A

LALIT LATA SINGH

v.

ABDUL LATEEF AND ANOTHER

B

[SUPREME COURT, 1969 (Thompson Ag. P.J.), 3rd, 5th February, 27th March]

Civil Jurisdiction

Tort—false arrest and imprisonment—arrest as an absconding debtor—warrant issued pursuant to judicial process—action for damages—plaintiff must prove issuing court misled deliberately or through reckless and rash allegations by creditor—Magistrates' Courts Rules (Cap. 10) 0.20 r.3.

C

The plaintiff was taken into custody on civil process as an absconding debtor and was in custody for about four hours. She brought an action for damages for false arrest and false imprisonment against the defendants as the persons who had applied for the warrant.

D

Held: 1. The arrest of the plaintiff had taken place pursuant to a valid process of the Magistrate's Court under Order 20 rule 3 of the Magistrates' Courts Rules after the application had been judicially considered by a magistrate.

E

2. In order to succeed in such an action the plaintiff must prove malice; it is only when a magistrate has been misled to order the issue of the warrant, either deliberately or through reckless and rash allegations by the creditor, that an action can lie for malicious arrest on civil process.

Cases referred to:

F

Clissold v. Cratchley [1910] 1 K.B. 374 revsd. [1910] 2 K.B. 244; [1910] All E.R. (Rep.) 739: *Daniels v. Fielding* (1846) 16 M. & W. 200; 16 L.J. Ex. 153; 153 E.R. 1159.

Action in the Supreme Court for damages for false arrest and imprisonment as an absconding debtor.

G

Magistrates' Courts Rules — Order 20

Rule 2. If the court, after making such investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the defendant is about to leave Fiji, ... and that, ... by reason thereof the execution of any decree which may be made against him is likely to be obstructed or delayed, it shall be lawful for the court to issue a warrant to bring the defendant before the court, that he may show cause why he should not give good and sufficient bail for his appearance.

H

Rule 3. If the defendant fail to show cause as aforesaid, the court shall order him to give bail for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit;.....

H. A. L. Marquardt-Gray for the plaintiff.

A *K. C. Ramrakha* for the defendants.

The facts sufficiently appear from the judgment.

THOMPSON Ag. P.J. : [27th March 1969]—

The plaintiff, a school teacher, was arrested on 2nd August, 1968, by a bailiff on the orders of the Sheriff, or his deputy, in execution of a B writ issued by Suva Magistrates' Court for the arrest of the plaintiff as an absconding defendant in an action pending in the Magistrates' Court. She was brought before a Magistrate of that Court within a few minutes of her arrest and, on the order of the magistrate, she remained in the custody of the bailiff while she tried to make arrangements to give security for the debt claimed. Subsequently, about 4 hours after her arrest, she was released after someone acting on her behalf had C settled the action.

The plaintiff is claiming damages in the sum of £10,000 ($20,000) for false arrest and false imprisonment. In her Statement of Claim she has not alleged that the defendants in the present action acted maliciously in obtaining the warrant from the Magistrates' Court. When she was cross-examined in the course of her evidence she agreed that she was not D alleging malice on the part of the defendants. Her case has been presented entirely on the basis that the defendants acted unreasonably in obtaining the warrant in view of their having received the information about her alleged plan to leave the Colony from only one person, the lawful wife of the man with whom she was co-habiting and therefore a person whose information should be regarded with suspicion as it might be founded on malice.

E In the course of his submissions at the end of the hearing learned counsel for the plaintiff cited the case of *Clissold v. Cratchley* [1910] All E.R. (Reprint) 739 and suggested that was on all fours with the present action. That was a case in which a writ of *fieri facias* had been taken out by the defendant after the judgment debt had been paid, i.e. at a time when the judgment had been completely satisfied. It was decided in that case that malice need not be proved as, since the writ was invalid F having been taken out after the judgment had been satisfied, the action was one of simple trespass. The basis of the plaintiff's claim in that case was, therefore, not of the same nature as that in the present action. The plaintiff here was arrested in execution of a valid process of a Magistrates' Court issued under the provisions of O.XX r.3 of the Magistrates' Courts Rules after the magistrate had considered judicially the application for it made by the defendants. The case of *Daniels v. Fielding* G (1846) 16 M. & W. 198 is very closely parallel to the present action. There the plaintiff relied upon an allegation that the defendant had not had reasonable or probable cause to believe that he was about to quit England. It was held that, as the writ on which the plaintiff had been arrested was issued only after the judge had exercised his judicial discretion thereon, it was necessary for the plaintiff to allege falsehood H or fraud in obtaining the original order and it was not enough simply to allege lack of reasonable and probable cause for believing that the plaintiff was about to abscond.

The plaintiff, in order to succeed in this action, must prove malice. It is not disputed that the plaintiff was in arrears with the payment

of the rent of her flat; that on the last Thursday in July 1968, two employees of the first defendant, who was her landlord, went to her flat to demand the rent and were told by her that she did not have the money with her to pay it; that she did not tell them that she was contemplating vacating the flat; and that three days later on the Sunday she did vacate the flat without notifying the first defendant or any of his employees. The plaintiff has explained why she did not tell the first defendant or his servants either on the Thursday or the Sunday that she was about to leave the flat. I do not propose to consider whether or not she has told the truth; in examining the state of mind in which the defendants came to take out the warrant it is the facts which were known to them at that time which matter and not the facts known only to the plaintiff. It is not disputed that later on that same Sunday the second defendant, who is the manager of the first defendant's business, received a telephone call from the lawful wife of the man with whom the palintiff had been cohabiting, informing him that her husband and the plaintiff had left the flat and were about to go to Canada. It is not disputed that on the following morning two employees of the first defendant were sent to the flat to ascertain whether or not it was true that she had left it and that they found that it had been vacated. It is not disputed that on the following Thursday, 1st August, the second defendant swore an affidavit (Exhibit 2) in support of the application for the issue of an absconding defendant's warrant.

The plaintiff has given evidence that after she vacated the flat she went to live in Lautoka with the man with whom she had been cohabiting and that the Education Department arranged for her to obtain a post at a school there. She has given evidence that she left the key of the flat with someone to deliver next morning to the first defendant's office and that she herself telephoned his office from the school at Lautoka to tell him that she would pay the rent at the end of the month. She has given evidence that she had this conversation with an employee of the first defendant, who has given evidence as D.W. 6, and that he subsequently put her through to the second defendant's son, who spoke to her about the rent. D.W. 6 and the second defendant's son, who gave evidence as D.W. 7, have denied having received any telephone call from the plaintiff. Even if they had done so it would not have been unreasonable for the defendants to regard the plaintiff's explanation and promises with suspicion as they were made belatedly.

It is a serious matter for a creditor to seek the issue of an absconding defendant's warrant. Creditors should be discouraged from lightly making such applications. Fundamentally, of course, it is the duty of the magistrate presiding over the court in which the application is made to ensure that warrants, even if lightly applied for, are not lightly granted. It is only when a magistrate has been misled to order the issue of the warant, either deliberately or through reckless and rash allegations by the creditor, that an action can lie for malicious arrest on civil process. There is no allegation in this case that the defendants deliberately misled the magistrate. Although I do not believe the plaintiff's evidence that she did not tell her colleagues at the school where she was teaching that she was making plans to go to Canada, she has satisfied me that she did not intend to depart Fiji immediately. The belief that she intended to do so which was expressed by the second defendant in his affidavit in support of the application for the warrant

to be issued was, therefore, ill-founded. In all the circumstances, however, I am satisfied that the second defendant did not act so rashly or recklessly that he can be held to have acted maliciously. The plaintiff's claim must, therefore, fail.

I, therefore, dismiss the plaintiff's claim with costs to be taxed if not agreed.

Action dismissed.