

C. J. R. LE MESURIER v. Hon. Mr. C. P. LAYARD,
Attorney-General of Ceylon.

1898.
August 16.

D. C., Colombo, C 9,983.

Action against the Attorney-General as representing the Government of Ceylon—Wrongful act of the Government of Ceylon—Difference between “the Crown” and “the Government of Ceylon”—Prerogative Law—Roman-Dutch Law—Civil Procedure Code, ss. 456, 458.

An action against the Attorney-General of Ceylon, as representing the Government of Ceylon, for alleged wrongful act on its part, should be treated as an action brought against the Attorney-General as representing the Crown, in accordance with section 456 of the Civil Procedure Code.

BONSER, C.J.—The Royal Proclamation issued in 1799, after the Dutch settlement in the Island was ceded to the British Crown, established the Roman-Dutch Law as the Common Law of the ceded territory, and thenceforth the relations as well as between the Government and the subject as between subject and subject must be governed by that law.

The Attorney-General of Ceylon is the lineal successor of the Advocate Fiscal of olden time, and just as in those days actions against the Government were brought against the Advocate Fiscal, so they may now be brought against the Attorney-General, not only for breach of contract, but also for tort.

THE plaintiff in this case set forth in his plaint that “on the dates material to this action he was and still is a member of the Ceylon Civil Service;” that “the defendant is the Attorney-General of Ceylon and represents the Government of Ceylon;” that being in the third class of the Ceylon Civil Service he was entitled to draw the salary and allowances amounting to Rs. 10,000 per annum; that he applied to the Treasurer of the Colony for the payment of his salary and allowances for the year ending 8th January, 1897, but has not been paid the Rs. 10,000 or part due to him; that in terms of section 461 of the Civil Procedure Code he had given notice of this action to the defendant; that while holding office at Matara he had been forcibly and unlawfully prevented on the 8th January, 1896, from performing the functions of his offices; that he was

1898. not dismissed in accordance with the Colonial rules and regula-
 August 16. tions, in terms of which he was appointed ; that his dismissal,
 made in contravention and defiance of those rules and regulations,
 constituted a breach of contract and a wrongful and unlawful act
 on the part of the Government of Ceylon, for which he was
 entitled to damages ; that even if the Crown had the prerogative
 to dismiss the plaintiff at pleasure, without reference to the
 Colonial rules and regulations aforesaid, the Crown had not
 exercised that prerogative ; and that plaintiff had suffered damages
 in Rs. 100,000. He prayed (1) for judgment for Rs. 10,000, being
 the amount of his salary and allowances from 9th January, 1896,
 to 9th January, 1897, and Rs. 10,000 per annum till he was restored
 to the office ; (2) for an order of court restoring him to the func-
 tions of his office ; or, in the alternative, for Rs. 100,000, being
 damages sustained by breach of contract and wrongful act, &c.

The defendant pleaded (1) that the defendant did not represent
 the Government of Ceylon, and that he was not liable to be sued
 as representing such Government ; (2) that no cause of action
 was disclosed against the Government of Ceylon or against the
 defendant as representing it ; (3) that an action could not be
 maintained against the Government of Ceylon, as such Govern-
 ment was not a body corporate or a body capable of being
 sued.

There were also other pleas raised as matters of law and on the
 merits, which are not pertinent to the present appeal.

On the trial day, after a settlement of the various issues of the
 case, the only point argued was whether there was warrant for
 suing the Attorney-General as representing the Government of
 Ceylon.

The Acting District Judge (Mr. Felix Dias) held as follows :—

“ In support of the contention that ‘ the Crown ’ and the
 “ ‘ Government of Ceylon ’ are practically the same thing, Mr.
 “ Morgan has cited several cases reported in 4 S. C. C. 77, 6 S. C. C.
 “ 30, 9 Appeal Cases 571, but it seems to me that these cases have
 “ no bearing whatever on the real point in issue. They have no
 “ more than affirmed a principle that in this country an action for
 “ a breach of contract lies against the Crown sued through its
 “ Queen’s Advocate or Attorney-General, but that no action for tort
 “ can be maintained. The latter has been left an open question by
 “ Chief Justice BONSER in the recent Dehigama case.

“ Assuming for the moment in favour of the plaintiff that these
 “ cases give him an unquestionable remedy for his grievances
 “ *ex contractu* and even *ex delicto* against the Crown, is he now
 “ suing the Crown ? The terms ‘ Crown ’ and ‘ Government
 “ ‘ of Ceylon ’ do not connote the same thing If any of the

“gentlemen who are administering Executive Government here have done the plaintiff any injury, it seems to me that he ought to sue them, but I fail to see how Mr. C. P. Layard, Attorney-General of Ceylon, can be made answerable for their acts. Our law (section 456 of the Code) only makes the Attorney-General the proper party to be sued in actions ‘against the Crown,’ but, as I said before, that is not the same thing as the Government of Ceylon. This action is in consequence wrongly framed, and must be dismissed with costs.”

1898.
August 16.
—

The plaintiff appealed.

The case came on for argument on 29th July, 1898.

Appellant appeared in person.

Wendt, for defendant, respondent.

16th August, 1898. BONSER, C.J.—

The only question to be decided on this appeal is whether the Acting District Judge of Colombo was justified in dismissing the plaintiff's action on a technical point. The plaintiff was a Civil Servant of the Crown, in the employment of the Government of Ceylon, or, to use the words of a local Ordinance, “an officer of the Civil Service of the Ceylon Government” (see section 47 of Ordinance No. 7 of 1887). He complains that he has been wrongfully dismissed, and claims damages for the wrongful dismissal. He has made the Attorney-General of this Island the defendant to his action, and it appears on the face of the plaint that the defendant is sued not in his personal capacity, but “as representing the Government of Ceylon.” The Acting District Judge, without going into the merits, has dismissed the action on the single ground that the Attorney-General does not represent the Government of Ceylon. Now, it seems to me something like a quibble to say that the Attorney-General represents the “Crown,” but does not represent “the Government of Ceylon.” Her Majesty, acting by her servants and officers, governs this Island. For most purposes the two expressions are convertible, and our local statute book shows numerous instances of their being so treated. I hold that this action is an action against the Crown, and was rightly brought against the defendant in accordance with section 456 of the Civil Procedure Code. It will be observed that section 458 of that Code provides that, when an action is brought against the Crown, the Court, “in fixing the day for the Attorney-General to answer the plaint, shall allow a reasonable time for the necessary communication with the Government,” which shows that the Government is regarded as the real defendant. But there

1898. is another ground on which the action may be supported. After the
 August 16. Dutch settlements in this Island were ceded to the British Crown
 BONSER, C.J. the King of England signified his pleasure by a Royal Proclamation
 issued in 1799 that the administration of justice was henceforth
 and during " His Majesty's pleasure to be exercised by all Courts
 " of Judicature according to the laws and institutions that subsisted
 " under the ancient Government of the United Provinces." That
 Proclamation therefore established the Roman-Dutch Law as
 the Common Law of the ceded territory, and by that law the
 relations as well between the Government and the subjects as
 between subject and subject must, in my opinion, be governed ;
 and such seems to have been the view taken by the Privy Council
 in the case of *Siman Appu v. The Queen's Advocate* (L. R. 9,
Appeal Case 585). Now, as I pointed out in *Sanford v. Waring*
 (11 N. L. R. 351), the Roman-Dutch Law allowed persons who
 had a claim against the Government to sue it as of right (*non*
petita venia) through its officer, the Advocate Fiscal ; and I may
 observe in passing that it does not appear that any distinction was
 made between actions of tort and other actions. The rule of
 English Law that the Crown cannot be sued in tort depends on
 the maxim, which appears to be peculiar to that law, *rex non*
potest peccare, " the king can do no wrong." I am not aware
 of any authority for the proposition that the Government of the
 United Provinces ever claimed the attribute of impeccability.
 For some time after the cession the office of Advocate Fiscal
 continued under the English Government. Subsequently, in
 1834, the title of the officer was changed to King's Advocate and
 more lately to that of Attorney-General, but the change was
 merely in name. The present Attorney-General is the lineal
 successor of the old Advocate Fiscal, and just as in old days
 actions against the Government were brought against the
 Advocate Fiscal as representing the local "Fisc" or Treasury, so
 they may now be brought against the Attorney-General. For
 these reasons I am of opinion that the Acting District Judge was
 wrong in dismissing this action, and it must go back to be tried.
 The appeal is allowed with costs. I express no opinion as to
 whether or not the plaintiff has a good cause of action. All that
 I decide is that the Attorney-General was properly made a
 defendant to this action.

LAWRIE, J.—

To assent to the proposition that the Attorney-General of
 Ceylon is the proper defendant in actions against the Crown in
 this Colony does not touch the question what actions lie

against the Crown, nor does an assent to the proposition that the Attorney-General of Ceylon is the proper defendant in actions against the Ceylon Government touch the question what action may be maintained against that Government. It does not follow that because the proper defendant has been named that the plaintiff has set forth a good cause of action and is entitled to decree. Here, if the plaintiff is really suing the Crown, I think that the Attorney-General ought to have been sued as representing the Crown in the old-fashioned way. I understand that the plaintiff now pretends that his action is against the Crown, contending that "Crown" and "Government of Ceylon" are identical terms, but in my opinion that is not what he alleged in the plaint. He there drew a distinction between the "Crown" and the "Government of Ceylon." My brother WITHERS says it is a distinction without a difference. If there be no difference, the Attorney-General ought to have been sued in the old way; but it seems to me that there is a difference between the "Crown" and the "Government of Ceylon." The one is greater than the other. There may be actions which will not lie against the Crown, which are sustainable against the Government. I am content to hold that in such actions the Attorney-General is the right defendant. I would give the plaintiff the alternative. If he is suing the Crown, let him do so plainly, and let him be tied down to that; if he is suing the Government of Ceylon as something lesser and different from the Crown, let him do so plainly, and let him be tied to that. The caption, in my opinion, should be amended by deleting the words "C. P. Layard" and "Colombo" and by adding the words "the Honourable" before the Attorney-General. If the plaintiff desire to retain the prayer for a decree against the Attorney-General as representing the Government of Ceylon, I will understand that he asks for a remedy for a wrong done to him by the local Government, which the local Government can grant. If he retains the prayer, he may not ask for a remedy for a wrong done by the Imperial Government.

1898.
August 16.
LAWRIE, J.

WITHERS, J.—

In my opinion the appellant is entitled to succeed. The plaintiff has brought an action, as I understand it, against the Ceylon Government to recover a sum of money alleged to be due to him by the Ceylon Government under a contract of service, which has not been duly determined, and to recover damages for a breach of contract in refusing to continue him in service. He sued the Attorney-General of Ceylon as representing in our local Courts the Government of Ceylon. M^r Dias, the Acting District

1898.
August 16.
WITHERS, J.

Judge, has dismissed this action on the ground that the Attorney-General does not represent the Government of Ceylon. He says that the Attorney-General represents the Crown, and that this is not an action against the Crown. But surely the Attorney-General represents the Government of Ceylon, and what is the Government of Ceylon but the Crown of Ceylon? The Crown is, of course, a larger term than the Government of Ceylon, which it includes. But the Crown in Ceylon means Government of Ceylon. Many local Ordinances were cited to us which seemed to use the words "Crown" and "Government of Ceylon" as almost convertible terms. If there is a distinction, it is one without a difference.

Mr. Wendt, for the Attorney-General, said he would not have demurred to the Attorney-General being made the defendant, if the plaintiff had put in his plaint the word "Crown" where he has the words "Ceylon Government." I repeat that I cannot appreciate this distinction.

