

Present: Mr. Justice Middleton.

1906.
September 26.

PERIS v. MUNASINGHE et al.

P. C., Balapitiya, 28,961.

Authority of Government Agent to reuter—Delegation by reuter to a third party—Obstruction—Delegatus non potest delegare—Penal Code, s. 183—Criminal Procedure Code, s. 147.

The Government Agent had delegated to an arrack reuter authority to place locks on the doors of the storehouse of any licensed distiller in the Galle District under section 22 of Ordinance No. 10 of 1844. The reuter delegated his authority in writing to the complainant, who is manager of the arrack farm. The accused, having obstructed the manager in the performance of his work, was charged under section 183 of the Penal Code.

Held, the accused was entitled to be acquitted, as the reuter had no power to delegate his authority to the manager, and the latter could not therefore be said to have acted under the lawful orders of the Government Agent.

MIDDLETON J.—The maxim *delegatus non potest delegare* must be strictly applied, wherever the agency involves a trust or discretion in the agent for the exercise of which he is personally selected.

THE facts and arguments sufficiently appear in the judgment.

A. St. V. Jayewardene, for the accused, appellants.

Sampayo, K.C., for the complainant, respondent.

Cur. adv. vult.

26th September, 1906. MIDDLETON J.—

The accused were convicted under section 183 of the Penal Code, and appealed on the ground that the person whom it was alleged they had obstructed was not a person acting under the lawful orders of a public servant.

The Government Agent had delegated to an arrack reuter authority to place locks on the doors of the storehouse of any licensed distiller in the Galle District under section 22 of Ordinance No. 10 of 1844.

The reuter delegated his authority in writing to the complainant, who is manager of the arrack farm, Wellaboda pattu.

The complainant, it appears, showed accused the authority given by the Government Agent to the reuter, and asked permission to put on the locks, but was refused under circumstances which certainly amounted to obstruction, and this is admitted by counsel for the appellants.

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The maxim *delegata potestas non potest delegari* was relied on, and *Brodhurst v. Hendrick Sinno* (1) was quoted as analogous to this.

For the respondent it was contended that this case was distinguishable and that here complainant was not acting under delegated authority, but was carrying out the orders of the renter as if he had been present, and was acting under lawful orders.

The maxim in English Law has been held to apply strictly wherever the agency involves a trust or discretion in the agent for the exercise of which he is personally selected [*Ess. v. Truscott* (2), valuation by broker's clerk; *Bell v. Balls* (3), signature of contract for sale of real estate by auctioneer's clerk]. If the agency involves no exercise of discretion, and it is immaterial if it is done by one person or another, then it may in general be delegated: *Leake on Contracts*, p. 320, 4th edition; *Johnson v. Osenton* (4); *Brown v. Tombs* (5).

From the document B produced by the complainant it is clear he was acting under delegation from the renter.

I am of opinion that this is an agency which involves an exercise of discretion in the doing of the arbitrary acts which are put within the power of the Government Agent to do or cause to be done, and to avoid breaches of the peace should only be delegated to persons who would act discreetly and clearly under the direct authority of the Government Agent.

This, I think, was the intention of the Government Agent in giving authority to the renter, and I would hold that the maxim applies to this case, and that the renter could not lawfully delegate his authority to another.

Under these circumstances I think the complainant was not acting under the lawful orders of the Government Agent, and that this appeal must be allowed.

I understand from appellant's counsel that neither the sanction of the Attorney-General has been obtained nor was a complaint made by the Government Agent under section 147 of the Criminal Procedure Code previously to the institution of this case.

I set aside the conviction and acquit the accused.

(1) (1896) 4 N. L. R. 213.

(2) 2 M. and W. 385.

(3) (1897) 1 Ch. 663.

(4) L. R. 4 Ex. 107.

(5) (1891) 1 Q. B. 253.