MEEDIN *v.* MOHIDIN.

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D. C., Kandy, 10,711.

Search warrant—Maliciously obtaining same—Want of reasonable cause—Action for damages—Animus injuriandi.

Defendant, who was complainant in a Police Court prosecution for theft, swore an affidavit before the Magistrate that he had been credibly informed that the property which he alleged was stolen by the accused in the Police Court case was in plaintiff's possession, and applied for a search warrant to search the plaintiff's house. A search warrant was accordingly issued and plaintiff's house searched, but no property was found. Plaintiff thereupon sued defendant for damage for "pain of mind and loss of dignity"—*Held*, that this was an action on the case for injury, and that it was necessary that plaintiff should prove intent on the part of defendant to expose him to contumely. Such intent is not to be inferred from the mere fact of defendant applying for a search warrant hastily and without reasonable cause.

THE plaint in this case set forth that the defendant instituted in the Police Court of Kandy a charge of theft against four persons; that he falsely and maliciously and without reasonable or probable cause appeared before the Police Magistrate on the 27th March, 1896, and complained to him that the property stolen by the accused was in the possession of the plaintiff; that he prayed for a warrant to search the house of the plaintiff; and that the Police Magistrate granting it, the house of the plaintiff was

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searched, " but no stolen property was found therein, whereby the " said complaint against the plaintiff was determined. By reason " of the premises," the plaint alleged, " the plaintiff has been " injured in his reputation and suffered pain of body and mind, " to his damage of Rs. 350," and he prayed for judgment for the said sum and costs.

The defendant answered that thieves had entered his house and carried away certain articles on the 20th March, 1896 ; " that " thereafter defendant received certain credible information from " one Mohideen and Meera Lebbe, respectable traders in Kandy, " to the effect that they had seen certain of the stolen property in " the boutique of the plaintiff, who is in the habit of receiving and " taking articles in pledge or pawn ; that thereupon, believing the " said information, and acting *bona fide*, the defendant on 27th " March, 1896, made complaint upon affidavit to the Police Magis- " trate of Kandy as set forth in the plaint ; that, save as aforesaid, " the defendant denies the allegations in the 2nd paragraph of the " plaint, or that he falsely and maliciously made the said complaint " against the plaintiff, or that he made it without reasonable or " probable cause."

The District Judge (Mr. J. H. de Saram) did not believe that any information was ever given to the defendant, and held that there was no reasonable or probable cause for the application for a search warrant. He assessed the damages suffered by plaintiff at Rs. 75, and entered judgment for plaintiff for the amount, with costs of the scale within which the decree falls in the Court of Requests.

The defendant appealed.

Dornhorst, for appellant.

Wendt, for respondent.

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The form of the plaint and the language of the plaint and the judgment look as if the parties and the Court thought that this case was one of malicious prosecution ; but in fact the defendant has never prosecuted the plaintiff. He had prosecuted others for theft of some articles of his which he trades in, and while that case was pending he presented an affidavit to the Magistrate in these words :—

" I, Peer Mohamadu, of Trincomalee street in Kandy, solemnly, " sincerely, and truly affirm and state that I am credibly informed " that the stolen property mentioned in Police Court, Kandy,

" case 806, belonging to me, is now in possession of Packeer Meedin, " of 38, Colombo street, Kandy, I therefore pray for a search " warrant to search the house and premises of the said individual " for the said stolen property."

The affidavit was signed before the committing Magistrate, who, having ascertained from the applicant for the search warrant that he was not related to the said Packeer Meedin, ordered a search warrant to be issued. This he had jurisdiction to do. The house was searched by the officer entrusted with the warrant and none of the stolen property was found. Packeer Meedin is the plaintiff in this action. His cause of action I understand to be this : " The " defendant by a false and malicious affidavit procured a search " warrant to be executed in my premises to my pain of mind and " loss of dignity."

I do not understand him to be suing for trespass to property which the execution of the search warrant involved. The English authorities cited to us by Mr. Dornhorst, if they are pertinent, show that the defendant would not be answerable for trespass under the warrant, for the warrant was sanctioned by a Judicial Officer. Counsel for defendant in *Locke v. Ashton*, who prevailed on the Judges to grant a new trial, admitted that an action on the case might have lain, but then malice and want of probable cause must have been alleged and shown. This is just what the plaintiff brings here. It is an action on the case for injury. But the question is, What must be proved to sustain such an action ? Injury is of so wide a scope that I doubt if any general rule can be laid down to meet all classes of cases. But the essence of this particular injury is contumelious, and this class of injury is thus defined by Voet : *Delictum in contemptum hominis liberi admissum, quo ejus corpus vel dignitas vel fama læditur dolo malo* (*Ad Pand, 47, 10, 1*).

No doubt in this case the wrong was contumelious, that is, the wrong was calculated to expose the plaintiff to contumely. Has he proved *dolus malus ?* Or, to put it another way, was the defendant's intent to expose the plaintiff to contumely made manifest ? Take this instance given by Voet : if a judgment-creditor seizes his debtor's goods *per injuriam* when his debtor is quite prepared to satisfy the judgment, he is liable to an action for injury, that is, if his act in seizing his debtor's property is done *defamandi causa*. Take another instance by the same author : *Si manifeste calumniosa delatione effecerit, ut homo infons quoestioni subjectus ac tortus fuerit* (*Ad Pand, 47, 10, 7*). There must be then in cases of this kind an evident intent to be vexatious or contumelious without good cause.

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Is it enough that the warrant was asked for hastily and without reasonable and probable cause ? The defendant did not charge the plaintiff with being the guilty receiver or retainer of his stolen property. He applied for a search warrant on the ground that he had been credibly informed that the stolen articles were in the plaintiff's possession. The Magistrate granted his application, and in so doing seems to have acted precipitately. Further inquiry might have made the Magistrate hesitate if not forbear altogether. The District Judge does not believe that the defendant received any information of the sort. This is a strong view to take in the face of the evidence led by the defendant. But let that pass. The District Judge infers malice from the fact of the defendant applying to the Court for a search warrant so hastily and without reasonable cause. But is this enough ? Was this itself manifestly contumelious ? If not, must not the plaintiff prove from other sources an intent to outrage his respectability ? There was no proof of such an intention.

Even given the facts found by the District Judge, the action, in my opinion, fails for want of proof of *animus injuriandi.*

In the public interest actions like this ought to be discouraged.

I would set aside the judgment in appeal and dismiss the action with costs.

BROWNE, A.J.—

I confess I do not go with the learned District Judge in his disbelief that information of the goods being in plaintiff's boutique was given to defendant by Sego Mohideen, nor do I consider that if given it should be held to have been falsely given. There is not the slightest suggestion from first to last of any evil motive which might have induced either defendant or his informant to make such a statement that the stolen goods were there.

Granting that malice may be inferred from proof of want of probable cause, I do not regard that the English Law considers malice to be a minor element for consideration in these cases. I believe it holds it to be necessary that such proof should be so strong as to be absolutely conclusive thereof ere that inference against defendant should be deduced therefrom. The proof would be perhaps held conclusive of a person not at all engaged in trade, nor of the race or class of life among whom such articles might be found, were he to deny that the articles ever were in his possession : in such a case his mere negation of their possession would be taken in conjunction with the *primâ facie* improbability that he would ever have had occasion to possess them. But when the keeper of a pawn shop should make a like denial, the absence of

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such improbability would weaken the effect of the denial, for his avocation would give the asserter some probable cause for believing that the information he had received was true.

The necessary degree of malice will therefore always depend upon the decree of proved want of probable cause, and will necessitate that the latter shall not be matter of only formal proof, but that it shall have always to be remembered that in the absence of proof of manifested malice *aliunde* the improbability must be shown to be so great that the existence of malice must be thereby established.

I agree that malice was not proved to be here existent, and entirely concur in the latter portion of my brother's remarks.