

Before Sir John Thom, Chief Justice, and
Mr. Justice Ganga Nath

BABU RAM AND ANOTHER (DEFENDANTS) *v.* NITYANAND
MATHUR (PLAINTIFF)*

1938
November, 4

Malicious prosecution—Legal Practitioners Act (XVIII of 1879), section 13—Proceeding under section 13—Quasi criminal proceeding—Initiated falsely and maliciously—Suit for damages lies.

A suit for damages for malicious prosecution is maintainable though the proceedings complained of are not strictly criminal. Proceedings under section 13 of the Legal Practitioners Act are *quasi* criminal proceedings, and a suit for damages for malicious prosecution lies against the person at whose instance and upon whose information, falsely and maliciously laid, such proceedings were started, with the result that the plaintiff suffered damage in respect that his reputation was assailed and in respect that he had to incur costs in defending himself.

Mr. S. N. Seth, for the appellants.

Mr. G. S. Pathak, for the respondent.

THOM, C. J., and GANGA NATH, J.:—This is a defendants' appeal from a decree of a learned single Judge of this Court.

The appeal arises out of a suit for damages for malicious prosecution. The facts of the case are set out in detail in the order of the learned single Judge, and we do not consider it necessary to recapitulate them here. Suffice it to say for the purposes of this appeal that it has been found by the lower appellate court, and the finding cannot now be disturbed, that at the instance of Ramji Mal proceedings under section 13 of the Legal Practitioners Act were directed against the plaintiff. There can be no dispute now that in attempting to have these proceedings initiated Ramji Mal was actuated by malice. The allegations which he made against the plaintiff were false and it has been held that they were made maliciously. The learned single Judge has in these circumstances held that an action for damages for malicious prosecution was

*Appeal No. 34 of 1937, under section 10 of the Letters Patent.

maintainable and he has awarded the sum of Rs.600 to the plaintiff as compensation for the loss he has sustained as a result of the proceedings against him under the Legal Practitioners Act.

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In appeal it was contended for the defendants that though a suit for damages for libel might be maintainable against Ramji Mal at the instance of the plaintiff, a suit for malicious prosecution was not maintainable inasmuch as the proceedings under section 13 of the Legal Practitioners Act did not amount to a criminal prosecution.

It cannot be disputed, however, that a suit for damages for malicious prosecution is maintainable though the proceedings complained of are not strictly criminal. In the course of his judgment the learned single Judge refers at length to the decision in the case of the *Quartz Hill Gold Mining Company v. Eyre* (1). In that case it was held that an action for damages for malicious prosecution would lie where the proceedings which were not strictly criminal were brought against the plaintiff, provided these proceedings were initiated maliciously and without reasonable and probable cause. It was held that "An action will lie for falsely and maliciously and without reasonable or probable cause presenting a petition under the Companies Acts of 1862 and 1867, to wind up a trading company, even although no pecuniary loss or special damage to the company can be proved, for the presentation of the petition is, from its very nature, calculated to injure the credit of the company."

Now it would appear plain that if an action for damages for malicious prosecution would lie in the case where a petition under the Companies Act was presented falsely and maliciously, such an action would lie in the case of initiation of proceedings under section 13 of the Legal Practitioners Act if the information upon which the

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proceedings were instituted was falsely and maliciously laid. Learned counsel for the defendant contended, however, that proceedings under the Companies Act stood in an exceptional position. He contended that in the case of such proceedings the person against whom the proceedings were directed sustained injury to his reputation before the opportunity was afforded to clear his reputation. Learned counsel urged that it was because of this fact that an action for damages for malicious prosecution lay where it was established that proceedings under the Companies Act to wind up a trading company had been instituted maliciously and without reasonable or probable cause. In support of this contention he referred to a passage in the judgment of the Master of the Rolls in *Quartz Hill Gold Mining Company v. Eyre* (1). The learned Master of the Rolls observed (page 684): "By proceedings in bankruptcy a man's fair fame is injured just as much since the Bankruptcy Act, 1869, as it was before, because he is openly charged with insolvency before he can defend himself. It is not like an action charging a merchant with fraud, where the evil done by bringing the action is remedied at the same time that the mischief is published, namely at the trial." The learned Master of the Rolls in making these observations was concerned with differentiating between the case of false allegations in a plaint in respect of which no action for malicious prosecution would lie, and bankruptcy proceedings maliciously instituted in which case the court held that an action would lie. The observation upon which learned counsel particularly founded, which has been quoted above, appears to us, however, to be *obiter*. We do not think the court intended to lay down any general principle.

So far as the present case is concerned we would observe that proceedings under the Legal Practitioners Act are *quasi* criminal proceedings. If the person against

(1) (1883) 11 Q.B.D. 674.

whom the proceedings are directed is found guilty of the charges which are framed under the Act he is liable to punishment. Some of the provisions of the Legal Practitioners Act are in a sense penal. Furthermore, in the proceedings under the Act the contest is not between the legal practitioner and the person who has laid information against him, but between the legal practitioner and the Government Advocate as representing the Crown. It is also to be observed that whilst in a civil suit a successful defendant may recover his costs against an unsuccessful plaintiff, a successful defendant in a proceeding under the Legal Practitioners Act cannot recover costs from the Government Advocate or from the person upon whose information the proceedings under the Act have been started. And we would remark also that in the case of a civil suit maliciously instituted by the plaintiff there is provision for awarding special costs against him. In the *Quartz Hill Gold Mining Company v. Eyre* case (1) BOWEN, L. J., quoted with approval the doctrine adumbrated by HOLT, C. J., in the case of *Savile v. Roberts* (2). The observations of BOWEN, L. J., are quoted at length in the judgment of the learned single Judge. We repeat here one passage from the judgment (page 689 of the report):

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“The reason why, to my mind, the bringing of an action under our present rules of procedure and under our present law, even if it is brought without reasonable or probable cause and with malice, gives rise to no ground of complaint, appears to me easily to be seen upon referring to the doctrine laid down by HOLT, C. J., in *Savile v. Roberts* (2). He there said that there were three sorts of damage, any one of which would be sufficient to support an action for malicious prosecution. ‘(1) The damage to a man’s fame, as if the matter whereof he is accused be scandalous. . . (2) The second sort of

(1) (1883) 11 Q.B.D. 674.

(2) (1698) 1 Ld. Raym. 374(378).

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damages, which would support such an action, are such as are done to the person; as where a man is put in danger to lose his life, or limb, or liberty, which has been always allowed a good foundation of such an action. . . . (3) The third sort of damages, which will support such an action is damage to a man's property, as where he is forced to expend his money in necessary charges, to acquit himself of the crime of which he is accused, which is the present charge'."

Now in the present case the plaintiff has suffered damage in respect that his reputation has been assailed, and in respect that he has had to incur costs in the proceedings under the Legal Practitioners Act.

The principle upon which actions for damages for malicious prosecution are permitted was considered by the House of Lords in the case of *Allen v. Flood* (1). In the course of his judgment at page 172 Lord DAVEY observes, after having considered the grounds upon which an action for damages for libel is maintainable:

"In my opinion the somewhat anomalous action for malicious prosecution is based on the same principle. From motives of public policy the law gives protection to persons prosecuting, even where there is no reasonable or probable cause for the prosecution. But if the person abuses his privilege for the indulgence of his personal spite he loses the protection, and is liable to an action, not for the malice but for the wrong done in subjecting another to the annoyance, expense, and possible loss of reputation of a causeless prosecution."

The same view was taken by Lord HERSCHELL (page 125).

It appears to us that upon the principles enunciated by HOLT, C. J., in *Savile v. Roberts* (2) and by Lord DAVEY in *Allen v. Flood* (1) an action for damages for malicious prosecution is maintainable by the plaintiff in the circumstances of the present case.

(1) [1898] A.C. 1.

(2) (1698) 1 Ld. Raym. 374.

The plaintiff has been subject to annoyance, expense and loss of reputation. The proceedings under the Legal Practitioners Act which are *quasi* criminal proceedings were instituted on information falsely and maliciously laid by the defendant. The damage sustained by the plaintiff resulted from the defendant's wrongful act. Accordingly we hold that the suit is maintainable and has been rightly decreed by the learned single Judge.

We see no reason to interfere with the award of damages. The award we consider reasonable in the circumstances of this case.

The appeal is accordingly dismissed with costs.

MISCELLANEOUS CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai

MUNNA LAL AND OTHERS (PLAINTIFFS) *v.* MAULA BAKHSH
AND OTHERS (DEFENDANTS)*

1938

October, 19

Stamp Act (II of 1899), section 2(5)—“Bond”—Instrument in the form of an agreement but containing the essentials of a bond—Stamp duty payable as on bond.

An instrument, in the form of an agreement between two parties, reciting that a certain sum is due from the first party to the second and covenanting that the first party will pay the same with interest in certain instalments, and being attested by witnesses and not being payable to order or bearer, comes within the definition of a bond as given in section 2(5) of the Stamp Act, and the stamp duty payable thereon is that for a bond, although the instrument appears to be in the form of an agreement.

Mr. *Chaturbhuj Sahai*, for the plaintiffs.

The opposite parties were not represented.

IQBAL AHMAD and BAJPAI, JJ.:—This is a reference under section 61 (1) of the Indian Stamp Act by the Inspector of Stamps, who, under a Government notification, has been invested with the powers of a Collector.