

1920.

Present : Shaw A.C.J.

ISMALANNE LOKKA v. HARMANIS.

214—C. R. Avissawella, 10,828.

Action for malicious arrest and prosecution against police headman—Action brought after three months—Police Ordinance, 1865, s. 79—Is a police headman a police officer?—May a police officer who acts maliciously plead the limitations of s. 79?

In an action for malicious arrest and prosecution against a police headman, which was brought five months after the conclusion of the prosecution, the headman pleaded section 79 of the Police Ordinance, 1865, as the action was not brought within three months.

Held, that the objection was bad, as (1) a police headman was not a police officer within the meaning of the Ordinance, and (2) as a police officer who acts maliciously and not in the *bona fide* exercise of his official duties is not entitled to rely on the limitation of actions provided in section 79.

THE facts appear from the judgment.

E. G. P. Jayatileke (with him *M. W. H. de Silva*), for the appellant.

Garvin, for the respondent.

December 10, 1920. SHAW A.C.J.—

This was an action for malicious arrest and prosecution brought against a police headman. The prosecution, which is said to have been malicious, was concluded on November 3, 1919. The present action was commenced on May 7, 1920. The defendant took the objection that the action was prescribed in consequence of the provisions contained in section 79 of the Police Ordinance, 1865. That section provides that all actions and prosecutions against any person which may be lawfully brought for any act done or intended to be done under the provisions of this Ordinance or under the general police powers hereby given shall be commenced within three months of the act complained of. The section then goes on to provide for notice of action and other matters. The Commissioner has decided this case on a preliminary issue, and has held that the action not having been commenced within three months is prescribed under the section I have read. It has been held that a police headman is not a police officer within the meaning of the Police Ordinance, 1865. See *Don Lewis v. Kaluappu*.¹ It has also been held in *Van Hagt v. Keegel*² that a police officer who is found to have acted maliciously and not in the *bona fide* exercise of his official duties is not entitled to rely on the limitation of actions provided in section 79 of the Police Ordinance. For both these reasons I think the decision of the Commissioner is incorrect, and I allow the appeal with costs, and send the case back to the Commissioner for him to hear the evidence.

Sent back.

¹ (1909) 2 L. L. R. 104.

² (1917) 4 O. W. R. 258.