

Present: Drieberg J.

1928.

RODRIGUESZ *v.* KIRI MENIKA.

711—*P. C. Kandy, 23,441.*

*Public servant—Government surveyor acting without authority—
Unlawful obstruction—Land Acquisition Ordinance, 1876—Penal
Code, s. 183.*

Where a Government surveyor proceeded to exercise the powers contained in section 4 of the Land Acquisition Ordinance No. 3 of 1876, without the authority of the Surveyor-General,—

Held, that the obstruction offered to the surveyor was not unlawful.

A PPEAL from an acquittal from the Police Court of Kandy.

Loos, for complainant, appellant.

Rajapakse, for accused, respondent.

June 12, 1928. DRIEBERG J.—

The appellant is a Government surveyor, who was resisted by the respondent when he was about to survey a land. It was sought to acquire this land for a public purpose, and an order (P 3) had been issued by His Excellency the Governor to the Surveyor-General under section 4 of the Land Acquisition Ordinance, 1876.

The appellant received instructions (P 1) from Mr. Davies, Assistant Superintendent of Surveys, to survey the land, and as the respondent objected to the survey the appellant was directed to issue a notice to the respondent on what is referred to as Form 178 (P 5). This form is intended to meet the requirements of the proviso to section 4 of the Ordinance.

On April 21, 1927, the appellant, when he was about to survey the land, was resisted by the respondent. The learned Police Magistrate has accepted the evidence of resistance, but he was of opinion that section 4 of the Land Acquisition Ordinance required that the appellant should have been authorized by the Surveyor-General to make the survey and that there was no proof that he was so authorized. He acquitted the respondent, and the appellant has brought this appeal.

Mr. Loos, for the appellant, contended that the words "authorized by the Surveyor-General" applied only to "any surveyor," and not to any officer of the Surveyor-General's Department. In my

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opinion the learned Police Magistrate has taken the correct view of this section, and it was necessary for the appellant to prove that he had the authority of the Surveyor-General to enter the land and survey it. Section 4 does not state the form or nature of the authority required.

The appellant undoubtedly was authorized by the Assistant Superintendent of Surveys to make the survey. A letter of July 22, 1927 (P 4), by the Surveyor-General to the Superintendent of Surveys, Kandy, was put in evidence. In this the Surveyor-General refers to orders issued by him to the Superintendent of Surveys, Kandy, to make the survey. Now, this letter was written after the resistance, and there is no proof of such orders. If the Surveyor-General had directed the Superintendent of Surveys or his Assistant to have the survey made by the appellant or any other officer of his department whose duty it was to make such surveys, and if the Superintendent or Assistant Superintendent of Surveys acting under those directions had entrusted the work to the appellant, it could have been contended that the appellant had the authority of the Surveyor-General to make the survey. But no such evidence was led, nor was there proof of a direct authority to the appellant by the Surveyor-General, and the charge necessarily failed.

The appeal is dismissed.

Appeal dismissed.

