1954 *Present :* **Gratiaen J. and Fernando A.J.**

G. C. G. BARRETT, Appellant, *and* MRS. A. F. ALTENDORFF, Respondent

S. C. 447—D. C. Colombo, 21,370

Delict—Inducement of breach of contract—Ingredients of the wrong.

A. sued B. in delict alleging that B. had induced A.'s employer C. to break A.'s contract of service with C. C. was an incorporated Company and B. was the Manager of the Ceylon Branch of that Company. It was established that B. acted within the scope of his authority as agent of C. when he terminated A.'s services.

***Held*, that, even if C. had unlawfully terminated the contract, B. was not personally liable for any damage resulting to A.**

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *S. J. Kadirgamar* and *B. S. C. Ratwatte*, for the defendant appellant.

N. E. Weerasooria, Q.C., with *J. A. L. Cooray*, for the plaintiff respondent.

Cur. adv. vult.

June 2, 1954. GRATIAEN J.—

The appellant was the Manager of the Ceylon Branch of the Dunlop Rubber Company Ltd. (hereinafter called "the Company"). The respondent had originally been employed in the Colombo office as a member of the Company's temporary staff, but on 31st March 1949 she was confirmed in her appointment as a stenographer. The terms of her employment provided, *inter alia*, that she should receive a monthly salary of Rs. 200 and that the contract could be terminated by either party giving one month's notice to that effect. (P1.)

On 27th May, 1949, according to her evidence, she was reprimanded for arriving late in the office. On the next day, having previously drawn her pay for the current month, she received a letter from the appellant stating that her services would no longer be required by the Company, but that she could immediately draw her "basic salary" for June (P2). This sum was in fact paid to her by cheque on 30th May, 1949, and a few days later she received (and accepted) a further sum of Rs. 107 representing "dearness allowance" for the month of June. There is no evidence as to how or when the amount of this allowance fell to be computed for each ensuing month, or as to whether she was entitled to it *as of right* as part of her remuneration. Indeed, no issue was framed covering these points. My reason for referring to this circumstance will become clear at a later stage of my judgment.

2—J. N. B 38959–1,592 (10/54)

On 29th June 1949, the respondent sued the appellant in delict for the recovery of Rs. 2,500 as damages from him personally, the cause of action alleged being that he had "*by wrongful and unlawful means maliciously and with intent to injure her* caused the Company to terminate the contract of employment with her without just cause". She preferred no claim against the Company itself for breach of contract, and no such remedy was available to her. The contract had been duly terminated by one month's notice, and the Company's outstanding contractual obligation to pay her the stipulated remuneration (even if it included "dearness allowance") for the month of June had been discharged before the date on which she could strictly have claimed it. (Her corresponding obligation to perform any services during that month had, of course, been waived by the letter P2.)

In *Quinn v. Leatham* [1], Lord Macnaghten, explaining *Lumley v. Gye* [2], said, "It is a violation of legal right to interfere with contractual relations recognised by law, *if there be no justification for the interference*". In a more recent authoritative pronouncement, Lord Simon said that, apart from the effects of combination (or conspiracy) to injure a man in his trade,

> "If C has an existing contract with A, and B is aware of it, and if B *persuades or induces* C to break the contract, with resulting damage to A, this is, *generally speaking*, a tortious act for which B will be liable to A for the injury he has done him. In some cases, however, B may be able to justify his procuring of the breach of contract"—*Veitch's case* [3].

The Roman-Dutch law recognises the same principle—*vide* the South African cases cited in *McKerron's Law of Delict (4th Ed.) p. 310 n. 1.*

The learned District Judge decided that the respondent had established her cause of action, and awarded her damages in a sum of Rs. 614. The basis of his judgment is that the defendant had "without justification" (though not "maliciously" as the plaint alleges) caused the Company to break its contract with the respondent.

Admittedly, the respondent could not succeed in her claim unless the facts proved at the trial justified, *inter alia*, the following conclusions:

1. that the Company had committed a breach of its contractual obligation to employ her; and further
2. that the breach of contract had "without justification" been "induced", "procured" or "caused" by the appellant.

The learned judge took the view that both elements had been established. In my opinion, his decision on each of these issues was vitiated by misdirection on essential matters.

The only reason recorded for deciding that the contract had been wrongfully terminated was that, although the stipulated notice of

[1] *(1901) A. C. 495.* [2] *(1853) 2 E. and B. 216.*
[3] *(1942) A. C. 435.*

termination was duly given, the Company had nevertheless " committed the fatal blunder " (sic) of not paying or tendering to the respondent the full wages that were due to her for the month of June 1949, when she was served with the notice P2. The theory, apparently, is that, having *expressly* offered her the concession of drawing her " basic salary " from the cashier in advance of the due date, the Company had *inferentially* repudiated in anticipation its (assumed) outstanding obligation to pay her " dearness allowance " at any time thereafter. Starting from that hypothesis, he concluded that the eventual payment of the " dearness allowance " (also, be it noted, before 30th June 1949) could not condone the earlier " blunder " which (in the learned judge's view) was irretrievable.

The learned judge concedes that " in view of this subsequent payment it may appear to be somewhat technical to hold that in point of fact, there was a breach of the contract ". Apart from attracting comment as to its extreme technicality, this part of the judgment also invites the more serious criticism that it suggests a wrong answer to a question which was not raised by either litigant at the trial.

As I have previously pointed out, the Company still remained liable, after the contract had been terminated by due notice, to pay to the respondent her remuneration for June 1949 on or before 30th June ; and this obligation was fully discharged long prior to the due date. No suggestion of any so-called " repudiation in advance " was made in the pleadings. Nor was it specifically put in issue or raised in the course of the appellant's cross-examination. Even the recorded summary of the closing addresses of the respondent's lawyer makes no mention of it. In the result, the appellant had no opportunity at the trial of meeting an argument (based on unascertained facts) which emerged for the first time in the judgment under appeal. I reject this admitted " technicality " as having no bearing on the issues which were framed in the Court below.

The only ground specified in the respondent's evidence to support her allegation that the Company had wrongfully terminated her employment was that, under the terms of P1, the clause providing for " one month's notice " applied only if her work or conduct proved unsatisfactory. This interpretation was, of course, quite untenable, and was rightly rejected by the learned judge. In the result, he should have held that the respondent's cause of action was without foundation.

But let us assume that the Company had committed some technical breach of the contract. Even on that hypothesis, the second element of the cause of action had still to be established before the appellant's liability in delict could arise.

The Company is incorporated in England, and admittedly the appellant was the officer entrusted with the function of employing, and terminating the employment of, the Company's minor employees (including the respondent) in Ceylon. How then is it suggested that, in exercising his delegated authority to terminate the respondent's services, he had " induced ", " procured " or " caused " the Company to do what in reality he, and he alone, had done ?

The essence of this particular category of actionable wrong is that damage has resulted from unjustifiable interference by an intermeddler who has induced or procured a breach by one of the contracting parties. Under the Roman-Dutch law, "every contract imposes a duty upon *persons extraneous thereto* not to interfere with its due performance, and a breach of this duty gives rise to an action for damages"—*Isaacman v. Miller* [1]. Similarly, in England, McCardie J. pointed out that "in every one of the sets of circumstances before the Courts, the person who procured the breach of contract was in fact a *stranger—that is, a third person who stood outside the area of the bargain* between the two contracting parties"—*Said v. Butt* [2].

An agent or servant who, acting within the scope of his authority or in the exercise of his delegated powers, terminates a contract on behalf of his principal or master, does not stand "wholly outside the area of the bargain": on the contrary, he is, by virtue of his own appointment, made directly responsible for its due performance or for its termination (as the case may be). He cannot therefore be fixed with personal liability for any damage resulting to the other contracting party. As McCardie J. explains in *Said v. Butt* (*supra*) "he is not a stranger. He is the *alter ego* of his master. His acts are in law the acts of his employer. In such a case it is the master himself, by his agent, breaking the contract he has made, and an action against the agent under the *Lumley v. Gye* principle must therefore fail, just as it would fail if brought against the master himself for wrongfully procuring a breach of his own contract". These observations were approved by the Judges who heard *Scammel Ltd. v. Hurley* [3] and, as far as I am aware, have never been dissented from since.

The learned District Judge acknowledges this difficulty, but seeks a solution in an interesting theory of "split personality": namely, that the appellant (in the role of "plain Mr. Barrett") had *induced himself* ("the District Manager of the Dunlop Rubber Co. Ltd.") to terminate the contract with Mrs. Altendorff. There is really no justification for such sophistry in applying the true legal principle to the facts of this particular case. It was very clearly understood by the respondent that all matters affecting the performance or termination of the contract should be dealt with (as far as the Company was concerned) by the manager, for the time being, of its branch office in Ceylon. In other words, the appellant was the Company's *alter ego* when he terminated the contract.

The matter can perhaps be looked at in another way. Even if it be correct to state that the appellant's actions did constitute an "interference" for the purposes of one element of the cause of action, the "justification" for what he did is found in his delegated authority to represent the Company in the matter. There seems to have been some confusion in the judgment under appeal as to what precisely called for justification as a defence to the action. The true position is (assuming

[1] *(1922) T. P. D. 56 at 65.*
[2] *(1920) 3 K. B. 497 at 506.*
[3] *(929) 1 K. B. 419, C. A.*

the other elements of the cause of action to be established) that the appellant was required only to justify his so-called interference and not to justify the breach itself.

In my opinion the respondent has failed to establish her cause of action against the appellant. Far too much time was taken up in the lower Court in an attempt to probe irrelevant matters—for example, whether there was " moral justification " for the decision to terminate the contract, and whether any underlying motives existed for selecting a particular stenographer to take the respondent's place after her services had been dispensed with. All these are matters with which, in the present state of the law, the Court was in no way concerned. Provided that a man fulfils his contractual obligations with the persons concerned, he is protected from judicial speculation as to why precisely he chose to terminate the services of one personal stenographer and preferred to engage the services of another.

I would allow the appeal and dismiss the respondent's action with costs in both Courts.

FERNANDO A.J.—I agree.

Appeal allowed.