Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sinclair v. *Broughton and the Government of India, from the Court of the Commissioner of Lucknow and the Court of the Judicial Commissioner of Oude; delivered 23rd June* 1882.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR JOHN MELLOR.

This is an appeal brought in *formâ pauperis* by the Appellant, Mr. Edward D. Sinclair, by special leave of Her Majesty in Council, from a judgment of the Judicial Commissioner of Oude, dated the 19th November 1874, in a suit brought by the Appellant in the Court of the Civil Judge of Lucknow against the late Major-General Sir Henry Tombs, and also from a judgment of the Commissioner of Lucknow in the same suit.

The suit was commenced as far back as the year 1873, and was for the recovery of damages laid at Rs. 25,000, alleged to have been sustained by the Plaintiff in consequence of the Defendant's having put him under an unlawful arrest of European soldiers of Her Majesty's Royal Artillery, and having wrongfully confined him in his own premises for three successive days, viz., from the 1st to the 3rd of November 1872, and having caused violence to be used against his person and property. The

Plaintiff also complained that the Defendant, subsequently to the first step, viz., on Sunday the 3rd of November 1872, forcibly delivered the Plaintiff into the custody of the late Lieutenant Gubbins, the then Cantonment Magistrate.

The Defendant, who was the officer in command of the military cantonments in Lucknow, put in a written statement, and thereby alleged that at about 8 a.m. on the 1st November 1872 he was riding towards his house in cantonment, when he noticed a flag flying from the thatched roof of a house in which Plaintiff resided, and saw Plaintiff walking about in a very strange and excited manner; that on being informed by Mrs. Gully (wife of Captain Gully, of the Royal Artillery), who resided in the house opposite that of Plaintiff, that she was alarmed at the conduct of Plaintiff, and on being asked by Mrs. Gully for protection against the Plaintiff (Captain Gully being absent from the house), Defendant caused due inquiry to be made regarding Plaintiff, and, on information received by him, he directed two medical officers, Doctors Guthrie and Scott, to examine the Plaintiff as to his soundness of mind; and that the medical officers, on examination of the Plaintiff, considered it necessary to recommend that he should be kept under an European guard until they could form a decided opinion as to his sanity. He further stated that, in the absence of the Cantonment Magistrate from the station on the 1st and the 2nd November 1872, Defendant, as officer commanding the cantonments of Lucknow, and consequently in general control of the police employed in the military cantonments (see Act XXII. of 1864, Section 11), considered that he was bound and justified, in the interests of public safety, to act on the recommendation of the two medical officers aforesaid, and believing the Plaintiff to be dangerous, by reason of lunacy, actual or

impending, placed over Plaintiff a guard of unarmed European soldiers, to prevent him doing harm to himself and others. That the substitution of unarmed European soldiers for Native policemen was in accordance with the usual practice, in case of European lunatics, when European policemen are not available.

That on the return of Lieutenant Gubbins, the Cantonment Magistrate, to the station, on the 3rd November 1872, the Plaintiff was made over in due course to the said magistrate (Section 4, Act XXXVI. of 1858), to be dealt with according to law, and that Defendant was in no way concerned, nor could he be held responsible for any proceedings that might have taken place in the Court of the Cantonment Magistrate, or subsequently.

That Defendant acted throughout in perfect good faith, and in the interests of public safety, and that no violence was used by the Defendant's order, or at his request.

That the amount of damages claimed by the Plaintiff was excessive, with reference both to the Plaintiff's late position in life and the nature of the alleged wrong.

The case was tried in the first instance by the Civil Judge of Lucknow, who gave judgment for the Plaintiff, and assessed the damages at 3,000 rupees.

From that decree the Defendant appealed to the Commissioner of Lucknow, who upheld the decision, but reduced the damages to Rs. 300, and ordered the Plaintiff to pay the Defendant's costs on Rs. 2,700, the difference between the Rs. 300 and the sum awarded by the Civil Judge.

It appears that, on the morning of the 1st of November 1872, the Defendant, who was then the Commanding Officer of the Cantonment at Lucknow, having reason to believe that the

Plaintiff was a dangerous lunatic, caused him to be confined on his own premises under a guard of unarmed European soldiers of Her Majesty's Royal Artillery, and caused him to be soon afterwards visited and inspected against his will by Drs. Guthrie and Scott, in order to ascertain the state of his mind. Those gentlemen on the same day reported that, having carefully examined the Plaintiff, they did not consider themselves justified in giving a decided opinion on the case until it had been longer under their observation, and that they considered it necessary to recommend that the Plaintiff should be kept under a European guard until the case should be decided on. The Defendant in his written statement admits that he felt himself bound, in the absence of the Cantonment Magistrate, to act upon the recommendation of the medical officers, though he there states his case as if the recommendation had preceded the confinement, which was not the fact. However, the Plaintiff was kept under confinement from the 1st to the 3rd of the month, and the medical officers were ordered to visit him during his confinement, and did so, against his will.

The Defendant signed on the report a memorandum as follows:—

"Mr. Sinclair is a civilian, not belonging to the cantonments, and it is hard on the troops to have to furnish a guard over him. I hope, therefore, Drs. Guthrie and Scott will not be long in making up their minds.

"I believe Mr. Sinclair's late chum, 'Mr. Reid,' could prove the insanity at once.

"Dr. Cannon is quite willing to receive him, and it is my opinion then that he should be observed before being sent to Bhowanipoor and not in cantonments.

"Make the substance of this known to Dr. Guthrie.

"Mr. Sinclair must be subsisted by the Cantonment Magistrate."

It is clear that the District Magistrate, or the officer exercising the powers of the District Magistrate, would have had jurisdiction in the

case if the Plaintiff had been taken before him under Act 36 of 1858, Section 4. It is clear, however, from the memorandum signed by the Defendant, that he intended to keep the Plaintiff under the European guard until the medical officers could decide on the case, a detention which he was not authorized to inflict.

The report of the medical officers, with the memorandum thereon signed by the Defendant, was delivered to Captain Beadon, the Brigade Major, and on the following day, Saturday, the 2nd November, Drs. Guthrie and Scott forwarded a further report to the effect that they considered the Plaintiff perfectly sane, but that they recommended him to be placed under the observation of the Civil Surgeon (see the Commissioner's Judgment, p. 43, l. 30, and judgment of the Civil Judge, p. 38, l. 28). This recommendation, it must be observed, was quite in accordance with the opinion of the Defendant expressed in the memorandum on the first report of which he directed that the substance should be made known to Dr. Guthrie. The certificate is, unfortunately, not forthcoming, and has not been accounted for, but it appears from the evidence of Major Beadon, the Brigade Major, that he forwarded it on the 2nd to the Officiating Deputy Commissioner, with a docket, which was in the following terms:—

"No. 4,071. Lucknow Brigade Office, 2nd November 1872.

"Forwards medical certificate regarding Mr. Sinclair's state of mind, and to request that very early steps may be taken to remove him to the charge of civil surgeon.

"Mr. Sinclair is at present under restraint and in charge of a military guard.

"(Sd.) R. BEADON, Captain,
"Brigade Major.

"To the Officiating Deputy Commissioner, Lucknow."

In answer to that request Major Beadon received from the Deputy Commissioner the following communication :—

" No. 4,928, 2nd November 1872.

" To the Brigade Major, Lucknow.

" Sir,

" In reply to your memorandum, No. 4,071, dated 2nd instant, I have the honour to state that, the medical officers who have examined Mr. Sinclair, having reported him to be perfectly sane, I should not be justified in placing him under restraint, or under observation, against his will, of the civil surgeon. The law relating to lunatics is clear on this point, that a magistrate has no power to act against any person (under Act XXXVI. of 1858), unless that person has been declared by medical authority lunatic.

" 2. I therefore regret that I cannot comply with your request to move Mr. Sinclair to the charge of the civil 'surgeon.'

" 4. The Cantonment Magistrate will be directed to give attention to Mr. Sinclair's proceedings, and, should occasion require, to bind him over to keep the peace, *and consign him to custody should sureties not be forthcoming.*

" I have, &c.,

" (Sd.) R. H. DEMONTMORENCY,

" Officiating Deputy Commissioner."

" No. 4,929, 2nd November 1872.

" Copy of the foregoing forwarded to the Cantonment Magistrate, Lucknow, for compliance with reference to the last paragraph.

" (Sd.) J. H. PHILLIPS, Head Assistant for

" R. H. DE MONTMORENCY,

" Officiating Deputy Commissioner."

Major Beadon states his belief that he received that communication on Sunday, the 3rd of November, about 11 o'clock, but that, as he never did business on Sunday, he did not show the letter to the Defendant on that day, but did so on the following Monday.

The Plaintiff was not released from confinement either on the second report of the medical officers received by Major Beadon on the Saturday or on the receipt of the letter from the Deputy Commissioner, at about eleven o'clock on the Sunday. On that day, however, a

summons was issued by the Cantonment Magistrate directed to the Plaintiff, requiring him to appear at one o'clock on that day, to enter into his personal recognizance in 500 rupees, and two sureties in 250 rupees each, to keep the peace for six months. That summons was delivered to and treated as a warrant by Major Beadon, who forwarded it on the same day to the officer commanding the Royal Artillery, with a letter, of which the following is a copy :—

"Memorandum, No. Urgent.

"From the Brigade Major to the Officer commanding Royal Artillery, Lucknow, 3rd Nov. 1872.

"Has the honour to request that Mr. Sinclair, at present under a guard of the R.A., may be taken at once before the Cantonment Magistrate, in accordance with the enclosed warrant, when further orders will be given to the N. C. officer in charge as to his disposal.

"(Sd.) RICHARD BEADON, Captain, Brigade Major."

The Plaintiff was accordingly detained in confinement in his own house until about two or three o'clock in the afternoon, when he was taken by the European guard against his will before the Cantonment Magistrate, not to be dealt with as a dangerous lunatic, but in consequence of the summons, and was committed for want of bail. Subsequently the Colonel commanding the European Artillery addressed the following letter to the Defendant :—

"Lucknow, 3rd November 1872.

"Has the honour to report, for the information of the Major-General commanding, that Mr. Sinclair has been removed to the magistrate's office, as herein directed, but considerable delay has taken place in doing this, owing to Mr. Sinclair refusing to be removed, and refusing to put on his clothes.

"The bungalow in which Mr. Sinclair resided is not in charge of any servant, and there are several articles of his property there. A gunner has been left to the care of these things, as also two ponies supposed to be Mr. Sinclair's, till further orders are received as to their disposal.

"(Sd.) NEIL MACKAY, Colonel,

"Commanding R.A., Oude Division."

It was contended by the Defendant in his written statement that he was not liable for the

detention of the Plaintiff after he was made over to the Cantonment Magistrate, and the first two Courts very properly adopted that view. It does not appear, however, upon whose information and complaint the summons was obtained, and their Lordships cannot help remarking upon the great irregularity of the forcible execution of it as if it were a warrant. The Defendant, however, is not liable for any force used in compelling the Plaintiff to go before the magistrate.

Their Lordships must also point out that Colonel J. Reid, the Commissioner, in his judgment, has referred to several matters which do not appear in evidence (see Record, p. 48, line 37, to line 16, page 40). Their Lordships have, however, entirely rejected those statements from their consideration, and have not been in any manner influenced by them.

Sir Henry Tombs having died, the Administrator General of Bengal, as administrator of his estate, appealed to the Judicial Commissioner of Oude, who, on the 17th November 1874, held that an officer commanding in cantonments is vested within cantonments with all the police powers which a magistrate of a district may exercise within his district, and that as there was a duty imposed on the Defendant, as officer commanding in cantoments, to take action in consequence of his *bonâ fide* belief that Plaintiff was dangerous by reason of lunacy, actual or impending, and that as the action taken was in perfect good faith, and in performance of the duty thus imposed, the Defendant was not liable at law for damages in consequence of any wrong that might have been unintentionally done to Plaintiff.

It may be taken as a fact upon the evidence and upon the findings both of the Civil Judge and of the Commissioner that the Plaintiff was not, at the time when the acts complained of

were committed, a dangerous lunatic. At the same time, there can be no doubt that the Defendant acted *boná fide* in the discharge of a public duty, and under the belief that the Plaintiff was dangerous by reason of lunacy.

That belief might have justified the Defendant, who as commanding officer of the cantonment had the control and direction of the police, in directing proceedings to be taken by the police under the 4th section of Act XXXVI. of 1858, but it is clear that the Defendant did not proceed, or intend to proceed, under that Act.

The Commissioner in his judgment, referring to Acts XXII. of 1864 and XXVI. of 1858, says (p. 50) :—

"It is not alleged that the Defendant proceeded under either of the Acts above cited, or, indeed, under any particular law, but it is contended that he felt bound to take immediate steps himself, in the absence of the Cantonment Magistrate and the magistrate of the district, and that he acted as a sensible and considerate man, and that subsequent inquiry into the legality of his proceedings shows that they were justifiable by the law."

The Legislature has been careful in providing for the protection of lunatics, and it would be extremely dangerous if the doctrine enunciated by the Judicial Commissioner could be held to be law. He draws no distinction between a mistake in fact and a mistake in law, if *boná fide*. He says,—"The main point raised in the appeal "to this Court is one of principle, namely, when "a public officer, who is bound by his duty to "take some action, fully intending in good faith "to do what is right, makes a mistake and "causes wrong, is such officer liable to be "mulcted in damages by a Civil Court?" And he held that he is not. Again, he says,— "Holding, then, that there was a duty imposed "on the Defendant, as the officer commanding "in cantonments, to take action, in consequence "of his *boná fide* belief that the Plaintiff was

" dangerous by reason of lunacy, actual or im-
" pending, and that whatever action was taken
" was taken in perfect good faith, and in per-
" formance of the duty thus imposed upon him, I
" am of opinion that the Defendant was not
" liable at law for damages in consequence of
" any wrong that may have been unintentionally
" done to the Plaintiff. I am of opinion, there-
" fore that a verdict should have been given for
" the Defendant."

There is no law which authorizes the police or a magistrate in the exercise of police duties, or an officer in command of a cantonment, in consequence of a *bonâ fide* belief that a person is dangerous by reason of actual lunacy, to put him into confinement in order that he may be visited and examined by medical officers, and to keep him in confinement until such officers can feel themselves justified in reporting whether the person is a dangerous lunatic or not; *à fortiori*, this cannot be done in the case of a *bonâ fide* belief of danger from impending lunacy. The Defendant had no authority for causing the Plaintiff to be put under restraint for such a purpose, nor had he, after the report of the medical officers that the Plaintiff was perfectly sane, any colour of authority, for keeping him under restraint in order that he might be removed from the cantonment and placed under the observation of the civil surgeon, even though recommended so to do by the medical officers.

Neither the police nor a magistrate in the exercise of police duties could, under Act XXXVI. of 1858, have had any colour for doing that which the Defendant caused to be done.

The Appellant appeared in person, and argued his case with considerable ability.

The Respondent appeared by Counsel, who, amongst other arguments, contended that the Defendant was protected by Act XVIII. of 1850.

But there is no foundation for that contention. That Act was for the protection of judicial officers acting judicially and officers acting under their orders. It is clear that the Defendant was not a judicial officer, and that he did not act judicially. Mr. Woodroffe, one of the learned Counsel for the Defendant, cited many authorities, and amongst others, Calder *v.* Halket, 3, Moore's Privy Council Cases, 28, Spooner *v.* Juddow, 4, Moore's Indian Appeals, 353, Hughes *v.* Buckland, 15, Mees and Welsby, 346, and Fergusson *v.* Lord Kinnoul, 9 Cl. and Fin., House of Lords, 251, 290, but none of those authorities have any bearing upon the present case. He also referred to Lucas and Nockels, 4, Bingham's Reports, but there is a great distinction between that case and the present.

The Plaintiff has complained before their Lordships that he was not allowed by the Civil Judge to give his own evidence in chief on his own behalf, and that he was merely examined in the nature of cross-examination on behalf of the Defendant. It does not appear that the Judge refused to allow the Plaintiff to give evidence as a witness for himself; but, assuming that the Plaintiff is correct in his statement, the fact would be merely a ground of appeal from the Civil Judge, and such appeal is expressly excluded from the leave given by the order of Her Majesty in Council.

The Plaintiff is entitled to a decree, and the only question remaining is as to the amount of damages to which he is entitled. Their Lordships see no sufficient reason to alter the judgment of the Commissioner of Lucknow in that respect. They will therefore humbly advise Her Majesty to reverse the decree of the Judicial Commissioner, and also to reverse the judgment of the Commissioner of Lucknow as regards the order that the Plaintiff shall pay the costs on Rs. 2,700, being the difference between the Rs. 3,000

awarded by the First Court and the Rs. 300 awarded by the Commissioner, but to affirm the last-mentioned judgment in other respects. The Respondents must pay the costs of this appeal.