

1899.
May 23
and 31.

SILVA v. APPUHAMY.

D. C., Kegalla, 1,104.

*Injunction—Ordinance No. 1 of 1889, s. 89, and Civil Procedure Code, s. 662—
Irregularity in issue of injunction—Disobedience—Contempt of Court.*

Per LAWRIE, J.—An injunction granted by a competent Court must be obeyed by the party whom it affects until it is discharged, and disobedience thereto is punishable as for a contempt of Court, notwithstanding that it was irregularly issued.

IN this case of *rei vindicatio* plaintiff prayed in his plaint, *inter alia*, that the defendants might be restrained from mining for plumbago in the land claimed by plaintiff, and from removing or otherwise disposing of the said plumbago therefrom. The injunction was granted as a matter of course on the 14th March, 1899. A fortnight afterwards the plaintiff swore an affidavit to the effect that, in disobedience and contempt of the said injunction duly served on the defendants, they were still mining for plumbago and removing and selling the same. Thereupon the District Judge charged the defendants with having on the 16th day of March, 1899, and thereafter, in contempt and disobedience of the injunction issued as already stated, gone on mining for plumbago on the land in question, and removing and selling the

same. The first accused pleaded guilty, and the rest were, after evidence taken, found guilty, and all were sentenced to three months' simple imprisonment.

They appealed.

Dornhorst (with him *Rudra, Bawa, and Peiris*), for appellants.—The injunction was improperly issued. Under section 87 of Ordinance No. 1 of 1889 an affidavit showing sufficient grounds is necessary; and section 662 of the Civil Procedure Code provides that, except in cases where an injunction is prayed for in a plaint in any action, every application for an injunction shall be by petition and shall be accompanied by an affidavit setting forth the facts on which the application is based. The plaint here, in which the injunction was prayed for, was not supported by an affidavit, nor was there any petition independently praying for injunction. The accused were not bound to heed such an informally issued injunction. (Counsel argued on the merits also.)

H. J. C. Pereira (and *E. Jayawardena*), for respondent.—Though informally issued, it was the duty of the appellants to obey the injunction so long as it was not recalled or discharged. (Counsel replied also on the merits.)

Cur. adv. vult.

31st May, 1899. LAWRIE, J.—

The appellants appeal from a sentence of imprisonment of three months passed upon them for disobeying an injunction of the Court below, which was in effect restraining them from taking and removing plumbago from the land in dispute. It was sought to be made out that the injunction was improperly issued, in that it lacked the support of material required by the Courts Ordinance and the Civil Procedure Code of 1889. Assume it, for instance to come under section 87, sub-section (1), of the Courts Ordinance. Then the Court can only grant an injunction where it appears in the plaint that the plaintiff demands and is entitled to a judgment against the defendant restraining the continuance of an injurious act. In the plaint in this action it does not so appear. Assume it, on the other hand, to come under sub-section (2) of that section. Then there must be a petition for an injunction, but no petition exists here.

The injunction having nothing to support it is ineffectual, if not for all purposes, at least for the purpose of bringing a party who disobeys it to punishment, for such contempt of Court is punishable like an offence under the Penal Code with imprisonment of either kind or a fine. It entails greater pains and

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penalties here than it does in England. Section 663 of the Procedure Code of 1889 was pressed upon me. That enacts " that an injunction granted by the Court on any such application may in case of disobedience be enforced by the punishment of the offender as for a contempt of the Court."

From this it was argued that an injunction granted by the Court without a petition could not in case of disobedience be so enforced. I have little doubt, however, that an injunction granted by a competent Court must be obeyed by the party whom it affects until it is discharged, and that disobedience can be punished as for a contempt of Court, notwithstanding irregularity in the procedure.

I may say that I think this plaint just comes within sub-section (1) of " The Courts Ordinance, 1889," for the action is to vindicate a land in the possession of defendants, who are charged with doing acts injurious to the plaintiff's interest, and relief by injunction is *prima facie* made out (subject to what I am about to say), and it is asked for in the plaint. Not that I myself should have granted an injunction without notice, having regard to the imperfect averments in the plaint of title to an undivided moiety of the land said to have been conveyed to the plaintiff by Magris and Gregoris in February and March, 1899, and having regard to the plaintiff's admission that the defendants have been in possession of the land since September, 1898. The title to the other half was made to appear, but just so and no more. I would add that these interlocutory injunctions should not be granted without very good cause when, as here, they may involve injury to persons who are no parties to the cause.

[Then his Lordship considered the merits of the case and set aside the conviction of all the appellants except the first and fifth.]

