Present: Schneider J. and Maartensz A.J. 1927.

S. P. A. ANNAMALAY CHETTY *v.* THORNHILL.

57—D. C. Ratnapura, 4,122.

Registration of business names—Chetty vilasam—Failure to register—Right to purge default—Caveat—Registrable instrument—Ordinance No. 6 of 1918, s. 2.

Where Annamalay Chetty, the son of Supramaniam Chetty traded under the designation of S. P. A. Annamalay Chetty.

Held, that he traded under a vilasam which did not consist of his true full names without addition within the meaning of section 2 (*b*) of the Registration of Business Names Ordinance and that the vilasam required registration under the Ordinance.

A person who, without registering his business names, institutes an action to enforce his rights on a contract, entered into while he was in default, is not entitled to purge his default during the pendency of the action.

Mohideen & Co. v. Meera Saibo et al.[1] followed.

A person who lodges a caveat against the registration of an instrument affecting land, in which he has no registrable interest, is liable in damages without proof of malice.

THIS was an action brought by the plaintiff for the recovery of a sum of Rs. 54,577.46 for rice and cash supplied to the defendant. The defendant, while denying the correctness of the amount, claimed in reconvention a sum of Rs. 75,000 as damages by reason of the plaintiff having wrongfully and maliciously entered in the land register of the District of Ratnapura a caveat forbidding the registration of any deed or other instrument affecting sixteen allotments of land belonging to the defendant. At the trial the defendant further contended that the plaintiff could not enforce the contract as he carried on business under a name which required registration under section 2 of the Business Names Registration Ordinance, No. 6 of 1918.

The learned District Judge held that (1) the plaintiff had established the liability of the defendant to the sum claimed by him, (2) that the plaintiff had carried on business under a name that should have been registered, and (3) that the defendant on his claim in reconvention was entitled to recover a sum of Rs. 5,000 damages. He further ordered the plaintiff to furnish to the Registrar within fourteen days the necessary particulars for the registration of his business under section 4 of the Ordinance and directed that on compliance with the order he would be entitled to enforce his decree.

[1] *22 N. L. R. 268.*

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A. E. Keuneman, for defendant, appellant.—The plaintiff is a Chetty and carries on business under a " vilasam, " and the first objection to the maintainability of the present action is that the business is not registered as required by Ordinance No. 6 of 1918.

The true name of the Chetty is Subramaniam Chetty Annamalay Chetty. The designation he chooses to use is S. P. A. Annamalay Chetty. This is not his " true full name " and therefore there is an obligation to register, *vide* section 2 (*b*) and section 20 of the Ordinance. The construction placed is that S. P. is an abbreviation for Supramaniam. Even if this is conceded the " A " in " S.P.A. " has no significance, and therefore S. P. A. is a vilasam requiring registration. But while the English Statute [1] on which our Ordinance is based contemplates the use of recognized abbreviation, *e.g.*, Ed. for Edward, Thos. for Thomas &c., our Ordinance has deliberately made no such provision.

The usual meaning given to S. P. A. Annamalay Chetty would be Annamalay Chetty attorney of the business S. P. A. The fact that the business is the concern of one individual does not matter. If the name is not the true full name or initials, then the business requires registration.

The learned Judge has given judgment in favour of the Chetty on the condition that he registers his business within a fortnight. The Chetty has done so. The Judge has no right to make such an order. The criminal liability under section 8 of the Ordinance is one for which a "reasonable excuse " would suffice. In section 9, which deals with the civil aspect, no such excuse is allowed. The Court can even *mero motu* take exception to plaintiff's bringing the action for want of registration. The proper course for the plaintiff was to have withdrawn the action under section 406 of the Code with liberty to institute a fresh action.

Counsel cited *Jamal Maideen v. Meera Saibo* [2] and *Karuppen Chetty v. Harrisons & Crosfield, Ltd.*[3]

F. A. Hayley, K.C. (with *N. E. Weerasuriya*), for plaintiff, respondent.—The true scope of the inquiry is " what is the true full name "? The earlier cases do not deal with that aspect but merely with the use of the vilasam. Now the Chetty has given evidence, and he states that his true full name is S. P. A. Annamalay Chetty. Now in this instance S. P. A. really denotes an abbreviation. There is no analogy to it in the practice of European nations as the custom is peculiar to the Chetties. " S. P. A. " simply stands for " Soona Pana Ana. " The Chetty, has been known from infancy as S. P. A. Annamalay Chetty, and that is his true name.

Cited *Hal vol. XXI. at pages 349-351* and *King v. Billingsworth.*[4]

[1] *6 & 7 Geo. V. c. 58.*
[2] *22 N. L. R. 268.*
[3] *24 N. L. R. 317.*
[4] *3 Maul & Sel. 250, at p. 256.*

If appellant's contention is right no Chetty can ever trade without registering his business.

It is not denied that the amount is justly due, and a technicality like the present objection ought not to prevail to defeat a just claim. Besides the Chetty has acted on advice and he registered his former business when he had a partner, so that it is not a case where he has deliberately evaded the provisions of the law.

Dealing with the Ordinance as a whole the following propositions may be laid down:—

(1) The object of the Ordinance was to prevent persons trading under a disguise, *e.g.*, alien enemies.

(2) The true full name in section 2 must be construed to include the initials and name habitually used (and in the case of Chetties the initials are the vilasam).

In any event, even if the " A " is an addition then it ought to be construed as an immaterial alteration, *vide Queen v. Bradley.*[1]

With regard to the effect of section 9, the important point is what is meant by " default. " The real issue is not one between two parties but between the Registrar and the plaintiff. The word " default " in this section is not equivalent to " not. " The plaintiff in the present case has not been in default as he has made every effort to get information but failed to register because he was told it was not necessary.

Also cited *Prizer v. Lefkuwitz* [2] and *Maxwell on Statutes.*[3]

As regards the claim for damages arising from the caveat proof of malice is essential, *Croos v. Raman Chetty.*[4]

A. E. Keuneman, in reply.—Malice is not necessary. Caveat can only be lodged by a party interested in the land. The plaintiff, having merely a money decree against the defendant, is not such a party. And in such a case malice is not an ingredient of the claim (*S. C. Minutes of February 5, 1925—191, D. C. Negombo, 16,048*).

October 28, 1927. SCHNEIDER J.—

At the close of the argument of this appeal my brother Maartensz and I were agreed that the plaintiff's action failed by reason of the provisions of " The Registration of Business Names Ordinance, No. 6 of 1918 ," and that the defendant had failed to prove that he had sustained any damage whatever, and we were also agreed as to the order which should be made regarding costs. Before writing this judgment I had the advantage of reading the judgment he has written. I entirely agree with it with regard to the facts and the law. I need not therefore discuss the evidence at any

[1] *30 L. J. Q. B. 180.*
[2] *(1912) 2 K. B. 235.*
[3] *(6th ed.) 148, 462, 501.*
[4] *5 C. L. R. 164.*

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length, but in view of certain arguments addressed to us I propose to make a few observations. The important fact to be ascertained is whether the plaintiff carried on business at the times material to this action under a business name which did not "consist of his true full names without any addition" (section 2 (*b*) of No. 6 of 1918). What was the name under which the plaintiff carried on business during those times? I agree in the finding of the District Judge and of my brother Maartensz that it consisted of the Tamil letters Suna Pana Ana. The fact that in bills rendered to the defendant, or in a formal document, such as P 2, relating to his business he described himself as S. P. A. Annamalay Chetty does not affect that finding. The weight of the evidence in this case is greatly on the side of that finding. Not only so, but the knowledge derived by my brother on the Bench of the District Court for many years, and indeed by any occupant of this Bench from the numerous cases in our Courts connected in one way or another with the Nattu Kottai Chetty traders' custom regarding business names, called by them "vilasams," and the peculiar forms of signature adopted to denote agency, enables him and me to appreciate the true value of the evidence produced in this case. I have no hesitation in preferring the evidence of Mr. Kandiah to the evidence of Mr. Beven wherever there is a conflict in their evidence. Mr. Kandiah's experience is over a wider field, and his knowledge is derived, not only from what he has seen, heard, or observed in Ceylon, but also in India, the home of the Chetty trader. He is a Tamil gentleman himself and familiar with the Tamil language, both spoken and written. All these are facts which invest his evidence with the greater value. He says that "Chetties in business are known by their 'vilasam' and they always carry on business under a vilasam." He gave the true explanation, in my opinion, when the document marked P 57 was shown to him. It gives the name as S. P. A. Annamalay Chetty and a telegraphic address and other details in English. He said "a full name like that printed on this document is not usually used by money-lending Chetties, but now some of them do, to have a fixed name for those, who do not understand their customs, to have a fixed name to write to or to make out cheques in their names." It is a well-known custom obtaining not only among the Nattu Kottai Chetties but among other natives of Southern India and among the Moors of this Island to form an individual's name by prefixing the father's name to the personal name of the individual. According to that custom, the plaintiff's father's name being Suppramaniam, and the plaintiff's own name Annamalay, his true full names would be Suppramaniam Annamalay. The word "Chetty" is only an honorific—more correctly it is "Chettiar." The Nattu Kottai Chetty custom of a "vilasam" has received judicial recognition

as consisting of a combination of letters. Whether those letters represent the initial letters of the person's true full names or other names, they are a " vilasam," which is a " business " name within the meaning of the Ordinance No. 6 of 1918, section 20, which does not consist of the person's true full names (section 2). Accordingly, even if the " vilasam " S. P. A. be regarded as representing the initials of the plaintiff's true name, registration is required of the individual carrying on business under that " vilasam." It appears to me inconsistent with my knowledge derived from numerous cases in the Courts, and contrary to the entire weight of the evidence in this case to accept the contention that, although the initial " A " stands for Annamalay, the plaintiff's personal name, and S. P. for the plaintiff's father's name, that the combination S. P. A. must be followed once again by the plaintiff's name in full to get the plaintiff's full names. On this point I will refer to but one document of a very formal character produced by the plaintiff. It is the power of attorney marked P 2 executed by the plaintiff appointing his own son, Suppramaniam, and one Rawther as his attorneys in regard to the business which is connected with this very case. The document was produced to prove that the plaintiff's true full name was Suna Pana Ana Annamalay Chetty, and also to prove that the custom is to take the initial letters of the father's name and suffix to them the initial letters or letters of the son's own name and then add, after that combination, the son's name in full. The document does support the statement that the plaintiff called himself S. P. A. Annamalay Chetty in the document. But on the other hand it contradicts the evidence as to the manner in which a Chetty forms his full name according to custom as deposed to by the plaintiff and his witnesses. According to them the plaintiff's son's full name would consist of the initial letter of his father's name, that is, Ana for Annamalay, followed by Suna for Suppramaniam Chetty, and the Suppramaniam Chetty suffixed to those initials, that is, A. S. Suppramaniam Chetty, but the son's name is given in the document as Suna Pana Ana Suppramaniam Chetty, that is with the same initials as in his father's name. The explanation of the forms of these names is to be found in what I have touched upon above, and which I will now put in a slightly different form.

A Nattu Kottai Chetty is born into business, and for business alone. At birth he acquires an interest in his father's business as a member of a joint Hindu family. At an early age he takes an active part in the old business, and often, also when quite young, as for instance as the plaintiff did at the age of 20, starts a business of his own. All businesses are carried on under " vilasams." The true meaning of the custom is that " vilasams " are not individuals so much as designations of businesses. Hence in the

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document both father and son called themselves by their own personal names, the letters S. P. A. prefixed to both names indicate that both of them are of the business carried on under the " vilasam " denoted by those letters. In short, a Chetty has for all practical purposes no existence apart from business. Even in his private correspondence his signature would not be his personal name, but only the " vilasam " or initial letters of the business if one there be. The true test as to what is the business name of a Chetty trader is the form of signature which his attorney adopts in formal documents. The custom is universally recognized that an agent denotes his signature as that of an agent by prefixing the " vilasam " of his principal to his own personal name. Plaintiff's own attorney says that the plaintiff's "vilasam " was S. P. A., and that when signing as plaintiff's attorney he signed S. P. A. and added his own personal name after those letters. To my mind that is almost conclusive evidence that plaintiff's " business name " was his " vilasam " S. P. A.

I agree therefore with the finding that the plaintiff having been an " individual having a place of business in the Colony and carrying on business under a business name or ' vilasam ' which did not consist of his true full name " was required by the Ordinance to be registered (section 2). He was therefore a person required to furnish a statement of particulars under the provisions of sections 4 and 9 of the Ordinance. I agree, for the reasons given by my brother, that he was in default within the meaning of section 9, and that under the provisions of that section he cannot maintain this action, which was not only commenced, but also decided, while he was in default. The defendant's appeal succeeds to that extent.

I agree with my brother that the defendant's appeal for an enhancement of the sum of Rs. 5,000 awarded to him as damages should be dismissed both for the reasons given by my brother and by the learned District Judge.

I also agree with the view expressed in my brother's judgment in regard to the plaintiff's objection to that part of the decree awarding the sum of Rs. 5,000 as damages to the defendant. The objection succeeds partially. It is correct, as the plaintiff contends, that the defendant has failed to prove that he suffered any actual damage. The damages he speaks to as having been sustained by him are either too remote or there is no reliable proof of his having actually sustained them. In the circumstances in which the caveat was lodged, my opinion is that the plaintiff had no legal justification for entering the caveat, and that the defendant is entitled to recover damages without any proof of malice. I would adopt the exposition of the law in *S. C. No. 191—D. C. Negombo*

No. 16,048,[1] mentioned in my brother's judgment. The plaintiff is in the position of a person complaining of an *injuria sine damno*. I would award him Rs. 5 as damages. I agree with the order as regards costs contained in my brother's judgment.

MAARTENSZ A.J.—

This was an action for the recovery of a sum of Rs. 54,577.46 for rice and cash supplied to the defendant as per particulars of account filed with the plaint.

The defendant filed answer denying the correctness of the account and claimed in reconvention a sum of Rs. 75,000 as damages sustained by him by reason of the plaintiff having on June 20, 1924, "wrongfully and maliciously and without reasonable and probable cause, and without any manner of right or title to do so, caused to be entered in the land register of the District of Ratnapura a caveat forbidding the registration of any deed or other instrument affecting sixteen allotments of land belonging to the defendant and situated in the village Denawaka Pathakada of the aggregate extent of six hundred and six acres and seventeen perches."

At the trial the defendant pleaded further that the plaintiff could not enforce the contract as he carried on business under a name which was not his true full names without addition and had not registered the name as required by the provisions of the Registration of Business Names Ordinance, No. 6 of 1918.

The learned District Judge held (1) that the liability of the defendant to the plaintiff in the sum claimed had been established, (2) that the plaintiff was not carrying on business under his true full names without addition and that the name should have been registered under the provisions of the Ordinance No. 6 of 1918, (3) that the defendant was, on his claim in reconvention, entitled to recover a sum of Rs. 5,000 as damages.

Instead, however, of dismissing plaintiff's action on the ground that the contract was not enforceable by reason of his default in furnishing to the Registrar of Business Names the particulars required by the Ordinance, the District Judge ordered the plaintiff to furnish to the Registrar within fourteen days of his judgment the necessary particulars for the registration of his business under section 4 of the Registration of Business Names Ordinance and directed that, on compliance with this order, the plaintiff will be entitled to enforce the decree.

The defendant appeal from the whole decree. But as a decision in defendant's favour with regard to the enforceability of the contract will be fatal to the plaintiff's claim, we decided to deal in the first instance with that question and the defendant's claim in reconvention.

[1] *S. C. Minutes of February 5, 1925.*

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The following issues were tried on these two questions:—

3. Does the plaintiff carry on business under his full true name or does he carry on business under a vilasam ?
4. If the latter, has he failed to register it under the provisions of Ordinance No. 6 of 1918 ?
5. If so, can he enforce his claim ?
6. Does the plaintiff carry on business under a business name which does not consist of his full name without any addition ?
8. Did the plaintiff wrongfully and without any manner of right or title thereto cause to be entered in the Land Registry of Ratnapura a caveat as set out in paragraph 6 of the answer ?
9. Was the said caveat entered maliciously by the plaintiff ?
10. Was the said caveat entered without reasonable and probable cause ?
11. What damages, if any, has the defendant suffered in consequence thereof ?
12. What sum, if any, is due to defendant from the plaintiff ?
13. Do paragraphs 6 and 7 of the answer disclose any cause of action against the plaintiff ?
14. Did the plaintiff wrongfully issue a caveat ?
15. Even if the issue of caveat be held wrongful can defendant claim any damages ?

The first question for decision is whether the plaintiff was trading under a name which was not his true full name without addition.

The defendant's contention is that, according to the custom of the Chetties, like the Tamils and Coast Moors, a boy is given a name to which is prefixed his father's name, that the plaintiff's full name is Suppramaniam Annamalay and that under the Ordinance he could have traded under the name of Suppramaniam Annamalay or S. Annamalay; but that by the addition of the initials " Pana Ana " before his final name it ceased to be his true full names without addition within the meaning of the Ordinance.

It will be convenient here to refer to the relevant sections of the Ordinance. Section 2 enacts that—

" (*a*) Every firm having a place of business in the Colony and carrying on business under a business name which does not consist of the true full names of all partners who are individuals and the corporate names of all partners who are corporations without any addition;

" (*b*) Every individual having a place of business in the Colony and carrying on business under a business name which does not consist of his true full names without any addition; and

"(c) Every individual or firm having a place of business in the Colony who, or a member of which, has either before or after the passing of this Ordinance changed his name, except in the case of a woman in consequence of marriage—

shall be registered in the manner directed by this Ordinance."

Section 4 enacts that—

"Every firm or person required under this Ordinance to be registered shall furnish, by sending by post or delivering to the Registrar at the register office in that part of the Colony in which the principal place of business of the firm or person is situated, a statement in writing in the prescribed form containing the following particulars . . . . . "

The particulars are not material to the appeal.

Section 9 enacts that—

" Where any firm or person by this Ordinance required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business, in respect of the carrying on of which particulars were required to be furnished, shall not be enforceable at any time while he is in default, by action or other legal proceedings either in the business name or otherwise."

Section 20 provides that the expression " full name " shall include any case in which a surname or other final name appears in full, and in which the preceding names either appear in full or are represented by initials, and that the expression " business name " shall mean the name or style under which any business is carried on, whether in partnership or otherwise, and shall include a vilasam.

The plaintiff's case is that S. P. A. Annamalay Chetty is his final name with his preceding name represented by initials. According to his evidence this has been his name since he started trading when 20 years old. Before he started trading his name was Annamalay, but if he was asked to sign his name he would have signed " Suna Pana Ana Annamalay Chetty." He said, however, that the name " Chetty " is added when a man starts in business.

The plaintiff admitted that the Kanakapulle employed by him in signing on his behalf would prefix the initials " S.P.A." before these names to show the world that they are acting on his business.

In cross-examination the plaintiff said that " Suna Pana Ana " are his initials and that vilasam is to him the same as initials.

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The plaintiff's attorney Warusakanni Ravuther said that his village in India is 3 miles away from plaintiff's village, that he had known plaintiff for thirty years and that plaintiff's name was Suna Pana Ana Annamalay Chetty.

Later he said that there are Nattu-Kottai Chetties in his village, and that it was an universal custom among all classes of people in his country to form the full name by prefixing the father's name to the individual name. Thus plaintiff's name being Annamalay Chetty and his father's name being Suppramaniam Chetty, his full name should be Suppramaniam Chetty Annamalay Chetty and was correctly stated in the extracts from the Register of Voters (D 1). the Indian Electorate, Ratnapura (D 1 (*a*)), and in the Householder's List (D 2).

The witness later said that he filled up the Householder's List (D 2) according to instructions given to him by the man who brought it to him. His principal was at that time in India.

The learned District Judge has considered this evidence and the evidence of the two expert witnesses called on either side and has held as follows :—" According to the Chetty custom the signature ' S.P. Annamalay Chetty ' could have but one meaning, viz., that the person signing that name was ' Annamalay Chetty the son of Suppramaniam Chetty ' and that he was doing so in a private capacity. The signature ' S. P. A. Annamalay Chetty ' on the other hand is open to dual construction. It may either mean that it is a name which the Chetty chooses to adopt for the ordinary purposes of life or business, or it may indicate that the Chetty intends to represent himself as the agent of some firm or individual carrying on trade under the style of the letters or vilasam 'S.P.A.' Even Mr. Walter Beven admits that if ' S. P. A.' does not represent the patronymic initials of the Chetty the use of that vilasam would indicate that the Chetty purported to act on behalf of that firm. Now, there is in this case abundant evidence of the fact that 'S. P. A.' was the vilasam under which the plaintiff Chetty was trading."

I can see no reason for dissenting from the view taken by the District Judge.

The evidence, in my opinion, establishes that the plaintiff's true full name without addition is Suppramaniam Annamalay Chetty. I know from my own experience that it is the custom of Chetties to use initials as a business name.

The initials S. P. would be insufficient as a business name as they contain no indication of the trader's own name Annamalay. An attorney signing his name with the initials " S. P. " prefixed to his name would not represent Annamalay Chetty but Suppramniam. The " A " is added in order to show that the business is one carried on by Annamalay Chetty. Thus " S. P. A. " became a business name

or vilasam and was used as such in Pelmadulla, where the plaintiff carried on business. (See the evidence of Warusakanni Ravuther at page 200 of the record.)

Plaintiff's counsel, however, contended that there was no system of registration of births in plaintiff's village, that plaintiff always used the name S. P. A. Annamalay Chetty, and that he did not commit a breach of the Registration of Business Names Ordinance by carrying on business under that name. In support he cited the case of *King v. The Inhabitants of Billingshurst.*[1] In that case a person whose baptismal and surname was Abraham Langley was married by banns by the name of George Smith, having been known in the parish where he resided and was married by that name only, from his first coming into the parish till his marriage, which was about three years. The question for decision was whether the marriage was void by reason of the fact that the banns were not published in the true Christian and surnames as required by sections 2 and 8 of Act 26 Geo. II. chapter 33. The Court held that the object of the statute in the publication of banns was to secure notoriety and that that object could not be better attained than by a publication in the name by which the party is known and the marriage was held to be valid.

I can see no analogy between the two cases and the *ratio decidendi* of the case cited is not applicable to the present case.

The plaintiff also contended that he was not in default as he was advised that registration of his name was not necessary and because Nagappa Chetty's application to register his name was rejected. I am unable to accept this contention.

The plaintiff can only plead that he is not in default if he had taken all the steps required by the Ordinance to register his business name, and the non-registration of his name was due to circumstances beyond his control, as for example the statement of particulars not reaching the Registrar.

There remains the question whether the plaintiff is entitled to the indulgence granted to him by the District Judge of registering his business and enforcing his decree. I am of opinion that he is not so entitled.

Section 9 of the Ordinance substantially reproduces section 8 subsection (1) of the Registration of Business Names Act, 1916.[2] But the proviso to that section empowering a Court "on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable" to grant relief either generally, or as respects any particular contract, has not been reproduced. The Ceylon Legislature thus deprived the Court of the power to grant relief to a person against his default.

[1] *(1914) 3 M. & S. 250.*

[2] *6 & 7 Geo V. C. 58.*

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Section 9 of the Ordinance differs from section 8 of the English Act in one particular. Section 8 of the English Act declares that "any contract made by the defaulter at any time while he is in default shall not be enforceable by action." Section 9 of our Ordinance, that the rights of a defaulter "under or arising out of any contract made by such defaulter shall not be enforceable at any time while he is in default."

Bertram C.J. in the case of *Jamal Mohideen & Co. v. Meera Saibo et. al.*[1] was of opinion that the intention of our Legislature was obviously to mitigate the rigour of the English enactment to enable the defaulter at any time to purge his default by complying with the Ordinance, and upon this being done to set him free to enforce his rights. He held, however, in that case that the default must be purged before the action is brought; and in the case of *Karuppen Chetty et al. v. Harrison & Crosfield, Ltd.*,[2] he said "the registration was a condition precedent to the enforcement of the special right of property which the plaintiff claimed," and affirmed the dismissal of the action by the District Judge.

There is therefore clear authority for the proposition that the plaintiff is not entitled to purge his default by registration after bringing the action.

I am accordingly of opinion that the District Judge should have dismissed the action, and would set aside the order appealed from and make order accordingly.

As regards the defendant's claim in reconvention for damages sustained by him by reason of the caveat entered on June 20, 1924, the facts are as follows:—

This action was instituted on June 19, 1924. On June 20, 1924, the plaintiff lodged with the Registrar a caveat under the provisions of section 25 of the Land Registration Ordinance, No. 14 of 1891, as amended by Ordinance No. 29 of 1917, forbidding the registration of any deed or instrument affecting 16 allotments of land belonging to the defendant situated at Denawaka Patakada in extent 616 acres and 17 perches.

Section 25 enacts as follows:—

(1) It shall be competent to any party to lodge with the Registrar a caveat to prevent the registration of any deed or other instrument affecting any land or other property as aforesaid subsequently tendered for registration. Such caveat shall state a postal address within the Island of the party lodging the same, shall bear the prescribed stamp, and shall be registered free of further duty.

(2) On such caveat being registered, the party lodging the same shall be entitled to notice of any subsequent application for the registration of any deed or other instrument as

[1] *(1920) 22 N. L. R. 268.* [2] *(1922) 24 N. L. R. 317.*

regards such land or other property as aforesaid, which notice shall be deemed to have been duly given if posted to the address stated in the caveat or to any address supplied subsequently.

(3) A caveat shall be in force for six months from the date of its being lodged, unless the caveat limits the time of its operation to a shorter period.

(4) Any existing caveat which has been in force for six months or upwards shall be deemed to be vacated within three months of the passing of this Ordinance.

(5) No caveat shall be sufficient to prevent the registration of a deed unless it be followed up within thirty days after the posting of the notice of application for registration by an action before some competent court and notice thereof to the Registrar, in which case the Registrar shall suspend the registration until the final adjudication of such action.

On August 23 a mortgage bond No. 4,257 executed by the defendant on August 15, 1924, to secure repayment to Mr. Tom Walker of a loan of Rs. 50,000 was tendered for registration at the Land Registration Office, Ratnapura. The Registrar, on the same day, issued a notice (P 36) to Mr. Peiris, plaintiff's proctor, that the bond will be duly registered if no intimation of an action at law is received by him within thirty days of the notice.

Mr. Peiris on August 28 replied that he had instituted case No. 4,122, D. C. Ratnapura (this case), to recover from Mr. Thornhill the sum of Rs. 54,577.46 and that the action is pending (P 35), and the registration of the bond was suspended pending the adjudication of this case. Subsequently, after representations were made that the action No. 4,122 was not instituted pursuant to the notice, the bond was registered on October 14, 1924.

In June, 1924, the defendant was negotiating for two loans of Rs. 50,000 and Rs. 100,000 from Mr. Tom Walker and Messrs. Gow Somerville & Co., respectively.

The negotiations as regards the loan of Rs. 50,000 had advanced so far that all that had to be done was to search for encumbrances and draw up the bond.

When the prospective lenders were told of the caveat entered by the plaintiff, they refused to go further in the matter unless some way was found of "getting round the caveat."

At that time the defendant's assets were worth about Rs. 975,000, and his liabilities amounted to Rs. 160,000. Owing to the caveat he could not raise money, and between June and July, 1924, all his creditors came into Court and all his properties were seized.

Eventually Mr. Walker, who had agreed to lend Rs. 50,000, was induced to give him Rs. 25,000 on the personal guarantee of a friend, and the bond No. 4,257 was executed and tendered for registration and subsequently registered.

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The defendant's case is that owing to his inability to obtain the loans of Rs. 50,000 and Rs. 100,000 he had to—

(*a*) Close his rubber works, which resulted in a loss of Rs. 80,000;

(*b*) Delay the completion of his road to the saw mills, which caused a loss of Rs. 2,000 ;

(*c*) Hold up his planting programme, and estimates his loss at Rs. 10,000 ;

(*d*) Cancel an order for 75 maunds of tea seeds at Rs. 125 a maund, and the price went up to Rs. 250 a maund ; and

(*e*) Pay Rs. 5,000 in lawyers' fees.

The learned District Judge in discussing the defendant's claim for damages generally says: " I find considerable difficulty in arriving at a fair estimate of the damage which the defendant actually sustained as a result of this wrongful act. For this the defendant is principally to blame. He has given me an obviously exaggerated and in consequence a more or less unreliable picture of the position he was placed in by reason of the plaintiff's filing the caveat "; " he (defendant) has led absolutely no corroborative evidence of any importance in support of his claim of damages "; " there is thus only Mr. Thornhill's word for it that in the middle of June, 1924, he was well on the way to securing two loans—one of Rs. 50,000 from Mr. Tom Walker and the other of Rs. 100,000 from Messrs. Gow Somerville & Co.—and that it was only the filing of the caveat that prevented these loans from going through." He also finds that there is no internal evidence to support defendant's evidence that he " was holding the handle of these two loans of Rs. 50,000 and Rs. 100,000 as securely as he now seeks to suggest."

There is no definite finding as to whether he accepts Mr. Thornhill's evidence or not. It appears to me that Mr. Thornhill has failed to prove that he was deprived of two loans of Rs. 50,000 and Rs. 100,000 by reason of the caveat entered by the plaintiff.

With regard to the bond No. 4,257 (P 37) dated August 15, 1924, on which Mr. Thornhill borrowed Rs. 50,000 from Mr. Tom Walker, the District Judge observes that " in the attestation clause it is stated that no consideration passed before the notary " and that " there is nothing to show that the full amount was not paid earlier." I agree with him that a great deal depends on this as the extent of the damages sustained by the defendant depends on the delay which the caveat caused the defendant in the matter of his raising money to pay off his debt and carry out his other business enterprises.

I am of opinion that the plaintiff can found no claim as regards the alleged loan of Rs. 100,000 as there is no evidence on the record that the defendant would have received that loan on a particular date but for the caveat.

There is no such evidence with regard to the loan of Rs. 50,000. But assuming that the negotiations had proceeded so far that the money would have been paid over to the defendant at or about the end of June, the claim for damages must be measured by the loss sustained by the defendant between that date and the date on which he actually received the loan. Of the latter date, as the District Judge points out, there is no evidence.

Again, assuming that he received the loan at or about the time the bond was executed, namely, August 15, 1924, there is in my opinion no definite evidence of the loss sustained by the defendant by reason of the payment of the money being postponed from the end of June to August 15.

In order to establish a claim of this nature the defendant should have placed before the Court facts and figures from which the Court would have been able to estimate the loss sustained by him.

I would also point out that apart from the plaintiff's evidence there is nothing to show that Mr. Tom Walker postponed his loan because of the caveat entered.

As regards the claims under the heads which I have set out, the learned District Judge has examined them in detail and rejected all of them. He has, however, awarded the defendant a sum of Rs. 5,000 " in satisfaction of his claim in reconvention with legal interest thereon as from the date of the caveat and his costs of the appeal in regard to the issues relating to the claim in reconvention."

The defendant-appellant submits that this amount is inadequate. It was contended that the defendant's evidence established his claim for damages under the several heads mentioned by him. I am quite unable to accept this contention. The evidence is very vague and unconvincing, and there is a total absence of proof that the defendant suffered any damages by reason of the postponement, if there was a postponement, of the loan from Mr. Tom Walker.

I would therefore dismiss the defendant's appeal from the finding of the learned District Judge as to the amount of damages he is entitled to.

The plaintiff has filed cross objections under section 72 of the Civil Procedure Code against the award of damages. It was contended (1) that the defendant had not proved any damages, and (2) that, even if there was such proof, the defendant was not entitled to damages as there was no proof of malice.

In support of the latter contention we were referred to the case of *Croos v. Ramanathan Chetty*,[1] in which plaintiff made a claim for damages on the ground that the defendant had unlawfully entered a caveat in the Land Registry of Negombo against the registration of any title deed affecting the land. Ennis J. was of opinion that such an action is really one for an abuse of process analogous to an

[1] *(1924) 5 C. L. R. 164.*

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action for malicious prosecution, and that in order to succeed the plaintiff must show that the defendant's act was malicious and that it was done without reasonable and probable cause. He also held that the form adopted by the plaintiff in the plaint was one for slander of title and in the circumstances he could not claim mental or moral damages. The case was remitted for further proceedings on issues framed so as to raise the question of malice and the question of reasonable and probable cause. On a second appeal Bertram C.J. said with regard to the ruling of Ennis J.: "It is not possible for us in this case to canvass that decision. It may be that on the matter being more fully considered a distinction might be drawn between a case in which a man is a party to a document and does claim a registrable interest, and the case in which a man is not a party to any document at all and is entirely outside the scope of the section, and wrongfully invokes a procedure which was intended for another class of person. It may be that in this latter case an action may be held to lie without any proof of malice." (S. C. No. 191—D. C. Negombo No. 16,048 (S. C. Min. of February 5, 1925).)*

On behalf of the defendant it was contended that this was a case in which the plaintiff wrongfully invoked a procedure which was intended for another class of person. The learned District Judge has considered this question in his judgment, and I entirely agree with him that there is no substance in the plaintiff's contention that he was a party interested in the land by reason of the fact that the money lent and the rice supplied were for the benefit of Denawaka estate, and would affirm his finding "that the plaintiff's action in causing this caveat to be filed was wrongful."

The learned District Judge has examined the evidence very carefully, and I entirely agree with his finding that there is no proof of malice. I award the defendant the sum of Rs. 5 as damages.

In my opinion the defendant has entirely failed to prove that he has suffered any material damage, and he has not, in his pleadings or in his evidence, assessed the amount of damages sustained by him by reason of what the District Judge refers to as "mental and moral damages."

The sum of Rs. 5,000 awarded by the District Judge is an arbitrary amount, for he does not set out how he arrived at this sum. It does not appear to me to be justified by the evidence in the case.

I would therefore set aside the decree declaring the defendant entitled to the sum of Rs. 5,000 and award him the sum of Rs. 5 in satisfaction of his claim in reconvention. As regards costs, I would direct each party to pay his own costs here and in the District Court.

* 191, D. C. Negombo, 16,048.

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This is a matter which has already been before this Court. The action is instituted by the plaintiff against the defendant for wrongfully filing a caveat under section 25 of the Land Registration Ordinance, 1891. It appeared that the defendant had sued and obtained judgment against the plaintiff in case No. 15,903 of the Negombo District Court, and entertaining some suspicion that the plaintiff might be likely to dispose of the particular property to his prejudice, the defendant lodged a caveat under the section referred to. That section authorizes any party in certain circumstances to lodge with the Registry a caveat. By "party" it is clearly intended "party to some deed or instrument," and the object of the section is to allow a person who claims a registrable interest in the land under some document to prevent another registration being made to his prejudice. The defendant in this case was not a party in any sense of the word. He did not come within the scope of the section at all. His action was clearly wrongful. The power to lodge a caveat is not given to judgment-creditors whether before or after judgment. It is not intended to be a means of supplementing a procedure which the law allows for sequestration.

The case came before this Court on a previous occasion, and it was held by my brother Ennis in a judgment reported in *5 Ceylon Law Recorder 164* that the action was really one for the abuse of process and was analogous to an action for malicious prosecution and that in order to succeed the plaintiff should show both that the act was done maliciously and that it was done without reasonable and probable cause. No issues appeared to have been framed for the purpose of having this point determined, and accordingly this Court sent the case back for the proper issues to be framed and for the determination of the question whether in fact the defendant's act was done maliciously and without reasonable and probable cause.

It is not possible for us in this case to canvass that decision. It may be that on the matter being more fully considered a distinction might be drawn between a case in which a man is a party to a document and does claim a registrable interest and the case in which a man is not a party to any document at all and is entirely outside the scope of the section and wrongfully invokes a procedure which was intended for another class of person. It may be that in this latter case an action might be held to lie without any proof of malice. As I have said, however, we cannot consider that question in the present case. This Court has made an order, and judgment must proceed in accordance with that order.

In pursuance of the order of this Court the matter again came before the District Judge, and he has made a finding of malice. I am unable to see, however, that the facts which he recites in his judgment justifying any such finding. All he imputes to the defendant is a certain amount of thoughtlessness and recklessness. He seems to consider that the action taken by the defendant was superfluous in his own interest, and that if he had more fully considered the circumstances he would have seen that there was no occasion to take it. He says: "Here there is recklessness tantamounting to malice."

It is quite true that in particular circumstances a Court may infer from the reckless behaviour of a particular person that he was animated by malice against the person complaining. But in that case the Court finds malice by reason of the recklessness. It is hardly correct to say that recklessness may amount to malice. If the phrase is used it can only be properly used in the sense I have explained, namely, that the recklessness was such that the Court infers malice therefrom.

In view of these considerations I do not think that the finding of the learned District Judge can be justified, and in the absence of malice no action lies against the defendant. I would therefore allow the appeal, with costs.

SCHNEIDER J.—I agree.