such disturbances.

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The learned District Judge (Mr. D. F. Browne) upheld the plea of jurisdiction and dismissed the plaintiff's action with costs. At the same time he observed that, if the Court had jurisdiction and found that the defendant was not justified in his acts, he would assess the plaintiff's damages at Rs. 3,000.

The plaintiff appealed. Appeal argued August 22 and 23, 1904.

Walter Pereira (Samarawikrama with him), for plaintiff, appellant.—The detention of the plaintiff in the Colombo harbour, though but for a short time, gave the District Court of Colombo jurisdiction. Such detention was by itself a sufficient cause of action, and section 9 of the Civil Procedure Code gave jurisdiction to the Court within the jurisdiction of which the cause of action arose. The case cited by the learned District Judge (*Ranatte v. Sirimal*, 1 S. C. R. 57) has no application. There, the cause of action is said to have arisen within the jurisdiction of more than one Court; that is to say, the occurrences at several places, apparently, had to be put together to constitute the cause of action. Here, the detention in the harbour and arrest at Malé were no doubt parts, so to say, of the same transaction, but the detention since the arrest was a continuing cause of action, and it was open to plaintiff to confine himself to the detention within the harbour and claim damage in respect of that cause of action only, pleading the rest of the acts of the defendant merely in aggravation of damages. Then, as to the defendant's right to arrest, the whole proceeding was high-handed and illegal. Under the British constitution no British subject can be arrested even by the Sovereign, except under due process of law (*Bowyer, On the Constitution*, 136), and except as is provided by express legislation. The defendant has pleaded the authority of the local Government for his act, but even the King's command is no excuse for a wrongful act (2 *Anson, On the Constitution*, 43), and no servant of the Crown may set up as defence to a wrongful act the express orders of the Crown, or orders implied by the allegation that what he did was an act of State (*Ans.*, 477 *Entick v. Carrington*, 19 *State Trials*, 1030). The Acting Governor had no authority to give defendant power to arrest. His authority is to be ascertained from Letters Patent and Royal Instructions, but these, even if sufficient, have not been produced in support of the alleged authority. (See *Ans.* p. 279.)

Van Langenberg, for defendant, respondent.—The detention in the harbour cannot be separated from the rest of the acts of the

1904. defendant complained of. The plaintiff's cause of action, if any, *September 6.* is the whole proceeding—the arrest and detention throughout put together, and he cannot be allowed to split his cause of action merely to give the District Court of Colombo jurisdiction. The case in *I S. C. R. 57* is in point. Where the whole cause of action has not arisen within the jurisdiction of any one Court, the Court having jurisdiction is that within the jurisdiction of which the defendant resides. Any way, the acts of the defendant outside the harbour cannot be taken into consideration in assessing damage. They are clearly acts committed outside the jurisdiction of the Court. The defendant acted with perfect *bonâ fides*. Circumstances had arisen that satisfied him that the plaintiff should be brought away. The defendant honestly believed that he was merely carrying out the wishes of the Ceylon Government, and he treated plaintiff with kindness and consideration throughout.

Cur. adv. vult.

6th September, 1904. MIDDLETON, J.—

This was an action to recover damages for the alleged illegal arrest and false imprisonment of the plaintiff by the defendant on board H.M.S. "Marathon," of which ship the defendant was the captain.

The facts of the case were that the plaintiff, a Parsee British subject, had been appointed Private Secretary to the Sultan of the Maldives by the new Prime Minister of that Potentate, Mohamad Didi, while on a mission from his Sovereign to the Governor of Ceylon in 1899. It would appear that the genuineness of the letter which the Prime Minister brought announcing the appointment was doubted by the Lieutenant-Governor of Ceylon, then acting as Governor, who commissioned the defendant to proceed in his ship to Malé and ascertain from the Sultan in person its authenticity.

Certain members of the mission, including the Prime Minister, were given a passage in the defendant's ship, but this privilege was refused to the plaintiff, who proceeded in the B.I. ss. "Vasna", arriving there on the 24th June, a few hours after the "Marathon".

The plaintiff was received by the Sultan, and his appointment confirmed, but the next day he was compelled to go on board the "Marathon" by an officer of the defendant's, and, in spite of the written remonstrances of the Sultan, conveyed by the defendant back to Colombo, whereafter a few hours' detention in harbour, while the defendant interviewed the Lieutenant-Governor, the plaintiff was allowed to go ashore, parting on friendly terms and with the offer of presents on the part of the plaintiff with the defendant.

The issues agreed upon were:—(1) Has this Court jurisdiction to entertain this action? (2) Was plaintiff on 25th June, 1899, appointed Private Secretary of His Highness the Sultan of the Maldives? (3) Was plaintiff confined on board the "Marathon", and were the acts complained of in paragraph 3 of the plaint unlawful? (4) Did the defendant unlawfully and forcibly detain the plaintiff and keep him in confinement on board the "Marathon" at Colombo harbour and within the jurisdiction of this Court? (5) Did the plaintiff on the 25th June, 1899, unlawfully interfere in the political affairs of the Maldivian States, and by such interference cause a disturbance among the people of the said State and danger to the said State, and did it become expedient that plaintiff should be removed from the said State, and had the defendant power and authority to cause the plaintiff to be arrested and brought on board the "Marathon" and conveyed to Colombo? (6) Was it by command of Her Majesty Queen Victoria that the defendant caused the plaintiff to be arrested and brought on board the said ship and conveyed to Colombo? (7) If so, is defendant and dismissed the action.

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The District Judge found for the defendant on the first issue for the plaintiff on the second, third, fourth, and sixth issues, but declined to hold the defendant consequently responsible on the seventh issue; and on the fifth issue, while finding in favour of the plaintiff as regards disturbance, upheld the power of the defendant and dismissed the action.

As regards the first issue, I find it difficult to follow the reasoning of the learned District Judge and the applicability of the case on which he relies in *1 S. C. R., p. 57*.

The plaintiff was admittedly arrested by the defendant at Malé on the 25th June, 1899, taken on board the "Marathon" against his will, and deported thence on that ship in such a manner as to limit his freedom of motion to the space enclosed by the sides of that vessel. He was brought into the harbour of Colombo and detained there for some two and a half hours until about 8 p.m. on the evening of the 27th June.

The defendant, in fact, in his evidence (p. 182) admits that he brought plaintiff as a prisoner to Colombo, and that he would not permit him to leave the ship till he had seen the Lieutenant-Governor.

If, therefore, the defendant had no warrant or authority in law for so acting, it is clear the arrest and imprisonment of the plaintiff would constitute a cause of action under the law peculiar to the British constitution, that no man, not even the Sovereign Authority of the Empire, can arrest and imprison a British subject

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I take it this cause of action would be a continuing one so long as the arrest of his liberty endured; arising in fact from moment to moment during the prolongation of the imprisonment.

It would therefore arise as soon as the plaintiff was brought prisoner within the jurisdiction of a competent British Court. The plaintiff was admittedly brought a prisoner into Colombo harbour within the jurisdiction, of the District Court of Colombo, and a cause of action for false imprisonment consequently arose within the jurisdiction of that Court (section 9, Civil Procedure Code).

In my view, therefore, the District Court of Colombo had jurisdiction to hear and determine this case. If the plaintiff had been sent ashore from the ship outside the three-mile limit, the case, it seems to me, might have been different.

It is not suggested that the Sultan of the Maldives assented to, required, or authorized the arrest of the plaintiff, and counsel for the appellant expressly limited his argument to the cause of action arising within the jurisdiction of the Colombo Court.

No question therefore as to the *lex loci* of the original arrest seems to arise.

The findings of the District Judge on the facts put in issue are practically admitted to be correct by both sides, and it cannot seriously be contended that the plaintiff had not his personal liberty so far restricted on all sides by his detention on the "Marathon" as to amount to imprisonment in the eye of the law. The defendant has expressly denied (p. 160) that he had authority from the Ceylon Government to do anything but report whether the embassy was a genuine one and the letter a genuine sealed one, and has admitted (at p. 170) that his impression as to any excitement he saw among the people might have had an erroneous origin.

It has not, however, been argued that the District Judge was wrong in the finding that there was no evidence to show that plaintiff did actively create any disturbance.

The act of the defendant in arresting and deporting the plaintiff from Malé to Ceylon cannot be supported on any legal grounds. There is no legal warrant or process of law to sustain it, and plaintiff had not committed a felony or even a misdemeanour or any offence for which he could be arrested by a person other than a peace officer without a warrant. It does not purport to be an act of State, nor does the defendant suggest that he was acting on the orders of

any superior authority in the person of the Lieutenant-Governor of Ceylon. (*Pollock On Torts, p. 108-113. 6th edition*). He may have thought that the Lieutenant-Governor of Ceylon apparently did not desire the presence of the plaintiff in the Maldives, inasmuch as the facility of proceeding thither in the "Marathon" was denied him, and in arresting plaintiff under the circumstances the defendant may have thought, and probably did think, that he was doing service which would be acceptable to the Lieutenant-Governor.

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As an act of State it is difficult for me to see how it could be constitutionally supported as against a British subject, although the learned Judge of the District Court finds himself able to do so. The defendant stated in evidence that the Lieutenant-Governor approved of his action. This may, however, only mean that the Lieutenant-Governor was glad that the plaintiff had been removed from the Maldives, but was not prepared to support the defendant's action in doing so.

It has been contended that if our judgment is against the defendant we ought not, in awarding damages, to take into consideration what the respondent's advocate calls the cause of action arising out of the jurisdiction, but at the same time he argues, in mitigation of damages, the mild treatment of the plaintiff in the Maldives and on the ship by the defendant, and the *bonâ fide* belief of the defendant that he was acting politically right in removing the plaintiff.

It was practically impossible to prove the detention of the plaintiff on the "Marathon" while within the jurisdiction without proving the antecedent circumstances which led to that detention, and these are therefore before the Court. If the circumstances of the arrest had been attended with any brutality or ill-treatment on the part of the defendant, it would, in my opinion, have aggravated the plaintiff's claim for damages, just as in the converse case of consideration and kindness such circumstances ought to mitigate it.

The actual damage which the plaintiff sustained is not perhaps capable of any very accurate computation, and that he was extremely well treated under the circumstances is shown by his evidence and by the fact that he offered the defendant a case of champagne and other presents on leaving the ship.

The District Judge says: "There is no evidence of injury to reputation or damage thereby," and that view was not controverted before us, and he assesses the damage at Rs. 3,000. According to the plaintiff, says the District Judge (p. 220), the Sultan declined to engage the plaintiff until this trial was over, although on his arrival plaintiff says his appointment was confirmed (p. 80). It

1904. would appear rather therefore as if the Sultan would not have
-September 6. continued to employ the plaintiff as his Private Secretary against
MIDDLETON, the declared wishes of the Ceylon Government, even if plaintiff
J. had proceeded back to Malé on his release in Ceylon, which there
was nothing to prevent him doing except the fear of another
deportation. I am inclined to think therefore that the actual
damage sustained by the plaintiff was not of a serious character.

The *injuria* which the defendant has caused to the plaintiff renders the former answerable in damages to the latter under the Roman-Dutch Law, as it is of an analogous character to the abuse of power contemplated in *Voet, 47, 10, 42*. See also *Langerman v. Cornell, 7 Juta 200*.

The defendant has committed an act which under the terms of the British constitution amounts to false imprisonment as against the plaintiff. This gives a cause of action under the Roman-Dutch Law applicable in this Colony to what are known as torts under the English Law.

In my opinion, therefore, on the principle laid down in *Hekkle v. Money (1765), 2 Wilson, 205*, that an attack has been made on the liberty of the subject, but, acting in a more moderate fashion than was adopted by the jury and ratified by the Court in that case, I would award the plaintiff the sum of Rs. 500 as damages.

The judgment of the District Court must be set aside, and judgment entered for the plaintiff for Rs. 500 and costs in the Court below and of this appeal.

MONCREIFF, A.C.J.—I agree.
