

1943

Present : de Kretzer J.

KIEL, Appellant, and MATHES APPUHAMY, Respondent.

659—M. C. Nuwara Eliya, 6,177.

*Obstruction to public servant—Surveyor employed by deputy fiscal under Village Community Rules—Penal Code, s. 183.*

Obstruction caused to a surveyor employed by the deputy fiscal to prepare a diagram or map under rules 59 and 60 of the Village Communities Ordinance is an offence under section 183 of the Penal Code.

**A** PPEAL from a conviction by the Magistrate of Nuwara Eliya.

F. A. Tisseverasinghe (with him P. Malalgoda), for complainant, appellant.

Cyril E. S. Perera, for accused, respondent.

*Cur. adv. vult.*

October 21, 1943. DE KRETZER J.—

The facts leading to this appeal are as follows :—Under writ issued by Village Tribunal a certain land was sold. The sale was confirmed and the deputy fiscal authorised the appellant to make a plan of the land. When he went to the land he was obstructed by the respondent. The learned Magistrate acquitted the respondent because he thought the appellant was not a public servant and therefore section 183 of the Penal Code did not apply. In this view he was wrong, for the section also refers to persons acting under the lawful orders of public servants. The complainant appeals with the sanction of the Attorney-General.

The issue of a fiscal's conveyance with a map or diagram annexed is provided for by rules 59 and 60 framed under the Village Communities Ordinance, to be found in Vol. III. of the Subsidiary Legislation of Ceylon. Mr. Perera argued that there was no authority in those rules justifying the deputy fiscal in employing a surveyor. I cannot agree. Rule 59 casts on the fiscal the duty of issuing a conveyance and entitles him to a fixed fee. Rule 60 casts on him the duty of attaching a map or diagram to the conveyance and on the purchaser all the expenses thereof and not a fixed amount. I can see no substantial difference between the provisions of section 286 of the Civil Procedure Code and rules 59 and 60; the former is more explicit but that makes no real difference. The fiscal cannot possibly make the map or diagram himself except by drawing some sort of imaginary figure on paper. The map or diagram is insisted on so as to make identification of the land conveyed easy. Such a map can be made by a surveyor alone. If the rough drawing were all that is required it would also be easy to fix the fee at once.

In my opinion, therefore, the deputy fiscal was well within his rights in getting the complainant-appellant to make the plan, and the latter was acting under the lawful orders of a public servant. The appeal is allowed on this point of law, and the case remitted to the Magistrate to proceed with the trial.

*Appeal allowed.*