

Present : De Sampayo J. and Schneider A.J.

1921.

SILVA v. SILVA.

21—D. C. Anuradhapura, 848.

*Injuria—Liability of mandatory and mandant—Order to leave the district or to stand a prosecution—Action for damages against subordinate officer who communicated orders of Government Agent.*

Defendant, a revenue officer of Tamankaduwa, reported the plaintiff, a clerk, to the Government Agent for misconduct, and communicated to him an order of the Government Agent calling upon him to leave the district within three days, and informing him that in default criminal proceedings would be taken against him (for insult and intimidation). Plaintiff brought this action for damages alleging that defendant acted "falsely and maliciously and with intent to injure."

*Held*, that no action for damages lay.

DE SAMPAYO J.—"By carrying out the Government Agent's order the defendant did not become legally liable to answer the plaintiff in civil damages. Both the mandatory and the mandant may be liable for an injury. But there is an exception to the rule where the injury is *levior injuria*, that is to say, where the injury does not amount to a crime. In such a case obedience due to superior authority does not expose the mandatory to an action of injury . . . . The Government Agent himself did not commit an injury in the legal sense of a lesser sort. The Government Agent had no power to order the plaintiff to be deported, but he did not so order. The Government Agent gave the plaintiff a choice. It was quite within the plaintiff's rights to remain in the district and stand a prosecution."

SCHNEIDER A.J.—"The plaintiff must be presumed to have known that the defendant had no authority to make an order for deportation. The plaintiff, therefore, in leaving the district, acted voluntarily, and was not compelled to do so by reason of defendant's order, which was *ultra vires*."

THE facts appear from the judgment.

H. J. C. Pereira, K.C. (with him Arulanandan), for defendant, appellant.—Defendant had reasonable grounds to complain to the Government Agent about the official misconduct of the plaintiff. The conduct of the plaintiff justified the suggestion made by the defendant regarding the punishment to be imposed on the plaintiff. There is nothing to indicate that defendant acted *malâ fide*.

The adoption by the Government Agent of the suggestion made by defendant proves *primâ facie* the justice of the conduct of defendant. There was no order of deportation. It was optional to the plaintiff to stay in or to go out of the Tamankaduwa district. The

1921.  
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*Silva v. Silva*

plaintiff went out of the district of his own accord, and cannot, therefore, maintain this action. The District Judge is wrong in thinking that the defendant went beyond his instructions. The defendant did no more than make the order of the Government Agent more specific.

*Elliott, K.C.* (with him *Fonseka*), for plaintiff, respondent.—  
 The evidence of the defendant shows that he acted *malâ fide*. The defendant is contradicted in material particulars regarding the circumstances which induced the defendant to report the plaintiff to the Government Agent. It is not necessary to entitle the plaintiff to maintain the action, that he should have been physically removed from the district. It was enough if the plaintiff believed that the defendant had the power to enforce the order. The defendant cannot take shelter behind the order of the Government Agent. Even the King's command is no excuse. The plaintiff has proved that the defendant maliciously induced the Government Agent to make the order of deportation.

*Cur. adv. vult.*

October 5, 1921. DE SAMPAYO J.—

The plaintiff was clerk of the Gansabhawa and the District Road Committee, Tamankaduwa, and Inquirer into Crimes of Meda pattu. His immediate superior was the defendant, who was and is the Revenue Officer of Tamankaduwa. As it was difficult at the argument of the appeal to understand from counsel what exactly was the wrong for which this action for damages was brought, I quote here the 4th and 5th paragraphs of the plaint, which purport to set out the plaintiff's cause of action:—

- (4) The defendant on November 18, 1919, falsely and maliciously and with intention to injure the plaintiff and purporting to act as the Revenue Officer made the order (herewith filed marked P) and served it on the plaintiff, that he the plaintiff do leave the district of Tamankaduwa within three days of the receipt of the order, and that should he be found in any part of Tamankaduwa after the expiry of the time limit, he is further informed that the ticket of occupancy given to his brother will be cancelled, and that proceedings will be instituted to prosecute him as provided in law. The order further adds that his appointment as Inquirer for Meda pattu has also been cancelled.
- (5) The plaintiff believing that the defendant had power to make the said order, and fearing consequences threatened by the said order, was compelled to leave the district within the time limit, removing his wife and children, and take up residence in Aluvihare, in the District of Matale, where he still resides.

1921.

DE SAMPAYO  
J.*Silva v. Silva*

The above paragraphs, both in the assertions and in the omissions, give an incorrect and misleading idea of what took place. It appears that the defendant discovered that the contents of official documents were leaking out from the office, and on the morning of November 8, 1919, the defendant spoke to and warned his clerks. That the plaintiff was specially censured as the person who disclosed confidential information is shown by his own evidence, for he said : " On the morning of November 8 there was some dispute between me and him, because I had disclosed official information, which I had seen, regarding the Government Agent's visit for the selection of D. R. C. members. Defendant spoke to me in insulting language." What the plaintiff calls a "dispute" was doubtless what the defendant in his report to the Government Agent calls his "telling off," or, as we might say, "talking to." At the same time the defendant appears to have rebuked the plaintiff for being insolent to the Kachcheri Mudaliyar at Minneriya, of which the Mudaliyar had complained to defendant. In the evening of the same day there was going to be a demonstration at the Gansabhawa by the headmen and the chief inhabitants of Tamankaduwa in honour of the recent appointment of the defendant as Additional Police Magistrate. The plaintiff says that he was to read the address, but that on account of the trouble in the morning he at first declined, but afterwards consented to do so. He, in fact, read the address. The plaintiff attributes all the defendant's subsequent actions against him, and all the malice which he now complains of, to his refusal to read the address. If this is so, it is an illustration of what dire results from trivial causes spring. There is nothing, however, to indicate that the plaintiff's refusal came to the knowledge of the defendant, nor was the defendant even cross-examined on the point. I should have said that the defendant would have preferred some senior headman, such as the Korala, who organized the whole demonstration, to read the address, rather than his own clerk, the plaintiff. I am, therefore, unable to believe that the defendant acted maliciously towards the plaintiff as alleged in consequence of the plaintiff's reluctance to read the address. After the reading of the address at the Gansabhawa, the people adjourned to the defendant's house, where there was a reception. I think the District Judge is right in holding that the serving of whisky was part of the entertainment, notwithstanding the defendant's denial. But the point is the plaintiff's behaviour at the defendant's house. His own account of it, given in a petition, which will be presently referred to, is that he "was intoxicated and lying on a lounge when the Revenue Officer (the defendant) . . . came up to the petitioner, pulled him up by his hand, and struck him on his face. The petitioner, who was too intoxicated to realize what he was doing, abused the Revenue Officer in return, when the others present came up and removed the petitioner to his house." In my opinion

1921.

DE SAMPAVO  
J.*Silva v. Silva*

this kind of scandalous conduct was of itself a good reason for the defendant's action. But the matter soon developed into something more serious. The next day, November 9, according to the defendant, he received further information from Darlis de Silva, Resthouse-keeper; from M. W. K. Bandara, Forest Ranger; and from W. Appuhamy, Government School Teacher, that the plaintiff had earlier in the day, on November 8, come drunk to the Gansabhawa and the school and spoke of the defendant in very offensive language, and even threatened to shoot the defendant. The District Judge is not inclined to accept the evidence of these men, but I am unable to discredit them entirely. The information of the school teacher was that the plaintiff came into the school with the Korala, who brought a pint of whisky, and they drank it between them. Unless there was some truth in this, it is difficult to explain why the information involved the Korala, against whom the defendant had no cause of complaint, and who, in fact, had got up the demonstration in honour of the defendant. In any case, there is no reason to doubt that these persons gave information to the defendant on November 9 about the plaintiff's conduct at the Gansabhawa and the school in the afternoon of November 8. The result of all this was that on November 9 the defendant suspended the plaintiff, and reported the whole matter to the Government Agent, Mr. F. G. Tyrrell, suggesting that the plaintiff should be dismissed from office, and the ticket of occupancy held by the plaintiff's brother in respect of a boutique built on Crown land should be withdrawn. The last suggestion was not really to subject the plaintiff's brother to vicarious punishment, but to prevent the plaintiff, who was trading in that boutique in partnership with his brother, and was likely to take up his residence in the boutique, from continuing to be in the district, as he, in the above circumstances, was considered an "undesirable person." On this same day, after the defendant had despatched his report to the Government Agent, he received from the plaintiff a letter tendering his resignation. This also was forwarded to the Government Agent. The defendant's letter forwarding the letter of resignation is not forthcoming. A written apology was also sent by the plaintiff to the defendant on November 14. About this time the Government Agent paid his contemplated visit to Tamankaduwa, and the defendant says that he personally saw the Government Agent with the apology, and that he suggested that, instead of the plaintiff being dismissed, his resignation might be accepted. There is very little doubt about this, for the Government Agent's order communicated to the defendant by his letter of November 15 was as follows:—

"I have the honour to inform you that the clerk's resignation is accepted, and that he is ordered to leave Tamankaduwa. If he does not do so, he will be prosecuted for insult and intimidation, and the ticket of occupancy given to his brother will be cancelled."

1921.

DE SAMPAYO  
J.*Silva v. Silva*

The District Judge considers this extremely drastic and quite illegal. Here I wish to make two remarks about the serious step taken by the Government Agent. In a remote district like Tamankaduwa, which is practically in the sole charge of the Revenue Officer, it appears to me possible for a single individual, who is bitterly opposed to the Revenue Officer, to create a great deal of mischief and cause much prejudice to its proper administration, and it is important to uphold as far as possible the authority and good name of the Revenue Officer. I cannot say that the discretion exercised in this respect by the Government Agent on this occasion went beyond the necessities of the case. Again—and this is very important—the Government Agent had, of course, no power to order the plaintiff to be deported, but he did not so order. The Government Agent gave the plaintiff a choice. He was either to leave the district, or to run the risk of being prosecuted for insulting and intimidating the Revenue Officer. It was quite within the plaintiff's rights to remain in the district and stand a prosecution. The plaintiff understood this very well, for in his evidence he said: "I left the district because I gathered from P (*i.e.*, the order in question) that otherwise I should be prosecuted." He chose what to him apparently was the lesser of two alternatives. In these circumstances, his leaving the district must in law be regarded as voluntary. His decision not to face a prosecution appears to me incidentally to show that the statements of the witnesses about the plaintiff's insulting language and threats were not without foundation.

This brings me to the plaintiff's cause of action against the defendant. The communication to the plaintiff of the Government Agent's order took the form of a letter from the defendant himself without any intimation that the Government Agent had made the order. Moreover, instead of confining himself to the language of the Government Agent, the defendant took upon himself to expand it. This was a blunder, which has enabled the plaintiff to allege, as he has done in the plaint, that the order was the defendant's own, and that it was malicious. The defendant's letter dated November 18 was as follows:—

"With reference to the resignation tendered by P. L. de Silva, . . . , he is informed that, in view of the written apology submitted by him, his resignation was accepted as from the 9th instant.

"The insulting and threatening words he used on the 8th instant towards the Revenue Officer in the hearing of many Government officers and men were so serious and grave that he is most mildly dealt by ordering him to leave Tamankaduwa within three days of receipt of this memorandum. Should he be found in any part of Tamankaduwa after the expiry of the time limit, he is further informed that the ticket of occupancy given to his brother will be cancelled, and that proceedings will be instituted to prosecute him as provided in law."

1921.

DE SAMPAYO  
J.*Silva v. Silva*

It will be seen that this letter contains the substance of the Government Agent's order, and, apart from mere padding, the only new thing in it is the statement of a time limit. I do not think that this is a material departure from the spirit of the Government Agent's order. The Government Agent had said "he is ordered to leave Tamankaduwa." *Primâ facie* that means that plaintiff must leave immediately, and the time limit appears to me to carry out this intention. Moreover, the gravamen of the plaintiff's present complaint is not that a time limit was imposed, but that the order deporting him from the district, as he conceived it, was made at all. That order, such as it is, is not an order made by the defendant as alleged in the plaint; it is an order by the Government Agent, of which the defendant was the medium of communication. The plaintiff knew, before he brought this action, that it was the Government Agent who made the order. For on January 2, 1920, he sent a long petition to the Government Agent praying that, for the reasons stated by him, the order might be cancelled, and a reply was sent to him on January 9, 1920, through the Ratamahatmaya of Matale, where the plaintiff then was, informing him that he was dismissed for disgraceful conduct, which rendered him liable to prosecution, and that he was allowed to resign and leave the district without being prosecuted in view of his former service. And yet the plaintiff brought this action alleging that it was the defendant who made the order, and that he did so "falsely and maliciously." By carrying out the Government Agent's order the defendant did not become legally liable to answer the plaintiff in civil damages. It is true that both the mandatory and mandant may be liable for an injury. But there is an exception to the rule where the injury is *levior injuria*, that is to say, where the injury does not amount to a crime. In such a case obedience due to superior authority does not expose the mandatory to an action of injury. Voet, *de injuriis*, 47, 10, 3. I have above indicated my opinion that the Government Agent himself did not commit an injury in the legal sense of a lesser sort. The defendant in any event is exempt from liability. Accordingly I think that issue No. 15 formulated at the trial should have been answered in the negative, and the plaintiff's action should have been dismissed.

In my opinion the appeal should be allowed, with costs.

SCHNEIDER, A.J.—

This action was instituted on May 7, 1920, for the recovery of a sum of Rs. 10,000 as damages sustained by the plaintiff by reason of an illegal order of deportation of the plaintiff made by the defendant. In the plaint the plaintiff states that on November 18, 1919, and prior thereto, he was a resident of Polonnaruwa, and was carrying on trade with his brother, and that he was an Inquirer into Crimes for the Meda pattuwa of the district of Tamankaduwa;

that the defendant was and is the Revenue Officer of the said district, and, in addition thereto, was and is the Additional Police Magistrate, Additional Chairman of the District Road Committee, and a President of the Village Tribunal of that district ; that the defendant purporting to act as such Revenue Officer on November 18 " falsely and maliciously and with intent to injure the plaintiff made order and served the same on the plaintiff that the plaintiff should leave the district within three days of the receipt of the said order, and that should he be found in any part of the district after the expiry of the said time limit, that the ticket of occupancy given to plaintiff's brother would be cancelled, and proceedings would be instituted to prosecute the plaintiff as provided in law ; and that the plaintiff's appointment as Inquirer for Meda pattuwa was also cancelled." The plaint also states that the plaintiff believing that the defendant had power to make the said order " was compelled " to leave the said district and take his residence elsewhere. In consequence he claimed the damages already mentioned.

In his answer the defendant pleaded that the plaintiff was employed as a clerk under him in his official capacity, and that the plaintiff was also an Inquirer into Crimes, and that owing to the misbehaviour of the plaintiff on November 8, the Government Agent of the North-Central Province, the superior of the plaintiff and the defendant, ordered the plaintiff to leave the district as an alternative to the plaintiff being prosecuted for criminal intimidation and insult, that it was not incumbent on the plaintiff to leave the district, and that the plaintiff had the option of remaining behind and facing a prosecution. The defendant pleaded that the plaint disclosed no cause of action.

It appears to me that upon these pleadings the one decisive issue which arises is whether the plaint discloses a cause of action ; and that the only decision of that issue is that no cause of action is disclosed. The whole foundation of the action is that the defendant made an illegal order of deportation. If the defendant did, in fact, have no authority to make such an order, the order had no effect in law, and the plaintiff was, therefore, not compelled to leave the district by reason of that order. Every person is presumed to know the law whether, as matter of fact, he does or not. The plaintiff must, therefore, be presumed to have known that the defendant had no authority to make an order for deportation. The plaintiff, therefore, in leaving the district acted voluntarily, and was not compelled to do so by reason of the defendant's order, which was *ultra vires*. That being so, even if the plaintiff suffered damage, he has no lawful claim against the defendant, as the damage arises from his own voluntary act.

It is not pretended that the defendant had authority to make such an order. I need not, therefore, consider the position as from the point of view that he did have authority to make such an order.

1921.

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 SCHNEIDER  
 A.J.
 

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*Silva v. Silva*

1921.

SCHNEIDER  
A. J.*Silva v. Silva*

To my mind the expression that the order was made "falsely" contains no meaning. I am unable to understand what is meant to be conveyed by saying that an order was made "falsely." That the order was made is an actual fact. How, then, can it be said that it was made "falsely." I can understand the expression that it was made "maliciously," that can only mean that the defendant having the authority to make it, but knowing that the circumstances did not warrant the making of it, yet made it, acting *dolo malo*, in order to injure the plaintiff. The complete answer to this charge is that the plaintiff was aware in the eye of the law that the defendant had not the authority to make such an order, and therefore the question of malice does not arise. It seems to me, therefore, that the action should have been disposed of upon the pleadings, and if that had been done, the trial which took place might have been avoided, and justice have been amply satisfied, because the plaintiff up to the last moment of the argument of the appeal adhered to the claim as laid in the plaint. With these observations only I should have been content to allow the appeal, and to dismiss the plaintiff's action with costs, but in view of the trial which has taken place and certain remarks of the learned District Judge, with which I regret to say I find myself unable to agree, I shall now proceed to consider other aspects of the case as it was developed at the trial.

His Lordship then proceeded to discuss the facts at length.

*Set aside.*

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