

1931

*Present: Maartensz A.J.*

DE ZOYSA v. WIMALASURIYA et al.

151-2—P. C. Balapitiya 16,258.

*Process server—Executing process outside division—Resistance to officer—  
Fiscals' Ordinance, No. 4 of 1867, s. 8.*

A person licensed to serve and execute process in the division of a district has no authority to execute a process outside his division.

**A** PPEAL from a conviction by the Police Magistrate of Balapitiya.

N. E. Weerasooriya, for appellant.

Amarasekera, for respondent.

September 28, 1931. MAARTENSZ A.J.—

The two accused in this case, A. S. Wimalasuriya and George Jayasekere, appeal from a conviction under section 181 of the Penal Code. They were convicted of offering resistance to and preventing R. D. G. de Zoysa of Madampe, a Fiscal's Arachchi, from taking certain movable property seized in possession of the first accused in execution of a writ issued in case No. 29,234 of the District Court of Galle, against the first accused.

The accused have appealed both on the law and on the facts.

I am not prepared to interfere with the learned Magistrate's finding on the facts.

The objection to the conviction on the law is that R. D. G. de Zoysa had no authority to execute the writ in the division of Elpitiya.

R. D. G. de Zoysa was on March 29, 1922, appointed a Fiscal's Arachchi "in and for the ———— Madampe in Wellaboda pattu of the Galle District" by the Government Agent of the Western Province (P 8).

The blank before the word "Madampe" should according to de Zoysa's evidence, be filled up with the words "division of".

The writ in question was executed at Elpitiya, which is not in the Madampe division.

The question for decision is whether de Zoysa had authority under his licence to execute the writ in Elpitiya.

The licence (P 7) issued to him on July 2, 1931, after the offence was committed, cannot be given retrospective effect.

The question turns on the effect to be given to the document P 2 which is as follows :—

General Order to Headman about writs.

Writ No. 29,234, D. C., Galle.

To the Fiscal's Arachchi of Madampe.

You are hereby ordered to execute the above writ as specified hereinbelow and to report the fact before the 20th instant.

You should demand from the defendant in the writ bearing the above number the amount of the writ, and if he fails to pay the same, then seize the properties which belong to the defendant and will be pointed out by the plaintiff coming with this (order).

(Sgd.) E. F. EDIRISINGHE,  
Deputy Fiscal.

December 4, 1930.

Plaintiff : K. P. Periya Nadar.

Defendant : A. S. Wimalasuriya of Elpitiya.

The name of the defendant as of Elpitiya below the line is endorsed on the back of the original. There is nothing to show that it was endorsed by the Deputy Fiscal.

It was contended (1) that P 2 was not an authority issued under the proviso to section 8 of Ordinance No. 4 of 1867, and (2) that in any event it had no legal effect as the signature of the Deputy Fiscal was affixed to it by a rubber stamp.

Process servers for the execution and service of process must be licensed by the Fiscal under the provisions of section 8 of the Fiscals' Ordinance, 1867, which enacts that—

For the service and execution of processes issued by the Courts in the Island the Fiscal shall licence as many process servers for each district as shall appear to him to be necessary, and the licences to be issued by him shall be substantially in the form E. to the schedule hereto annexed. The Fiscal shall also have authority to revoke any licence granted by him whenever it shall appear to him necessary to do so; provided that it shall be lawful for the Fiscal or Deputy Fiscal to appoint, by writing under his hand, any person to execute process in any particular case”.

The prescribed form is as follows :—

I, \_\_\_\_\_ Fiscal for the \_\_\_\_\_ Province, do hereby licence \_\_\_\_\_ to act as Process Server for the district of \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_ 19—

A. B.,  
Fiscal.

The document P 8 which is signed by F. Bartlett as Government Agent, not as Fiscal, is not a licence contemplated by the Ordinance.

R. D. G. de Zoysa was licenced (P 6) to act as Fiscal's Officer for the division of Akurale of Madampe on probation for six months in October, 1916. He says he was subsequently confirmed but has lost the licence and is unable to produce a certified copy of it as no copy was kept in the office.

De Zoysa is strictly speaking unable to prove that he is a licensed process server at all. But for the purpose of my decision I shall assume that he had a licence for the division of Madampe.

It appears from the evidence of de Zoysa that the practice is to licence process servers for divisions of a district instead of for the whole district as contemplated by the Ordinance.

A person licensed to serve and execute process in a division of a district clearly has no authority to serve and execute processes outside his division. De Zoysa can only derive authority to execute the writ in question in Elpitiya from the document P 2.

Mr. Amarasekera, who said he represented the writ holder and not the Fiscal's Officer, R. D. G. de Zoysa, contended that by P 2 de Zoysa was appointed by the Deputy Fiscal to execute the process in case No. 29,234 of the District Court of Galle.

I am unable to sustain this contention. P 2 does not purport to be an appointment under the provisions of the proviso relied on. The heading “General Order to Headman about writs” negatives any such idea. It is, so far as I can see, the usual letter sent with a writ to a Fiscal's Order to whom it is entrusted for execution.

R. D. G. de Zoysa therefore had no authority to execute the writ in Elpitiya division and the accused cannot be convicted of the offence with which they were charged.

I allow the appeal and acquit the accused.

*Set aside.*