

Present: Fisher C.J.

1930

BANDA v. THOMAS.

129—C. R. Matala, 18,929.

Action for damages—Fish exposed for sale—Condemnation by apothecary
—Malice—Cause of action.

Where fish exposed for sale was condemned by a sanitary inspector on the authority of an apothecary, who falsely and maliciously stated that the fish was unfit for human consumption,—

Held, that the owner of the fish had a cause of action for damages against the apothecary.

A PPEAL from a judgment of the Commissioner of Requests, Matala.

H. V. Perera, for defendant, appellant.

Navaratnam, for plaintiff, respondent.

February 19, 1930. FISHER C.J.—

In this case the plaintiff who is a vendor of fish seeks to recover damages against the defendant, an apothecary, for having falsely stated that certain fish that he had for sale was unfit for food whereby a sanitary inspector prohibited the plaintiff from selling the fish, causing damages to the plaintiff in the sum of Rs. 34. I do not think it can be doubted that, if a man falsely and maliciously disparages the goods of another, whose business it is to sell them, to a man whose duty it is to prevent the goods being sold if the disparaging statements are true, who acts on such statements and prevents them from being sold, and the owner thereby suffers loss, the latter has a cause of action against the person who has so made the statements. The question is whether all the above-mentioned elements are present in this case. The evidence shows (a) that the defendant told the sanitary inspector that the fish which the plaintiff had for sale was bad; (b) that it was not bad. I think it must be taken that the sample sent to the District Medical Officer was a fair sample, and the learned Commissioner was clearly of this opinion; moreover, proceedings were instituted against the plaintiff for exposing his fish for sale, which was unfit for food, which in the result were withdrawn. (c) That in consequence of the defendant's statement the inspector, whose power to condemn is not contested, condemned the fish. The inspector said in his evidence, "I cannot condemn without a medical report," and the medical report is clearly the statement made by the defendant. (d) That the plaintiff suffered damage by the fish being taken away from him, and the amount of the damages claimed is not excessive. The only question is whether the learned Commissioner was justified in finding that the defendant acted *mála fide*, that is to say, did he say what was untrue knowing it

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to be untrue? The evidence is directed to show that the defendant had an ulterior motive, namely, that he acted with malice being actuated by some resentment against the plaintiff. The plaintiff and another witness deposed to the fact that the defendant had asked the plaintiff to give him some fish for nothing and that the plaintiff had refused. The learned Commissioner says: "the defendant acted *mála fide* in condemning the fish because he was not given some fish free. The sanitary inspector's evidence shows that the alleged examination of the fish was a very cursory one. This supports the plaintiff's version that the defendant condemned the fish through anger and not for any other reason," and he goes on to say that it was clear that the fish was not unfit. He therefore found that the defendant made a statement which he knew to be false and that he was actuated in so doing by the fact that the plaintiff had refused to give him some fish free. Where it is sought to establish malice against a person who *primá facie* is acting in the performance of a public duty the evidence should establish something more than mere suspicion. The learned Judge's finding is based on facts which, if true, justify an inference of malice. I cannot say his finding on this point is wrong.

The appeal must be dismissed with costs.

Appeal dismissed.
