

BOWES v. MEERA TAMBY.

1905.  
March 31.*P. C. Puttalam, 9,877.*

**Commissioner appointed under Partition Ordinance—Obstruction—Penal Code, s. 183.**

Obstruction to a person acting in pursuance of a commission issued to him by a Court under the provisions of the Partition Ordinance (No. 10 of 1863) is punishable under section 183 of the Penal Code.

• *Brodhurst v. Hendrick Sinno* (4 N. L. R. 213) dissented from.

IN REVISION.

**T**HE facts sufficiently appear in the judgment.

*H. A. Jayewardene*, for applicant.

*Van Langenberg*, for respondent.

31st March, 1905. LAYARD, C.J.—

The principal question raised in this matter in revision is as to the construction to be placed on section 183 of the Penal Code. It appears to me that the section was intended to meet the case of the voluntary obstruction of any public officer in discharge of his public functions, or any person acting under the lawful orders of such public servant, when such orders have been made by such public servant in the discharge of his public functions.

The wording of this section has been criticized by Bonser, C.J., in his judgment in the case of *Brodhurst v. Hendrick Sinno* (4 N. L. R. 213). I think that he has put a false construction on the words of section 183, and I find some difficulty in understanding how he could have arrived at the construction at which he did, in view of the language used by the Legislature in that section. To put the construction which Bonser, C.J., has put on the wording of the section, is to make entirely inoperative the words which were inserted by our Legislature in section 183, namely, the words "or any person acting under the lawful orders of such public servant."

It is true, as pointed out by Bonser, C.J., that they are not joined in the Indian Code, and it is also true that he found it difficult to give any meaning to them. At the same time the Legislature did insert them, and I consider that it is our duty to interpret them and to try to ascertain what it was the intention of the Legislature to meet. It appears to me that the Legislature meant to protect a public servant from obstruction when he was acting in the discharge

1905. of a public duty, and also to protect "any person acting under the  
March 31. lawful order of such public servant" when such order was made by  
LAYARD, C.J. a public servant "in the discharge of his public functions."

In the case actually before us the Commissioner was appointed by the District Judge in a partition suit, and he was purporting at the time he was obstructed to act in pursuance of the lawful orders of the District Judge, made by him in discharge of his duties as District Judge, and in conformity with the provisions of the Partition Ordinance. If my construction of the words used by the Legislature is correct, then the resistance offered to the Commissioner would, under the provisions of section 183 of the Penal Code, be an offence, and the persons resisting would be liable to the punishment provided by that section.

The Police Magistrate in the order now under revision has failed to determine one point which it was necessary to determine to render the action of the accused obnoxious to the provisions of section 183, namely, whether the Commissioner appointed by the District Judge, and directed to survey certain lands within certain limits, had wrongfully exceeded the limits of the land described in his commission, and so was not acting under the lawful orders of the District Judge, who appointed him Commissioner. We are asked in revision by the respondent to decide as to whether the Commissioner had exceeded his authority or not. I find it impossible to decide that question, and as I consider the order of the Magistrate was bad for uncertainty I think our order should be that the acquittal of the accused be set aside, and the case remitted to the Magistrate to determine whether the Commissioner was acting lawfully or without authority. On the case being returned to the Magistrate in the first instance we direct that he should send for the accused and point out to them that if they object to their land being included in the partition suit, they should take proceedings in that action itself and allow the Commissioner to continue his survey. In the event of the accused agreeing to that course, it will be unnecessary for the Police Magistrate to proceed any further in the matter. If however they should decline, he must decide as to whether the Commissioner exceeded the lawful orders given him by the District Judge.

MONCREIFF, J.—I agree.

MIDDLETON, J.—I agree.

