

1916.

Present : Shaw A.C.J.

FERNANDO *v.* PIERIS.

221—C. R. Colombo, 50,412.

Action for damages for illegal arrest—Malice—Arrest of one person on warrant obtained against another.

Malice is immaterial in an action for damages for illegal arrest.

“ The appellant was not, and never had been, known as M. T. Fernando, and his arrest on a warrant against such a person was illegal.”

THE facts appear from the judgment.

M. W. H. de Silva, for appellant.—The warrant on which the appellant has been arrested is directed against Manadewage Thegis Fernando. The appellant has never been known by that name. The respondent is merely an executive officer, who should execute

the warrant against the person named. He cannot arrest some other on the ground that the warrant was meant against that other, though in fact it was so meant (*Hoye v. Bush*¹).

There has been malice in this instance; even otherwise the defendant is liable (*De Alwis v. Murugappa Chetty*²).

No appearance for respondent.

September 11, 1916. SHAW A.C.J.—

The appellant sued the defendant, who is the Police Vidane of Watarappola, for damages of illegal arrest under the following circumstances.

The defendant included in his list of persons liable to pay commutation tax the name of one Manadewage Thegis Fernando, and on June 26, 1915, he obtained a warrant for the arrest of that person for default in payment of the tax.

On November 17, 1915, he arrested the appellant, whose name is Siriwardenadewage Assereiris Fernando, and who, according to the evidence, is not, and never has been, known as Manadewage Thegis Fernando, when the appellant had come to Watarappola for a wedding. The appellant was taken to the Police Station, and next day was taken handcuffed to the Kachcheri, when he was released on payment of Rs. 10 as security.

The defendant says he compiled the list on information given by one Neris Fernando, in whose house the appellant was living at the time, and that he understood that M. Thegis Fernando was the appellant. This Neris denies, but, however it may be, the compilation of the list was quite irregular, and it would have been quite improper for the appellant to have been placed upon it under any name, as it was satisfactorily proved by the headman of Uggalboda that the appellant was residing in that district, and had paid his commutation tax there for the years 1913, 1914, and 1915. Upon his arrest the appellant informed the defendant that he was not M. Thegis Fernando, but the defendant, nevertheless, insisted on executing the warrant, and took him to the Police Station from just outside the house where the wedding was in progress in the presence of a large crowd of people.

The Commissioner of Requests has dismissed the action, holding that the appellant was the person against whom the warrant was directed, and that the arrest was therefore legal. I do not agree. The appellant was not, and never had been, known as Manadewage Thegis Fernando, and his arrest on a warrant against such a person was illegal (*Hoye v. Bush*¹). Malice is immaterial in an action for an illegal arrest, and the appellant is entitled to recover the damages he has sustained.

¹ 1 M. & G. 775.

² (1909) 12 N. L. R. 353.

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I allow the appeal with costs, and set aside the decree and direct judgment to be entered for the plaintiff with costs; the case to be sent back to another Commissioner of Requests to assess the amount of damages.

So far as can be seen from the evidence in the case, there appears to have been no justification for the appellant to have been handcuffed when taken from the Police Station to the Kachcheri, and it is illegal and a gross outrage that a person arrested for non-payment of taxes should be unnecessarily subjected to such an indignity.

Set aside.

