

COMMISSIONER OF POLICE v. BITTAR

SUPREME COURT (Smith, C.J.): April 13th, 1950
(Cr. App. No. 4/50)

[1] Constitutional Law—Governor—Deputy Governor—powers must be specified and limited under Letters Patent—authority to exercise all powers vested in Governor sufficient limitation: While art. XIX of the Letters Patent of the Governor and Commander-in-Chief requires that the Governor's Deputy shall only exercise such powers and authorities as are specified and limited by the instrument of appointment, there is nothing to prevent the instrument authorising the Governor's Deputy in wide terms to exercise all powers and authorities vested in the Governor himself (page 34, lines 12-18). 5
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The appellant was charged in a police magistrate's court with an offence under the Immigration Restriction Ordinance (*cap.* 106). 15

He was convicted and appealed to the Supreme Court. On appeal, the sole question to be decided was whether the instrument which appointed the Deputy Governor conferred powers which were so wide and general that they did not comply with the requirements of art. XIX of the Letters Patent of the Governor and Commander-in-Chief. 20

Legislation construed:

Letters Patent of the Governor and Commander-in-Chief (Laws of Sierra Leone, 1946, vol. IV), art. XIX: 25

"Whenever and so often as the Governor is temporarily absent . . . [he] may by an instrument under the Public Seal of the Colony appoint any person or persons to be his Deputy or Deputies within any part or parts of the Colony during such absence, and in that capacity to exercise, perform, and execute for and on behalf of the Governor during such absence, but no longer, all such powers and authorities by these Our Letters Patent or otherwise vested in the Governor as shall in and by such instrument be specified and limited, but no others." 30

R.B. Marke and R.W. Beoku-Betts for the appellant; 35
Benka-Coker, Ag. Sol.-Gen., for the respondent.

SMITH, C.J.:

This is an appeal against a conviction under the Immigration Restriction Ordinance (*cap.* 106). Five grounds of appeal were originally filed and a sixth ground was subsequently added. Learned 40

counsel took the first two grounds together and they were the only ones that were seriously argued.

5 As a result of the arguments put forward, and in view of the wording of art. XIX of the Letters Patent of the Governor and Commander-in-Chief the court, in exercise of its powers under the Appeals from Magistrates Ordinance (*cap.* 14), s.17, decided to call further evidence and the instrument dated February 3rd, 1949 appointing Mr. Stoddart as the Governor's Deputy was produced. That document, as far as it is material to this case, reads: "[A]nd
10 in that capacity to exercise, perform and execute . . . all powers and authorities . . . vested in the Governor."

This evidence forced learned counsel to adopt the somewhat attractive, but to my mind quite fallacious, argument that the powers conferred by the instrument were so wide and general that they did not comply with art. XIX of the Letters Patent, which requires that
15 the powers and authorities to be exercised by the Governor's Deputy shall be such "as shall in and by such instrument be specified and limited, but no others." In my opinion all the grounds of appeal fail and the appeal must stand dismissed.

20 *Appeal dismissed.*

BASMA *v.* WEEKES and THREE OTHERS

25 JUDICIAL COMMITTEE OF THE PRIVY COUNCIL (Lord Simonds, Lord MacDermott, Lord Reid, Sir John Beaumont and Sir Lionel Leach):
May 3rd, 1950
(P.C. App. No. 45/1948)

30 [1] **Agency—duties and liabilities of agent—liability in contract—agent contracting in own name liable even if existence of principal disclosed:** An agent who contracts in his own name does not cease to be contractually bound because it is proved that the other party knew when the contract was made that he was acting as agent for another; but in such a case the other party is entitled to sue either the
35 agent or the principal at his election (page 42, lines 7–11; page 44, lines 8–19).

[2] **Agency—duties and liabilities of agent—liability in contract—evidence admissible to show party signing memorandum contracted as agent if memorandum not contradicted:** Evidence is admissible to show
40 that a party named in an agreement or memorandum of sale was acting as agent for an unnamed party, and this is so whether or not the agreement is one required to be evidenced in writing by the