

A PPEAL from an acquittal by the Police Magistrate of Kandy.

The accused in this case was charged with obstructing a public servant (a surveyor) in the discharge of his public functions in surveying a land. The Police Magistrate discharged the accused on the ground that the authority to survey the land was signed by the Additional Deputy Fiscal instead of the Fiscal or his deputy as required by section 286 of the Civil Procedure Code. The complainant appealed with the sanction of the Attorney-General.

N. E. Weerasooria, for plaintiff, appellant.

June 18, 1930. JAYEWARDENE A.J.—

The accused was charged with obstructing a public servant, a surveyor, in the discharge of his public functions in surveying a land and also with criminal intimidation and insult. At the close of the case for the prosecution, the learned Magistrate acquitted the accused holding that the authority to survey the land was signed by the Additional Deputy Fiscal and not by the Fiscal or Deputy Fiscal, as required by section 286 of the Civil Procedure Code. Under that section a surveyor licensed by the Fiscal or Deputy Fiscal is to be deemed a public servant. The complainant has appealed with the sanction of the Attorney-General.

1930

Present : Jayewardene A.J.

MISSO v. SELLAPAH.

373—*P. C. Kandy*, 31,686.

Public servant—Obstructing surveyor licensed by Additional Deputy Fiscal—Civil Procedure Code, s. 286.

An Additional Deputy Fiscal has the powers vested in the Deputy Fiscal, under the proviso to section 286 of the Civil Procedure Code, to issue a licence to a surveyor to prepare a survey for the purpose of a fiscal's transfer.

¹ (1859) 3 *Lorensz* 234. ² (1877) *Ram*. 379.

³ (1899) 3 *Browne* 331.

Under section 286 of the Code 2 of 1889, as it originally stood, only the Fiscal had the power to licence a surveyor to prepare a diagram or map to be annexed to a fiscal's conveyance, and it was held in *Deputy Fiscal, Kalutara v. Mayo Nona*¹ that the Deputy Fiscal did not have the same power. The case of *Deputy Fiscal v. Babahamy*² is to the same effect. The section of the Code was amended by Ordinance No. 14 of 1907,

¹ (1906) 8 *N. L. R.* 348.

² (1902) 3 *Browne* 90.

and the words "Deputy Fiscal" were added after the word "Fiscal," and a surveyor licensed by the Fiscal or Deputy Fiscal was for the purposes of the Ceylon Penal Code to be deemed to be a public servant.

In this case the authority is signed by "A. Ranasinghe, Additional Deputy Fiscal, Kandy." The question is whether the Additional Deputy Fiscal has the same powers as the Deputy Fiscal under section 286 of the Civil Procedure Code. Under the Indian Code of Criminal Procedure, s. 31, the powers of a Sessions Judge and an Additional Sessions Judge are limited under section 10. An Additional Police Magistrate is to be deemed subordinate to the Magistrate for certain purposes.

Under section 32 an Additional Sessions Judge can exercise all the powers of a Sessions Judge in revision and on reference. To take a familiar example, an Additional Police Magistrate or District Judge in Ceylon has all the powers of a Police Magistrate or District Judge and it has never been contended that such an officer has only limited authority or jurisdiction to do any act or make any order under our Codes. In the absence of any limitation of his authority an additional officer would have the same powers as the officer holding the substantive post. He is an added officer enjoying the same rights, privileges, and immunities.

The powers of the Additional Deputy Fiscal are not limited in any way, and he had the same authority as the Deputy Fiscal to issue the necessary licences to the Surveyor. The complainant was thus a public servant and resistance to him was punishable.

I set aside the acquittal and send the case back to the Magistrate to complete the trial in due course.

Set aside.