1906.
May 23.

Present: Mr. Justice Wood Renton.

APPUSINGO APPU *v.* DON ARON.

C. R., Colombo, 33,764.

Notice of action—"Purporting to act"—Mala fide—Forest Ordinance (No. 10 of 1885), ss. 70 and 78—Courts Ordinance (No. 1 of 1889) —Civil Procedure Code, ss. 461, 463, and 464.

WOOD RENTON J.—A public officer who does an illegal act *Mala fide* in the pretended exercise of statutory powers cannot be said to be "purporting" to act under the statute which confers those rights within the meaning of section 461 of the Civil Procedure Code, and is therefore not entitled to the notice of action provided for by that section.

THE plaintiff sued the defendant, a police officer, for damages for unlawful seizure of timber, in the possession of the plaintiff, which the defendant alleged had been unlawfully removed by the plaintiff from Crown land. The Commissioner held that the defendant had acted in bad faith in seizing the timber and did not honestly believe that the timber had been cut on Crown land, but dismissed the action on the ground that notice of action had not been given by plaintiff to defendant, as required by section 461 of the Civil Procedure Code.

The plaintiff appealed.

Garvin, for plaintiff, appellant.—The defendant acted maliciously and not *bona fide*. A public officer is only entitled to notice when he honestly intends to act in pursuance of the powers vested in him. The word "purporting" does not mean "pretending" but "intending". [WOOD RENTON J.—It is conceivable that a public officer may have acted *mala fide* and still be entitled to notice.] Yes, provided the act to which he was moved by malice was one which he was lawfully entitled to do. It is submitted that a public officer cannot *mala fide* do that which he had no honest belief he was empowered to do, and still claim the benefit of sub-section 1 of section 461, *Hermann v. Seneschal* (1).

E. W. Perera, for defendant, respondent.—Defendant admittedly acted as a public officer. Plaintiff himself admits it, and it is only as headman he could have entered plaintiff's land and removed the

(1) (1862) 32 *L. J. Rep.* (*N.S.*) *C. P.* 43.

timber. In these circumstances he is entitled to a month's notice under section 461, Civil Procedure Code. " Purporting " in the section means " pretending," and even if defendant acted *mala fide* he was still entitled to notice, being sued for an act done in his official capacity, *Bahadur v. Price* (1). 1906. May 23.

Garvin in reply.—He may have acted maliciously; still, to be entitled to notice he must have honestly believed he was entitled as public officer to do the act, *King v. Chamberlain* (2).

23rd May, 1906. Wood Renton J.—

In this case the question of law raised is of considerable interest and importance. The facts are simple. The respondent, Leanage Don Aron, who is police vidane of Ooruwella, seized certain rafters in the possession of the appellant which he alleged had been unlawfully removed by him from Crown land. It transpired that this seizure was in itself unlawful, inasmuch as the land in question was private land; and the appellant thereupon sued the respondent in the Court of Requests of Colombo claiming the value of the timber seized. At the trial of the case certain issues were framed and the learned Commissioner decided all these issues, except one, in favour of the plaintiff. He held that the timber in question had not been felled from Crown land; that it had been lawfully removed by the plaintiff; and that its seizure by the respondent was unlawful. He valued the timber at Rs. 10 and assessed the damages at Rs. 5. In his answer to the appellant's plaint, however, the respondent had raised the issue that in what he had done he had acted as a public officer, and that he was therefore entitled to the one month's notice of action provided for by section 461 of the Civil Procedure Code in regard to proceedings against such officer for anything " purporting " to be done by them in their official capacity. It is conceded by the appellant that no such notice of action was given, and the learned Commissioner of Requests, although he specifically holds that the respondent acted in bad faith and had no honest belief that the timber in question had been cut by the appellant on Crown land, has come to the conclusion that he was yet " purporting " to act under the powers of seizure conferred on forest and police officers by section 57 of " The Forest Ordinance, 1885," and was therefore entitled to the month's notice of action secured to public officers by section 461 of the Civil Procedure Code.

In the course of his judgment the learned Commissioner quotes a statement made by the appellant himself in cross-examination

(1) (1897) *I. L. R.* 24 *Cal.* 584. (2) (1871) 40 *L. J. Rep.* (*N.S.*) *C. P.* 273.

1906. *May* 23. WOOD RENTON J.

to the effect that the respondent purported to act in his capacity of headman in seizing the timber, and treats this as an admission which, if not positively binding on the appellant, at least went far to dispose of the case. It appears to me, however, that the Commissioner has taken a wrong view of the bearing of any such answer as this. Apart altogether from the fact that it was elicited in cross-examination in reply to some ingenious advocate who had the requirements of the law in view, I think that the interpretation of the word " purporting " in the Civil Procedure Code was a question for the Court, and that the learned Commissioner should have considered it exclusively in that light. We have therefore to determine the simple question whether a public officer who in bad faith effected an unlawful seizure of timber in the pretended exercise of statutory powers can be said to be " purporting " to act under the statute which confers those powers within the meaning of section 461 of the Civil Procedure Code.

So far as I am aware, the term " purporting " has not been judicially defined, at least for the purposes of such a case as this, either in the English Courts or in any of the Courts of this Colony. But it seems to me that in the connection in which I have now to deal with it the word " purporting " is equivalent to " in pursuance of," and it has been held in England in a great variety of cases, of which I may give *Hermann v. Seneschal* (1) as a typical example, that the defendant in such an action as the present is only acting in pursuance of his statutory powers, if he honestly intended to put the law in force and believed that the plaintiff had committed the offence with which he was charged, although there was no reasonable ground for such belief. In my opinion law and equity alike require that we should construe the word " purporting " in the same sense. It must be borne in mind that notice of action is not the only privilege which the Civil Procedure Code confers on public officers acting in their official capacity. It gives them the chance of the intervention of the Attorney-General to undertake the burden of their defence (section 463). Even if there be no such intervention, it exempts their persons from arrest and their property from attachment otherwise than in execution of a decree (section 464). It would be intolerable if these privileges could be claimed by a public officer who is acting wrongfully and for the gratification of private malice, and whose official authority appears only in his badge as police vidane or in his possession of those Government diaries with which we are so unpleasantly familiar in the Court of Assize.

It appeared to me at the close of the argument, which was most

(1) (1862) 32 *L. G. Rep. (N. S.) C. P.* 43.

ably conducted by Mr. Garvin for the appellant and by Mr. E. W. Perera for the respondent, that, in view of section 66 of the Forest Ordinance, 1885, which makes the vexatious and unnecessary seizure of property by a forest or police officer a criminal offence, and empowers any magistrate dealing with such a case to award the whole or part of any fine imposed as compensation to the party aggrieved, it might possibly be said that the creation by this enactment of a special procedure by way of redress to the parties aggrieved by unlawful seizures had taken away by implication the present appellant's remedy in a Civil Court. But after hearing what counsel on both sides had to say on this question, I think that the difficulty which I raised is an unfounded one. Section 92 of the Courts Ordinance provides that convictions or acquittals are not a bar to civil process for the same wrong which forms the subject of the criminal proceedings, and I think that sections 70 and 78 of the Forest Ordinance, 1885, both of which contemplate alternate or additional proceedings in such cases. themselves corroborate my view on this point. I have now dealt with all the outstanding issues in this case.

I set aside the judgment appealed against, and on the basis of the finding of the learned Commissioner of Requests himself, I direct that judgment be entered in favour of the appellant for Rs. 10, the value of the timber, and Rs. 5 damages, with all costs here and in the court below.