

1906.
March 26.

Present: The Hon. Mr. A. G. Lascelles, Acting Chief Justice
and Mr. Justice Middleton.

THE MUNICIPAL COUNCIL, GALLE *v.* CASSIM.

P. C., Galle, 28,822.

"*Broker*"—*Person working for one employer—Licence—Ordinance No. 15 of 1889, ss. 13, 18.*

A person who works as broker for one employer only and does not offer his services, as such, to the public is exempt from the operation of section 18 of Ordinance No. 15 of 1889.

A PPEAL from a conviction under section 18 of Ordinance No. 15 of 1889.

The facts appear in the judgments.

Dornhorst, K.C., for the accused-appellant.

Bawa for the Council.

Cur. adv. vult.

26th March, 1906. LASCELLES A.C.J.—

This is an appeal from a decision of the Police Magistrate of Galle convicting the appellant under section 18 of Ordinance No. 15 of 1889, of carrying on trade or business as a broker without the licence required by the Ordinance. The appellant had previously been acquitted of this offence; but on appeal this Court set aside the acquittal in order to enable the Municipal Council of Galle to establish such facts as would elicit from this Court a decision which would be binding on them in future cases. The case came on before another Magistrate, who took a different view of the Ordinance and convicted the appellant. It was proved that the appellant was employed by Messrs. Clarke, Spence & Co. in the purchase of goods, principally coir yarn. The course of business was for the appellant to find and introduce to the firm dealers who were willing to sell. By way of remuneration the appellant received a commission of $\frac{1}{2}$ per cent. on purchases. He gave security to the firm for the advances made to dealers. He also acted as an interpreter to the firm. He was prohibited by the terms of his engagement from acting for any other firm or person. Many authorities have been cited to us to show what should be understood by the terms "broker" and "carrying on business," but I think the safest guide is to be found within the four corners of the Ordinance. The object of the Ordinance as declared in the preamble is to provide for the registration

and licensing of surveyors, and to prevent unlicensed persons from carrying on business as auctioneers or brokers. These three professions are obviously placed under control, because it was considered that the interests of the public require that they should only be practised by persons for whose fidelity and competence there should be some guarantee. The Ordinance is clearly one for the protection of the public. Section 13 provides that a licence is necessary for "carrying on trade or business of a broker" and the penal section—section 18—provides for the punishment of "every person whoshall carry on or attempt or profess to carry on trade or business as an auctioneer or broker without a licence." Reading these sections by the light of the preamble, I have no difficulty in arriving at the conclusion that the Ordinance is aimed at persons who offer their services as brokers to the public, and that it does not affect a person, such as the appellant, who works only for one employer, even though his duties are in some respects of the same character as those of brokers whose services are at the disposal of the public. I would set aside the conviction, and I think the appellant should be allowed costs.

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 A.C.J.

MIDDLETON J.—

Defendant was convicted, under section 18 of Ordinance No. 15 of 1899, of carrying on the business of a broker, without having obtained a licence and sentenced to pay a fine of five rupees and in default seven days' imprisonment. The facts of the case were that the accused was in the sole employment of Messrs. Clarke, Spence & Co. at Galle, and his business was to negotiate the purchase of goods for the firm, to act as interpreter between the firm and the vendors, for which services he received a commission on the purchase money. The accused was also held responsible for advances, if paid direct to the dealers. It was contended on behalf of the respondent Municipality that in so doing the accused carried on business as a broker so as to render it obligatory on him to obtain a licence. It was argued that although the accused might only be acting in the exclusive employ of Messrs. Clarke, Spence & Co., yet his doing so involved the carrying on business as a broker within the meaning of the Ordinance, and respondent's counsel relied upon *Smith v. Anderson* (1). The object of the Ordinance appears to me to be to guard the public from impositions on the part of irresponsible persons purporting to carry on the business of brokers, surveyors, and auctioneers within municipal limits, and not to obtain a revenue for the Municipal Council. According to Lord Blackburn

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in his book on the Contract of Sale, page 81, quoted by Lord Hannen in *Mollet v. Robinson* (1), and referred to by Mr. Dornhorst, a broker for sale is "a person making it a trade to find purchasers for those who wish to sell, and vendors for those who wish to buy, and to negotiate and superintend the making of the bargain between them." In the present case the accused is simply and solely employed by Messrs. Clarke, Spence & Co. to find sellers to them of goods. He carries on no independent trade "to find purchasers for those who wish to sell and vendors for those who wish to buy," but simply acts as a buyer and intermediary in the exclusive employment of one person. My view in such action does not amount to the carrying on of the business of a broker within the contemplation of the Ordinance, and—applying the definition of Lord Blackburn—I am inclined to hold that he is not, in fact, a broker. In my opinion, therefore, the conviction should be quashed and the accused acquitted. The appellant to have his costs.

