1939 *Present :* **Soertsz A.C.J.**

POLICE SERGEANT, HAMBANTOTA *v.* SIMON SILVA.

356—M. C. Hambantota 5,587.

Obstructing public servant—What constitutes voluntary obstruction—Physical force unnecessary—Penal Code, s. 183 (Cap. 15).

A threat used to prevent an officer from performing his duty would amount to voluntary obstruction within the meaning of section 183 of the Penal Code.

Whether force is used or not, there is voluntary obstruction when that is done which can reasonably be regarded as hindering or being likely to deter an officer from discharging his duty.

Fernando v. Alim Marikar (*1 C. A. C. 173*) and *Hendrick v. Kirihamy* (*12 N. L. R. 28*) referred to.

APPEAL from a conviction by the Magistrate of Hambantota.

M. M. K. Subramaniam (with him *C. J. Seneviratne*), for the accused, appellant.

D. Janszé, C.C., for the plaintiff, respondent.

Cur. adv. vult.

[1] *(1897) 1 Q. B. 772.*

July 24, 1939. SOERTSZ A.C.J.—

The charge preferred against the accused-appellant was that he "did . . . on April 11, 1939, voluntarily obstruct a public servant, to wit . . . . examiner of weights and measures, in the discharge of his duties and thereby committed an offence punishable under section 183 of Chapter 15, Volume I." of the Legislative Enactments. This charge was laid in the terms of the section referred to which reads as follows: "Whoever voluntarily obstructs any public servant or any person acting under the lawful orders of such public servant in the discharge of his public functions shall be punished . . . ."

The facts on which this charge was based are these: B. T. Jamion, an examiner of weights and measures, whom, it is clear, the accused knew as such, visited the Green Market in Hambantota on April 11, 1939, and detected some false measures in the provision stall of one D. C. Jayaweera. The accused came up and claimed one of those measures saying he had lent it to Jayaweera. The examiner took charge of it and scaled it in the presence of the Vidane Arachchi. Later in the day, the examiner went to the boutique of the accused and intimated to him that he "wanted to search for the weights and measures", obviously meaning the weights and measures the accused kept in his boutique. The accused "said he has no weights and measures in his boutique". The examiner said he "did not believe him" and "must search". The Vidane Arachchi was with the examiner at the time. The accused threatened the examiner and the Vidane Arachchi saying "he would know what to do if he searched the boutique". The examiner says, "we could not search as the man was *obstructive and boisterous. I anticipated trouble if I used force*". That is the evidence of the examiner. The Vidane Arachchi's evidence is to the same effect. "The accused said if the premises are searched, you know what will happen." The Vidane Arachchi also says that the accused wanted to see "the authority" and would not allow a search until he saw it and that the accused said "if you want to search the house please bring the police". Another witness Nikulas corroborates the evidence of Jamion and the Vidane Arachchi. The accused gave no evidence himself. He called a witness, who was, by no means, impressive. The learned Magistrate accepted the version given by the witnesses for the prosecution, and convicted the accused and sentenced him to pay a fine of Rs. 15, in default two weeks' simple imprisonment.

In view of the punishment imposed, the accused had no right of appeal on the facts, and the appeal is preferred on a question of law. The question submitted is whether assuming the facts to be as stated for the prosecution, there was "voluntary obstruction" in the meaning of those words in section 183. It was contended that there was no more than a "verbal refusal to allow the public servant to perform his duty", and that that "does not constitute voluntary obstruction within the meaning of the section under which this charge was laid". The words I have quoted occur in the judgment of Lascelles C.J. in *Fernando v. Alim Marikar*[1]. In that case the facts were as follows: A sanitary Inspector in the course of his perambulations encountered the accused who "had onions

[1] *1 C. A. C. 173.*

in a box on the drain". He told "the accused to remove them. The accused refused". The Inspector "bent to take the box". The accused "prevented him from taking the box. The accused abused him in indecent language". Lascelles C.J. commenting upon the evidence said, "the evidence is that the accused did no more than refuse to allow the complainant to remove the box, and that there was an altercation between the two. A mere verbal refusal to allow a public servant to perform his duty does not constitute voluntarily obstructing within the meaning of section 183. *There must be some overt act done or physical means used*". Now, in my opinion, a proposition like that must not be taken at large, but with reference to the facts of the case, I agree with the conclusion to which Lascelles C.J. came when he acquitted the accused. There was no evidence to show what right the Sanitary Inspector had to demand the removal of the box from where it was. If he had no such right, he was acting beyond the scope of his public functions when "he bent to take the box", and the accused was justified in defending his property against an invasion of his right to it. In the circumstances he could not be said to have been resisting a public officer but defending his own property. I should have preferred to base the order for acquittal in that case on that view of the matter. Perhaps, Lascelles C.J., was saying the same thing in a different way. But if he was not, and if he meant to say that "a mere verbal refusal to allow a public servant to perform his duty does not constitute 'voluntarily obstructing'" and that "there must be some overt act done or physical means used", is a legal proposition that applies universally, I must say, with great respect, that I cannot agree. Lascelles C.J. relied on the decision in *Hendrick v. Kirihamy*[1] in which Hutchinson C.J. held that where a constable went with a search warrant to search the accused's house for fermented toddy, and the accused refused to allow such a search, and went inside the house and picked up a pot of toddy and spilt it over the hearth, the conduct of the accused did not amount to obstruction within the meaning of section 183 of the Penal Code. There are two aspects of obstruction in that case, (1) the accused saying he will not allow a search without the village headman being present and (2) his spilling the contents of the pot over the hearth. Hutchinson C.J. said, "the mere saying that he would not allow him to search *without doing anything more* is not an obstruction; and the spilling of the toddy *was certainly not an obstruction*". I am not concerned in this case with what Hutchinson C.J. said in regard to the second aspect of the obstruction alleged in that case. But, if I may say so with respect, the acquittal of the accused in respect of the first aspect of obstruction in that case, was right on the facts as established, because the accused merely said he would not allow a search and did nothing more than go inside the house. He did nothing to prevent a search. He only took steps to see that the search would prove abortive. That is a different matter and does not concern us in this case. When the accused said he would not allow the police constable to search without the village headman being present, and went inside the house and spilt the toddy, he was doing nothing to deter the police constable from entering the

[1] *1 C. A. C. 105 also 12 N L. R. 28.*

house, but was really resorting to an expedient for going inside the house and removing traces of guilty possession, by spilling the toddy. So far as the spilling of the toddy is concerned, whether that amounts to an obstruction or not is another question. But I am not concerned with it in this case. On that point Hutchinson C.J. and Wood Renton C.J. have taken opposite views. The only question here is whether "a verbal refusal" to allow a search can never amount to an obstruction. In *Hendrick v. Kirihamy* (*supra*) Hutchinson C.J., as I have pointed out, took the view that it did not in the circumstances of that case, and as I have said, on the facts of that case the verbal refusal did not, in my opinion too, amount to an obstruction.

In *Lourenz v. Jayasinghe*[1] Wood Renton C.J. said he agreed with that view of Hutchinson C.J. as expressed in that case and acquitted the accused in the case before him because "the obstruction offered by the accused to the Sanitary Inspector was purely verbal". The facts as stated in the report of *Lourenz v. Jayasinghe* are too meagre to enable me to say in what circumstances Wood Renton C.J. made the observation I have quoted, but I repeat again that I do not agree with that proposition if it is meant as a general statement of the law. In the very cases cited by Wood Renton C.J. in *Lourenz v. Jayasinghe*, namely, *Bastable v. Little*[2] and *Betts v. Stevens*[3], when Ridley J. stated in the former case "I think that in order to constitute an offence under this section (*i.e.*, wilful obstruction), *there must be some interference by physical force or threats*", Darling J. said "I should desire to reserve my opinion whether the respondent had committed an offence under the section, although no physical obstruction of the police constables in the execution of their duty had taken place", and Alverstone L.C.J. added as a note to his judgment "I also would wish to guard myself from saying that the only obstruction contemplated by this section is a physical obstruction". In the later case Lord Alverstone, Lord Darling, and Bucknill JJ. acted on the footing that physical obstruction was not necessary.

In the case before me, the facts bring it even within Ridley J.'s view that *threats used to prevent* an officer performing his duty would amount to voluntary obstruction. There is ample proof that the accused in this case used threats. He was clearly threatening when he said "you know what will happen if you search" and "that he knew what to do if the examiner searched the boutique". The evidence also establishes that the accused was "boisterous" at the time and that the examiner feared that force might be used and refrained from the proposed search. But, as I have pointed out, the other Judges who took part in the two cases took the view that a verbal refusal to allow a person to perform his duty would suffice apart from threats provided it was a refusal conveyed in terms that indicate that the officer would have to use force if he proceeded to put his intention to search into execution. That surely must be so if one regards the plain meaning of the word obstruct. In the Oxford Dictionary "obstruct" is stated to mean *inter alia* "to stand in the way of or persistently oppose the progress of or course of (proceedings

[1] *S. C. Min. July 20, 1906.*
355 P. C. Ratnapura, 3,948.

[2] *(1907) 1 K. B. 59.*
[3] *(1910) 1 K. B. 1.*

or a person or thing in a purpose or action), to hinder, impede, retard, delay, withstand, stop", and by way of illustration there is this quotation from Froude "he had *obstructed* good subjects, who would have done their duty, had he allowed them". On the day in question, those were exactly the relations and reactions between the accused and the examiner of weights and measures. In *Borrow v. Hooland*[1] a householder who refused to let the scavenger enter into his house to remove refuse—the scavenger acting under the orders of the County-Council—was held "wilfully to obstruct" the scavenger. This is the view Wood Renton C.J. himself took in *Rasavasagram v. Siwandi*[2], and I cannot at all follow the distinction he sought to draw in the course of his comment in *Lourenz v. Jayasinghe* (*supra*) by pointing out that in the earlier case the words he was interpreting were "obstruct and impede" and in the case before him, there was only the word "obstruct". It seems to me that if the accused in *Rasavasagram v. Siwandi* was guilty of "obstructing and impeding" by doing what she did, she certainly would have been guilty of "obstructing" if that was the charge against her, for the greater includes the less. But in truth, there seems to be no difference so far as language is concerned between "obstruct" and "obstruct and impede" except perhaps that there is greater rhetorical quality in the tautology of the latter. In the quotation I have made from the Oxford Dictionary, vol. VII., "Obstruct" is stated to mean "impede" *inter alia*.

I will refer to one more case, *Davidson v. Rahiman Lebbe*[3]. In that case Moncreiff J. said "Mr. Bawa argued that something like force was necessary to meet the words of the section . . . . and that it was necessary to show something more than passive resistance. The case in *4 N.L.R. 151* is sufficient to show that force was not necessary . . . . For my part, I think that it is not possible to lay down any hard and fast rule upon the subject . . . . It seems to me that the question is one of circumstances and that there is voluntary obstruction, whether force is or is not used, when that is done which can reasonably be regarded as hindering or being likely to deter an officer from "discharging his duty".

If I may respectfully say so, that is my own view of the law ; and on the facts of this case, it is abundantly clear that the accused was rightly convicted.

In my opinion, the accused acted very defiantly and the sentence imposed is, I think, out of proportion to his offence. At one stage, I contemplated a sentence of imprisonment, but as there is nothing against the accused, I refrain from sending him to prison. I alter the fine to one of Rs. 30 in default one month's rigorous imprisonment.

Affirmed.

[1] *74 L. T. 787.*

[2] *9 N. L. R. 88.*

[3] *2 Br. 281.*