1930

Present : **Dalton and Akbar JJ.**

MUTTIAH CHETTYAR *v.* EMMANUEL.

354—*D. C. Jaffna*, 23,729.

Wrongful sequestration of goods—Action for damages—Malice—Civil Procedure Code. s. 659.

Section 659 of the Civil Procedure Code does not debar a person whose property has been wrongfully seized under a mandate of sequestration before judgment from maintaining a separate action to recover damages.

It is not necessary for the plaintiff in such a case to prove malice.

PLAINTIFF sued the defendants to recover the value of goods and damages consequent upon the wrongful sequestration and sale of property belonging to him under a mandate of sequestration obtained by the defendant-appellant against the added defendant. The plaintiff claimed the property when sequestered under section 658 of the Code, and then instituted the present action.

The learned District Judge gave judgment for the plaintiff.

Soertsz, for defendant, appellant.

De Zoysa, K.C. (with *L. A. Rajapakse*), for plaintiff, respondent.

July 11, 1930. DALTON J.—

The present defendant (appellant) had in an earlier action obtained a mandate of sequestration against the added defendant and seized property that was eventually held to belong to the present plaintiff. The property had however been sold by the Fiscal as perishable, at a price alleged by plaintiff to be much below the real value. On obtaining that mandate, he had undertaken in the usual form to pay to the defendant all costs and damages sustained by reason of the sequestration. The present plaintiff claimed the property sequestered under the provisions of section 658 of the Code.

Plaintiff then sued the defendant for the value of the goods and damages, being awarded the sum of Rs. 14,650, the value of the goods, and a further sum of Rs. 2,000, the amount which he lost as the result of being deprived of the right of selling the property in Calcutta, the ordinary market for these goods, to which place plaintiff had intended to send them. They were in fact sold there by the actual purchaser from the Fiscal for the sum of Rs. 20,500.

Defendant has urged on this appeal that plaintiff has no right to recover damages in this action, in the absence of any proof of malice on the part of defendant, but that he should have claimed them in the claim proceedings, and that he is barred from bringing a separate action. No authority has been cited for this proposition. We were referred to section 659, which does provide for the award of damages in such a case, but it seems to me that section in no way debars a separate claim. It may further be pointed out that a claim for damages might frequently be most unsuitable to add to a claim to property under section 658 for which a special and summary procedure is provided. There is nothing in either of the cases referred to (*Bank of Bengal v. Jaffna Trading Co.*,[1] ; *Government Agent, S. P. v. Kalupahana*[2]) that goes as far as appellant contends.

With regard to the non-averment of malice, it is to be noted that the present plaintiff is not a party to the proceedings in which the mandate for sequestration issued and undertaking as to damages was given. He is a third party whose goods were seized by the present defendant. There is nothing in *Abdul Azeez Marikar v. Abdul Gaffoor*[3] that helps appellant here. The trial Judge was correct in my opinion in his finding that the seizure of plaintiff's goods was not covered by the order of the Court. Any person when he unlawfully interferes with the exercise of property rights of another commits an act in the nature of trespass to property and is liable in damages for his act. It is not necessary for the plaintiff in such a case to prove any malice or want of any reasonable or probable cause (*cf. Civil Procedure, Sarkar, vol. I., p.* 593). It is not necessary for the plaintiff here to prove malice as a condition precedent to the recovery of damages from defendant.

It was then urged that the payment of damages should, except under special circumstances, be enforced when the mandate of sequestration was dissolved or when judgment was given at the trial of the action. On the analogy of the English practice with regard to injunctions, that would appear to be so, where an undertaking to pay damages has been given, but that undertaking only extends to the defendant or defendants in the action and not to any third party who may be damnified as is the case here.

The judgment of the learned Judge was correct and the appeal must be dismissed with costs.

AKBAR J.—I agree.

Appeal dismissed.

[1] 16 *N. L. R.* 417 [2] 25 *N. L. R.* 13.
[3] 1 *S. C. D.* 76.