

APPELLATE CIVIL.

Before Eric Weston, C. J. and Bhandari, J.

RAM NATH,—Plaitiff-Appellant.

versus

BASHIR-UD-DIN,—Defendant-Respondent.

1952

Regular First Appeal No. 20 of 1949.

November,
11th

Malicious Prosecution—Action for damages—Essential ingredients of such action stated—“Reasonable and probable cause”—Meaning of—Malice—Meaning of—Prosecution in respect of two charges—No reasonable and probable cause for one but reasonable and probable cause for the other—Rule as to grant of decree in such cases stated.

Held, that the essential ingredients of an action for damages for malicious prosecution are well known and well understood. A person who wishes to recover damages to person, property or reputation must establish that he sustained injury by reason of a previous proceeding which was commenced or continued without reasonable and probable cause, but with malice, and which has terminated in favour of the plaintiff. These elements must all unite in order to produce liability. Reasonable and probable cause may be defined to mean reasonable grounds for suspicion supported by circumstances sufficiently strong in themselves to warrant any ordinary prudent and cautious man in the belief that the person charged with crime was probably guilty of the offence with which he is charged. There can be no reasonable and probable cause unless the defendant genuinely and honestly believed that the prosecution or other proceeding complained of, was justifiable. Malice means the presence of some improper and wrongful motive—that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. The co-existence of malice and want of probable cause is an essential pre-requisite to the success of an action for malicious prosecution. Malice alone, however great, is insufficient. Want of probable cause cannot be inferred from malice, however great such malice may be, but malice may be implied or inferred as a fact from want of probable cause. The question is not what the actual facts were but what the defendant had reason to believe they were.

Held, that in cases where the plaintiff is able to establish that there was no reasonable and probable cause for some of the charges preferred by the defendant in the

original proceeding but that there may have been such cause for others, the Court ought to grant a decree to plaintiff in respect of the charges for which there was no reasonable or probable cause.

Brown v. Hawkes (1), *Reed v. Taylor* (2), *Ellis v. Abrahams* (3), *Delisser v. Towne* (4), *Boaler v. Holder*, (5), and *Palmer v. Birmingham Manufacturing Company* (6), relied on.

Regular First Appeal from the decree of Shri A. N. Bhanot, Subordinate Judge, 1st Class, Delhi, dated the 8th November, 1948, dismissing the plaintiff's suit with costs.

BISHEN NARAIN and D. K. KAPUR, for Appellant.

A. N. GROVER, for Respondent.

JUDGMENT.

BHANDARI, J. The short point for decision in Bhandari, J. the present case is whether the Court below was justified in dismissing the plaintiff's suit for damages for malicious prosecution on the ground that the prosecution was not inspired by malice and was not destitute of any reasonable or probable cause.

The parties to the litigation out of which this appeal has arisen are owners of two contiguous properties which were separated by a wall belonging to the defendant. On the 19th September 1946, the defendant sent a registered notice to the plaintiff in which he complained that the plaintiff was endangering the safety of his wall by piling up bricks and other building materials against the wall and warned him that if his property sustained damage by reason of any act done by him, his agents or his labourers, the plaintiff would be held responsible for any loss that may be caused.

The plaintiff paid no heed to this notice and at 10 o'clock on the night of the 4th October 1946 the

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- (1) (1891) 2 Q.B. 725
 - (2) 128 E.R. 472
 - (3) (1846) 8 Q.B. 709
 - (4) (1841) 1 Q.B. 333
 - (5) (1887) 3 T.L.R. 546
 - (6) (1902) 18 T.L.R. 552

Ram Nath wall came down all of a sudden causing a certain
v. amount of damage to a printing press which a
Bashir-ud-Din tenant of the defendant had set up near the wall.
The defendant reported the matter to the Police on
Bhandari, J. the following day and filed a regular complaint on
the 10th January 1947. In this complaint he
alleged that both the plaintiff and his *munim*
Mithan Lal had intentionally and mischievously
piled up a large quantity of building material
against the wall with the object of demolishing the
wall and encroaching upon the land belonging to
the defendant and that they had stolen the
materials of the complainant's wall and brought
the same to their own use. It was accordingly
prayed that action be taken against them under
sections 427 and 379 of the Penal Code. The trial
Court came to the conclusion that the guilt had
not been brought home to the accused beyond
reasonable doubt and ordered their discharge
under section 253 of the Code of Criminal Proce-
dure. This was on the 31st July 1947.

On the 18th November 1947, the plaintiff brought the present action for the recovery of a sum of Rs. 10,000 by way of damages from the defendant on the ground that the latter had maliciously and without reasonable and probable cause brought a false complaint against him and his *munim* Mithan Lal. The trial Court dismissed the suit with costs and the plaintiff has accordingly come to this Court in appeal.

The essential ingredients of an action for damages for malicious prosecution are well known and well understood. A person who wishes to recover damages to person, property or reputation must establish that he sustained injury by reason of a previous proceeding which was commenced or continued without reasonable and probable cause, but with malice, and which has terminated in favour of the plaintiff. These elements must all unite in order to produce liability. Reasonable and probable cause may be defined to mean reasonable grounds for suspicion supported by circumstances sufficiently strong in themselves to warrant any

ordinary prudent and cautious man in the belief that the person charged with the crime was probably guilty of the offence with which he is charged. There can be no reasonable and probable cause unless the defendant genuinely and honestly believed that the prosecution, or other proceeding complained of, was justifiable. Malice means the presence of some improper and wrongful motive,—that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. As pointed out by Cave, J., in *Brown v. Hawkes* (1), “malice in its widest and vaguest sense has been said to mean any wrong or indirect motive; and malice can be proved, either by showing what the motive was and that it was wrong, or by showing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor”. The co-existence of malice and want of probable cause is an essential prerequisite to the success of an action for malicious prosecution. Malice alone, however great, is insufficient. Want of probable cause cannot be inferred from malice, however great such malice may be, but malice may be implied or inferred as a fact from want of probable cause. The question is not what the actual facts were but what the defendant had reason to believe they were.

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There can be no manner of doubt that the Court below was justified in dismissing the plaintiff's suit in so far as the charge under section 427 of the Penal Code was concerned. It is common ground that the property belonging to the defendant was at one time mortgaged with the father of the plaintiff; that the plaintiff's father declined to surrender possession thereof even after the mortgage was redeemed; that the defendant was reluctantly compelled to seek the intervention of a Court of law and to secure his eviction; that after the eviction of the plaintiff's father the defendant promptly constructed a wall with the object of separating his own property from that of the plaintiff; that the plaintiff objected to the construction of the wall and stated that it had been constructed on a part of the land belonging to him; that while

(1) (1891) 2 Q.B. 725

Ram Nath this dispute was in progress the plaintiff collected
 v. building material with the object of constructing
 Bashir-ud-Din some shops on the land belonging to himself; that
 ——— he piled up this material against the defendant's
 Bhandari, J. wall which is said to have been about 9 feet high,
 12 feet long and 9 inches wide; that the defendant
 sent a registered notice to the plaintiff asking him
 to remove the building material which was likely
 to damage the wall; that the plaintiff paid no heed
 to this notice and that the wall actually collapsed
 on the night of the 4th October 1946. These cir-
 cumstances make it quite clear that the defendant
 honestly believed that he had a reasonable and
 probable cause to put the criminal law in motion
 against the defendant.

During the course of arguments our attention was invited to the fact that in his deposition before the trial Court the defendant had stated that he had instituted the criminal complaint with the object of compelling the plaintiff to reconstruct the wall which had been demolished by the acts of his servants. It is contended on behalf of the plaintiff that as the defendant set the machinery of law in motion not with the object of vindicating the law and securing the punishment of the offender but the collateral object of securing the reconstruction of the wall, the criminal proceedings must be deemed to be malicious. This argument appears to me to be wholly devoid of force. It seems to me that a motive on the part of the defendant to secure the reconstruction of the wall at the expense of the plaintiff cannot be regarded as improper if it is established, as has been established in the present case, that he had an honest belief that an offence under section 427 had been committed. The defendant had a reasonable and probable cause for setting the criminal law in motion and the mere fact, therefore, that he might have pursued a civil remedy cannot render him liable for malicious prosecution.

But, even though the facts and circumstances of the case indicate that the prosecution was not malicious in so far as the charge under section 427 of the Penal Code is concerned, the question arises whether the prosecution was malicious in so far

as the charge under section 379 is concerned. It is contended on behalf of the plaintiff that a charge under section 379 of the Penal Code is more serious of the two charges preferred against him; that a prosecution under this section involves moral turpitude and was deliberately designed to attack the fair name of the plaintiff who is a respectable and respected citizen of Delhi; that it was impossible for the defendant to believe that the plaintiff, who was paying a large sum of money by way of income-tax and who was the owner of a considerable amount of landed property, could have stooped so low as to steal a few bricks belonging to the defendant; that although the defendant notified the Police as early as the 5th October 1946, he made no allegation in the report that any theft had been committed; that the allegation of theft was made for the first time when the complaint was lodged before the Magistrate on the 10th January 1947 and that this scandalous accusation was made without a reasonable and probable cause. There is, in my opinion, considerable force in this argument for there is nothing on the record to indicate either that the plaintiff had committed theft or that he had appropriated material belonging to the defendant to his own use. It must, therefore, be held that in preferring the charge of theft against the plaintiff, the defendant acted maliciously and without a reasonable and probable cause.

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—
Bhandari, J.

In cases of this kind when the plaintiff is able to establish that there was no reasonable and probable cause for some of the charges preferred by the defendant in the original proceeding but that there may have been such cause for others, the Court ought to grant a decree to the plaintiff in respect of the charges for which there was no reasonable or probable cause. In *Reed v. Taylor* (1), it was held that if the plaintiff declares that the defendant maliciously and without probable cause preferred an indictment, setting it forth, the averment is proved if some charges in the indictment were maliciously and without probable cause preferred, although there was good ground for others of the charges preferred.

(1) 128 E.R. 472

Ram Nath v. Bashir-ud-Din Bhandari, J.

A similar view was taken in *Ellis v. Abrahams* (1). It was held that in an action for malicious prosecution for perjury, where the indictment contains two assignments of perjury, if the plaintiff at the trial of the action confines his case to one of the assignments, the defendant is not entitled to prove that there was reasonable and probable cause for the charge contained in the other assignment. In *Delisser v. Towne* (2), a declaration in case for a malicious prosecution for perjury, in one count, set out ten assignments of perjury, which were alleged to have been prosecuted maliciously and without probable cause; at the trial the plaintiff failed in proving want of probable cause as to nine of the assignments. He obtained a verdict with damages on the tenth assignment. It was held that he was not entitled to the costs of the witnesses called to give evidence of want of probable cause as to those nine; and the defendant was not entitled to the costs of witnesses subpoenaed by him to show probable cause as to those assignments. In *Boaler v. Holder* (3), the plaintiff was indicated under section 4 of the Libel Act, 1843, though committed for trial only under section 5. He, therefore, brought an action for malicious prosecution. It was held that the conviction was no bar to an action for malicious prosecution under section 4 of the Act. In *Palmer v. Birmingham Manufacturing Company* (4), the plaintiff having been indicted in one count with having stolen a number of articles and having been acquitted, it was held that if there was an absence of reasonable and probable cause for the charge as regards one or more of the articles, an action for malicious prosecution will lie on proof of malice.

The question as to the amount of damages which the defendant should be required to pay for making a false accusation against the plaintiff under section 379 of the Penal Code is not easy to determine. No special damage has been proved.

(1) (1846) 8 Q.B. 709
 (2) (1841) 1 Q.B. 333
 (3) (1887) 3 T.L.R. 546
 (4) (1902) 18 T.L.R. 552

The plaintiff has not been able to indicate the damage which has been caused to his reputation by reason of the charge under section 379 having been preferred against him or to his property by reason of the expense which he was called upon to incur in securing his acquittal of that charge. As stated above, the complaint under section 427 of the Penal Code was not destitute of reasonable or probable cause and it was necessary for him to defend himself in a Court of law. It has not been indicated whether he has incurred any additional expenditure in connection with the charge under section 379 and if so, what. I am of the opinion that the ends of justice would be served if nominal damages to the extent of Re. 1 are awarded in this case. The parties will bear their own costs throughout.

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WESTON, C. J.—I agree.

Weston,
C. J.

APPELLATE CIVIL.

Before Kapur, J.

RAM SINGH AND 3 OTHERS,—Appellants.

versus

GAINDA RAM AND 4 OTHERS,—Respondents.

1953

November,
12th

Regular Second Appeal No. 418 of 1952.

Code of Civil Procedure (Act V of 1908)—Sections 11, 47 and Order XX Rule 14—Pre-emption decree—When does the pre-emptor get title to the property pre-empted—Sale by pre-emptor of the pre-empted property—Whether passes good title to the purchaser—Section 47 whether bars a suit for possession by such transferee—Transferee, whether a representative of the decree-holder—Decision in an execution application that transferee had no right to execute the decree, it being non-transferable—Whether operates as res judicata in a subsequent suit between the same parties—Symbolical possession taken in execution of decree—Effect of—Purchaser, whether bound by anything done by the vendor after sale.

S. S. obtained a pre-emption decree on 8th November, 1944, and deposited the decretal money in Court on 8th December, 1944. On 8th December, 1944, he sold his rights