

1941

Present : Soertsz J.

VEERASINGHAM v. MEENATCHY.

462—M. C. Jaffna, 15,264.

*Public Servant—Surveyor employed by Fiscal—Obstruction to survey—Motive for obstruction—Penal Code, s. 183.*

A surveyor employed by the Fiscal to prepare a plan for the purpose of executing a Fiscal's conveyance in terms of section 286 of the Civil Procedure Code is a Public Servant within the meaning of section 183 of the Penal Code.

For the purpose of a conviction under the section the motive of the person obstructing is immaterial.

**A** PPEAL from a conviction by the Magistrate of Jaffna.

*P. Navaratnarajah*, for the complainant, appellant.

*M. Balasunderam*, for the accused, respondent.

*Cur. adv. vult.*

November 13, 1941. SOERTSZ J.—

This is an appeal, sanctioned by the Attorney-General, from an order made by the Magistrate of the Jaffna Court acquitting a person charged under section 183 of the Penal Code with obstruction to a public servant in the discharge of his public functions. The person obstructed was a

<sup>1</sup> 8 S. C. C. 135.

<sup>2</sup> 11 N. L. R. 226.

licensed surveyor. The occasion on which the obstruction took place was when on December 9, 1940, this officer went to survey a land which had been sold against the husband of the accused in execution of a decree of Court. The order confirming the sale is an exhibit in this case and is marked P 1.

The two questions that arise for decision are :—

- (a) was this surveyor a public servant acting in the discharge of his public functions ?
- (b) was he voluntarily obstructed ?

In regard to question (a), the uncontradicted evidence of the complainant is that he "went to the land in question on the orders of the Fiscal to make a survey and to prepare a plan for the purpose of executing a Fiscal's conveyance". He also testified to the fact that he has been 'registered' to carry out Fiscal's surveys and that he was given the order, confirming the sale, by the plaintiff's agent, who also paid him his fees for making the survey and the plan. Section 286 of the Civil Procedure Code provides for a conveyance by the Fiscal or Deputy Fiscal to the purchaser, and enacts that "in the event of there being no diagram or map of the premises which are the subject of the conveyance already appended to a title deed . . . thereof . . . there shall be annexed a sufficient map . . . and the purchaser shall pay in advance the expense of preparing it". Finally, the section provides that "such diagram or map shall be prepared by a competent surveyor licensed by the Fiscal or Deputy Fiscal for that purpose and such surveyor shall be an officer of the Fiscal within the meaning of section 325, and shall for the purposes of the Penal Code be deemed to be a public servant". It is quite clear, therefore, that the complainant was in the position of a public servant discharging public functions on this occasion.

The next question is whether the accused voluntarily obstructed him. On the evidence, it is quite clear that she did. She says she "asked the surveyor not to survey the land", but the surveyor's evidence is that she went further and held the chain and obstructed him from surveying the land and pushed out the plaintiff's agent who was with him. This is the more probable version and the Magistrate has impliedly accepted it. But he took the view that the accused was entitled to an acquittal because she was exercising rights on behalf of her minor son to whom the land in question had been conveyed prior to the decree entered in this case. This view of the Magistrate is erroneous. The motive of the person obstructing is immaterial. Section 183 of the Penal Code makes any voluntary obstruction an offence. The position of a person like the accused's minor son is safeguarded by the law. Section 328 of the Civil Procedure Code enables such a person to have his claim investigated. He has no right to prevent section 286 of the Civil Procedure Code taking its full course. Nor has any other person a right to do that in his behalf.

For these reasons, I set aside the order of acquittal and send the case for the Magistrate to enter conviction and to pass sentence. I would say that the case does not call for severe punishment.

*Set aside.*