

Present: Fisher C.J. and Drieberg J.DAVID & CO. *v.* ALBERT SILVA.

94—D. C. Colombo, 30,972.

Sequestration before judgment—Affidavit—Statement of facts—Grounds of belief—Civil Procedure Code, s. 653.

An application for a mandate of sequestration under section 653 of the Civil Procedure Code must be supported by an affidavit giving a statement of facts and grounds of belief.

A PPEAL from an order of the District Judge of Colombo.*H. V. Perera*, for defendant, appellant.*Keuneman*, for plaintiff, respondent.

August 1, 1929. FISHER C.J.—

The only point for our decision is whether this mandate was rightly issued. Such mandates are issued under section 653 of the Civil Procedure Code. In my opinion the provisions of that section must be strictly complied with inasmuch as the section deals with very special procedure invoked at the outset of the action before the merits of the action or the legal rights of the parties have been dealt with on the basis of fraudulent conduct on the part of a defendant, involving interference with the proprietary rights of a defendant. Special procedure, such as this, can only be invoked if the provisions of section 653 are complied with. The affidavit in this case merely says that the plaintiff "has good reason to believe" certain things. There is no statement of any facts in the affidavit as required by section 653 of the Civil Procedure Code, and moreover, being an affidavit based on belief, section 181 is also applicable and must be complied with. That section requires reasonable grounds for the belief to be set forth in the affidavit. The affidavit in this case did not comply with section 181 in this respect and there was therefore no proper affidavit before the Judge. It is impossible to give effect to the contention that the insufficiency of the material on which this mandate was granted can be made good, if it is shown that the state of things, in fact existing at the time the application was made, had it been brought to the notice of the Judge would have justified him in acting as he did. In my opinion there is no proper material upon which a mandate could be issued and it must therefore be dissolved and the appeal must be allowed, with costs in both Courts.

DRIEBERG J.—I agree.

Appeal allowed.