

1906.
February 6.

Present: Mr. Justice Wood Renton.

RASAVASAGRAM v. SIWANDI.

P. C., Trincomalee, 2,693.

"Obstruct or impede"—Mere refusal—Absence of physical resistance—
Ordinance No. 3 of 1897, s. 6 (1).

Section 6 (1) of Ordinance No. 3 of 1897 enacts that "if any person without lawful authority or excuse (proof whereof shall lie on him),or if he obstructs or impedes or assists in obstructing or impeding any inspector or other officer appointed under this Ordinance, or any police officer, in the execution of any provision of this Ordinance, or of any regulation made thereunder, he shall be guilty of an offence against this Ordinance."

Where a person did not use any actual physical resistance, but repeatedly and distinctly, refused to allow the officer of the proper authority to execute his order—

Held, that the conduct of the person amounted to "obstruction" within the meaning of the above section, and was punishable under the section.

APPEAL by the complainant from an acquittal. The facts and arguments appear sufficiently in the judgment.

Bawa, for complainant, appellant.

Balasingham, for accused, respondent.

6th February, 1906. WOOD RENTON J.—

I have to deal with an exceedingly interesting question of law, and I commence by thanking counsel on both sides for the clearness and brevity with which they argued it. Section 6 of Ordinance No. 3 of 1897 provides that if any person without any lawful authority or excuse contravene any regulation made under the Ordinance, which deals *inter alia* with the segregation of cases of contagious diseases, "or obstructs or impedes" any officer acting under any such regulation, he shall be liable to a statutory penalty. Certain regulations have been made under this Ordinance, and of these No. 27 empowers the proper authority to cause persons who are suffering from smallpox, to be removed to some public hospital or other place provided by the Government. In the present case a man and a woman were suffering from smallpox, and the "proper authority" visits the house in which they are living, clearly conveys to the woman the fact that he is acting under a statutory regulation, and makes an order for the segregation of them both, under his statutory power.

It appears that no actual physical resistance was offered by the woman, who is the accused, to the execution of the order, but it is clear from the evidence that she repeatedly and distinctly refused to allow the officer of the proper authority to execute his order either as regards herself or as regards her husband. If the order was to be executed at all, it could only be executed by force, and it follows that the act of the woman was an act which rendered force necessary. Force was not in fact used.

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The question which I have to decide is, whether a person who behaves in this way does not "obstruct or impede" the discharge of the officer's duty. If we take the words "obstruct" or "impede" in their plain English meaning, it is clear that she does so, for she places an obstacle in his way, and that is "to obstruct" or "impede" him. His primary duty there is not to use force; it is to remove the patient, and that she prevents. I see no reason for placing on the words "obstruct" or "impede," as they occur in section 6 of Ordinance No. 3 of 1897, any other than their simple English meaning. It will be observed that our local Ordinance does not speak of "voluntary obstruction" a phrase which may have led the Indian Courts to their decisions in such cases as *Queen Empress v. Hussain* (1). It speaks simply of "obstructing" or "impeding," and the decision of Moncreiff J. in the case of *Davidson v. Lebbe* (2), seems to me to be practically on all fours with the present case. Each case must be decided on its own merits. I think, without attempting to lay down any general rule which may fetter the Courts in any subsequent cases, that if what I may call legal compulsion is present, if it is conveyed to a person in such a position as the accused, that the officer who seeks to remove the patient is acting under statutory authority which she is bound to obey, and if she exhibits not merely reluctance to comply with the order, but such a positive refusal to do so, that the order can only be carried out by physical violence, it is competent for a Court to hold, as I hold under the circumstances of the present case, that the person is guilty of a contravention of section 6 of Ordinance No. 3 of 1897. I set aside the judgment and acquittal and convict the accused of both the offences with which she is charged, and impose a fine of Rs. 10, being a fine of Rs. 5 on each of the two counts.

(1) 15 B. H. C. Rep. 718.

(2) (1902) 2 Broune 281.