Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Wood Renton.

Oct. 21, 1910

RAMAN CHETTY *v.* VALLIPURAM.

D. C. Jaffna, 7,163.

Arrest before judgment—Warrant obtained by false averment—Action for damages—When warrant of arrest should issue—Civil Procedure Code, s. 650.

Although section 650 does not deal with the point in terms, a Court would not, in the exercise of its discretion conferred upon it by that section, be justified in allowing a warrant of arrest before judgment to issue, unless materials had been put before it by the applicant tending to show that his debtor was about to quit the Island under circumstances rendering it improbable that the debt would be paid.

The mere existence of malice in the mind of a creditor, who is applying for the arrest of the debtor before judgment, could expose him to no legal liability, provided always that he does not obtain the arrest by maliciously putting false materials before the Court; where he does do so, the debtor is entitled to recover damages against him.

THE facts are set out in the judgment of Wood Renton J.

Bawa, for the plaintiff, appellant.

Balasingham, for the defendant, respondent.

Cur. adv. vult.

October 21, 1910. WOOD RENTON J.—

I think that the circumstances, to which the learned District Judge calls attention in his judgment, are sufficient to justify his conclusion that the plaintiff-appellant acted maliciously in applying for a warrant of arrest before judgment against the defendant-respondent under section 650 of the Civil Procedure Code; and, further, that he must be taken to have obtained the issue of that warrant of arrest by the allegation in his affidavit in support of it, that the respondent was possessed of no property. Although section 650 does not deal with the point in terms, I do not think that any Court in the exercise of the discretion conferred upon it by that section would allow such a warrant to issue, or would be justified in doing so, unless materials had been put before it by the applicant tending to show that his debtor was about to quit the Island under circumstances rendering it improbable that the debt would be paid.

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Raman Chetty v. Vallipuram

Under these circumstances, the question arises whether such conduct on the part of the plaintiff-appellant entitles the respondent to recover damages against him at law. In my opinion this question must be answered in the affirmative. It is, of course, clear that the mere existence of malice in the mind of a creditor, who is applying for the arrest of his debtor before judgment, could expose him to no legal liability, provided always that he does not obtain the arrest by maliciously putting false materials before the Court. Where he does do so, it seems to me, both on principle and on authority, that the debtor is entitled to recover damages against him. It was held by the Supreme Court, in the case of *Thomis v. Ahamado Lebbe Markar*,[1] that an action would lie against a person who maliciously and without any reasonable and probable cause applied for and obtained the issue of an injunction, when that injunction had been dissolved. It has been held in England that an action will lie for maliciously suing out a commission in lunacy (*Turner v. Turner*,[2] *Incledon v. Berry*,[3] or in bankruptcy (*Whitworth v. Hall*,[4] and see also *Johnson v. Emerson*[5] and *Metropolitan Bank v. Pooley*.[6] In the present case the respondent obtained his discharge whenever he had an opportunity of doing so. The warrant of arrest was therefore set aside; and as the learned District Judge has held, on materials which are sufficient to justify his decision, that the appellant procured its issue falsely and maliciously, I would hold, following the authorities above cited, that he is liable to the respondent in damages. It was argued by Mr. Bawa that there was nothing to show that the respondent had suffered any actual loss in consequence of his arrest. The mere fact of the arrest entitles him, however, to damages, and I do not think that the amount which the District Judge has awarded is in any way excessive.

I would dismiss the appeal with costs, subject, however, to the deduction, by agreement between the parties, of the Rs. 100 expenses referred to at page 4 of the record.

HUTCHINSON C.J.—I agree.

Appeal dismissed.

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[1] *(1876) Ram. 1872-1876, 281.*
[2] *(1818) Gow. 28.*
[3] *(1805) Selw. N. P. 1006.*
[4] *(1831) Barn. and Adol. 659.*
[5] *(1871) L. R. 6. Ex. 327.*
[6] *(1885) 10 A. C. 210.*