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CORNELIS *v.* COOKSON.

D. C., Colombo, 13,452.

Action for wrongful entry into house and for wrongful arrest and confinement by police officers—Ordinance No. 16 of 1865, s. 59—Criminal Procedure Code, chapters 4 and 5—Reasonable justification—Evidence.

The power given by section 59 of Ordinance No. 16 of 1865 to a police officer to enter into and inspect without a warrant all premises of persons suspected of receiving stolen property, &c., is not superseded by the provisions enacted in chapters 4 and 5 of the Criminal Procedure Code.

Whether the arrest of a person in whose possession things reasonably suspected to be stolen property have been found is justifiable or not, will depend on the reasonableness of the suspicion entertained by the police officer.

Where a police officer had received information, true or false, which led him to think that a person was a receiver of stolen goods, and where, a watch being put upon him, it was found that a habitual criminal went into his house with a parcel and made himself at home by sitting down there,—

Held, in an action for damages brought by the person suspected, that entry into and search of his house for stolen property was justifiable, and that his arrest, after a third party had identified and claimed certain of the articles seized, was not tortious.

THE plaintiff in this case, who was a goldsmith, sued three police officers for wrongfully entering into and searching his house, and for wrongfully detaining certain goods belonging

to him. The first defendant was the Superintendent of Police, and the second and third defendants were Inspectors under his command.

On the morning of the 21st November, 1899, the second defendant, with two or three constables, entered the plaintiff's house about 7.30 A.M., and searched it for stolen property. The third defendant helped the second defendant in the search. The plaintiff was present, but did not object to the search. The police officers seized and removed to the police station some jewellery and various other articles. On the following day, one Paramananda claimed some of the articles seized as his, alleging that his house had been robbed about four days previously. The plaintiff was then taken up, confined in a cell, marched to the Police Court, and charged with being in recent possession of stolen goods. He was tried and acquitted by the Magistrate on the 29th November, but the police officers did not return to him the articles removed by them. Plaintiff therefore claimed in the present action (1) the return of his goods, or the payment of their value, Rs. 1,441.75; (2) Rs. 500 as damages sustained by him by loss of trade; and (3) Rs. 500 as damages for unlawfully entering and searching his house and arresting and confining him.

The defendants pleaded justification as to searching the plaintiff's house and arresting him, and the first defendant averred that he detained the things a reasonable time pending inquiries as to the owership of the articles seized.

The Additional District Judge, Mr. F. R. Dias, held that section 59 of the Ordinance No. 16 of 1865 was not intended to curtail the Common Law rights of the subject to seek redress for a trespass or other wrongful act committed by police officers; that, though the second defendant had some grounds for entering and searching the plaintiff's house, he acted unreasonably in making "a clean sweep of the man's house, and carrying away everything, leaving only his electric battery in its place;" that the defendants had no reasonable grounds for seizing any of the plaintiff's property or for detaining it; that the detention of the goods was arbitrary and characterized by *mala fides;* and that he would have given exemplary damages, but for the fact that the plaintiff's counsel did not press for them, because the articles seized had been restored to the plaintiff subsequent to action. He therefore gave the nominal sum of Rs. 10 as damages on the second and third cause of action, with costs in the class in which the action had been brought.

The defendants appealed.

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Walter Pereira, for appellants, cited Ordinance No. 16 of 1865, sections 32 and 59; and *Perera v. Hansard* (*8 S. C. C. 3*).

Schneider, for respondent, cited *Thiedeman v. Fernando* (*2 N. L. R. 149*).

Pereira, in reply, pointed out that Withers, J., had regretted the judgment delivered by him in *Thiedeman v. Fernando*.

Cur. adv. vult.

25th July, 1902. MONCREIFF, A.C.J., after setting out the facts of the case, said:—

In order to understand the defence it is necessary to look at the statutory powers conferred upon the police. The first provision is section 59 of Ordinance No. 16 of 1865, which makes it "lawful for any police officer without a warrant to enter into and inspect ..... all premises of persons suspected of receiving stolen property, any locality.....which he reasonably suspects to contain stolen property, and then and there to take all necessary measures for the effectual prevention and detection of crime, and to take charge of all property reasonably suspected to have been stolen, and of all articles or things which may serve as evidence of the crime supposed to have been committed, and to take charge of all unclaimed property." Now, it was suggested that that provision was not in force because it has been superseded by chapters IV. and V. of the Criminal Procedure Code. I think I need say no more about that suggestion than that I am not disposed to believe that the mere enactment of these chapters was sufficient to repeal the very salutary provision which I have just quoted from the Ordinance of 1865. It seems quite clear to me from that provision, which is not touched by what Burnside, C.J., said in *Perera v. Hansard* (*8 S. C. C. 3*), that, if what the police did was done with reasonable grounds, they were justified in their action.

The learned Judge stated that they made a clean sweep of the house, and apparently left the plaintiff nothing but an electric battery with which to console himself. I think that that is a somewhat sweeping statement. The plaintiff undoubtedly retained, among other things, some gold bars and materials with which he could carry on his electro-plating business. It may be true that the police carried away a great many articles which could not be supposed to have been stolen, but their action was, in my opinion, covered by the concluding terms of this section, provided that they had reason to think that the detention of the articles might assist them in detecting the authors of a crime.

With regard to the arrest, we were referred to section 32, subsection (*e*), of the Criminal Procedure Code, which provides that

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"any peace officer may, without an order from a Magistrate and without a warrant, arrest any person in whose possession anything is found which may reasonably be suspected to be property stolen or fraudulently obtained, or who may reasonably be suspected of having committed an offence with reference to such a thing."

Now, the only question is whether the Superintendent of Police and his inspectors were reasonably justified in doing what they did. That matter must be looked at with a due regard to common sense and the social conditions under which we live. The police had evidently some information, true or false, which led them to think that the plaintiff was a receiver of stolen goods. Therefore they put a watch upon him, and when they found that at an early hour in the morning one Jacolis was seen entering the house, they thought themselves justified in searching it and carrying away such articles as were necessary for their purpose.

Now, the case hinges to a great extent upon the character of this man Jacolis. There is no doubt that he went into the house--the plaintiff himself admits it—and that he made himself at home by sitting down there. I see no reason to disbelieve the evidence of the constable that he had a parcel with him when he went in. The constable's conduct is explained by what he tells us about this man. He said that he knew Jocolis, who was a well-known burglar, who had been previously convicted, and, he added in this case, that at that moment he was under commitment for trial before the Supreme Court on a charge of burglary committed since this incident. Inspector Modder explains that he knew the man Jacolis, that he knew that he was a habitual criminal who had been convicted of house-breaking, and that he had put detectives on because he had information that he was frequenting the plaintiff's house. He adds that this man Jacolis was suspected by the police of being the burglar responsible for the crime committed at Paramananda's house. The Superintendent himself says that he considered he was justified in detaining the things because an habitual criminal, who was suspected of being concerned in a serious case of house-breaking, was seen entering the plaintiff's house that morning with a parcel, and that some of the articles seized answered to the description of the things stolen from Paramananda. It seems to me that the information which the police had in their possession justified them in having a very lively suspicion as to the nature of part of the trade which the plaintiff was carrying on; that they were justified in entering and searching the house and removing the articles which they did remove when they saw the man Jacolis making himself at home there; and that, when some of the articles were identified

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by Paramananda, they were justified at the moment in putting the plaintiff under arrest.

For these reasons I think that the learned Judge was wrong in holding that the defendants were not justified in doing what they did, and that, with the exception of the Rs. 10 for the too long detention of the plaintiff's property, the judgment of the District Judge must be set aside.

The exact order to be made with regard to costs will be contained in the judgment of my brother Wendt, with whom I entirely agree.

WENDT, J.—

I entirely concur with what has fallen from my Lord the Chief Justice in regard to the action of the police on the 21st November. We must of course be careful, while we protect the police in the exercise of what are often very difficult duties, not to permit them to over-ride the rights of private individuals. But I do not think that it can be said in the present instance that the officers concerned acted unlawfully, or even with unnecessary harshness. The plaintiff does say that he was beaten by two constables in his own house before his property was removed, but as I read the District Judge's judgment, he does not believe plaintiff on that point, and consequently this tends further to discredit the plaintiff as a witness. I think section 59 was ample justification for the taking of the plaintiff's property into the custody of the police, considering the nature of the property, the situation in which some of it, at all events, was found, and the fact that Jacolis took a parcel into the house which the plaintiff was unable to otherwise account for. I think, however, that the detention of this property until the 26th March, that is to say, for over four months, was not justified by the circumstances. The finding of the articles in the plaintiff's house had been advertised in the *Hue and Cry*, and it was not alleged at the trial that any claimant to any part of this property had come forward in answer to that advertisement. Moreover, a formal letter of demand was served upon the defendants early in December, to which no reply was sent until after the institution of this action. I think that the award of Rs. 10 to the plaintiff for damages consequent on the detention of his property during the four months would be sufficient compensation.

With regard to the arrest which took place on the 22nd November, after Paramananda had identified some of the articles as having been among those which he had lost from his own house, I am disposed to think that that man's evidence alone was

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sufficient to justify the arrest, inasmuch as no reason is shown why the police should not have acted upon it.

The order as to costs will be that the plaintiff will have his costs of instituting the action and up to the 26th March, 1901, with Rs. 10 damages, and costs in the corresponding scale of the Court of Requests; but he will pay the defendants their costs subsequent to the 22nd March, 1901, as in the first class in the District Court, and also the costs in appeal in the class in which they were incurred.