1933 *Present :* **Drieberg J.**

JAMEL *v.* HANIFFA.

831—P. C. Batticaloa, 55,324.

Public servant—Causing hurt to a Sanitary Inspector—Penal Code, s. 19.

The Sanitary Inspector of a Local Board is not a public servant within the meaning of section 19 of the Penal Code.

APPEAL from a conviction by the Police Magistrate of Batticaloa.

R. L. Pereira, K.C. (with him *Kariapper*), for accused, appellant.

Pulle, C.C., for respondent.

[1] *(1902) 3 Browne 5.*

[2] *(1920) 2 C. L. Rec. 15.*

March 14, 1933. DRIEBERG J.—

The Sanitary Inspector of the Local Board of Batticaloa noticed in the garden of a house offal and fresh goat's dung which suggested to him that goats had been slaughtered there. He entered the garden and saw the carcases of three goats hanging in the house and a hand balance and a pair of scales. He was of opinion that an offence against the by-laws had been committed, the goats having been slaughtered in an unauthorized place and a sale there being contemplated. He was not sure as to what action he could take and he sent someone for the police. In the interval the appellant, who is a licensed butcher, came there and asked him to overlook the matter and take no action. This, I take it, is what the Inspector means when he says that the appellant asked him to excuse him. The Inspector declined to do so and the appellant lost his temper, pulled the notebook from the Inspector and threw it away and struck him. The Inspector ran away and he says the appellant threw a brick at him.

The appellant was charged and convicted on three counts. The first was of causing hurt to a public servant in the discharge of his duty with intent to deter him from discharging his duty (section 323 of the Penal Code). The second charge was of assaulting or using criminal force on a public servant with intent to deter or prevent him from discharging his duty (section 344 of the Penal Code). The third charge was under section 314 of voluntarily causing hurt, this offence having no reference to the capacity in which the Inspector was acting. The accused was sentenced to one year's rigorous imprisonment on each of the first two counts and to two months' rigorous imprisonment on the third, sentences to run concurrently.

If the Sanitary Inspector is not a public servant as defined in section 19 of the Penal Code, the conviction on the first two counts cannot be sustained. There was also some argument that it had not been shown that what the Inspector did was within the ordinary scope of his official duties, but it is unnecessary to consider this for it has not been established that the Sanitary Inspector is a public servant.

There is no evidence that the duties of the Inspector are anything other than the name of the office indicates. A sanitary officer is one whose duties are directed to the protection of the public health; he would fall within the ninth definition in section 19 if he were an officer of Government, but this he is not. An endeavour was made, and it succeeded, to bring him within the eleventh definition, and the learned Police Magistrate following the ruling in *King v. Selliah*[1] held that his case was covered by definition eleven, which is as follows :—" Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district." It will be noticed that this definition contemplates duties connected with the receipt and expenditure of income the levying of rates, and all that is necessary for determining and ascertaining the amounts to be levied, and keeping and controlling all documents

[1] *(1922) 24 N. L. R. 18.*

and records for such purposes. In *King v. Selliah* (*supra*), the complainant was the Secretary of a Local Board. Evidence was led regarding his duties and it is hardly necessary to point out how obviously such duties would bring him within the eleventh definition. It is not possible to apply the decision in this case to a Health Officer of a Local Board. It may be that the Inspector performs duties which one would not ordinarily associate with the name of his office, duties which may bring him within the eleventh definition. But there is no evidence of this. The conviction on the first and second counts must therefore fail.

I accept the finding of the learned Police Magistrate on the facts and the only question which I have to decide is the sentence imposed for the conviction on the third count. I agree with the Magistrate that the case is a bad one, and even though one keeps out entirely the thought that this was done to the Inspector while he was discharging his duties, I can properly take into consideration the relative positions of the complainant and the accused and the circumstances under which the assault was committed. There is no suggestion of any aggressive conduct on the part of the Inspector; on the contrary, he acted with restraint and care in sending for the police. The garden which he entered was not, so far as I can see, that of the appellant. If the Inspector had not run away, he would probably have been subjected to more violence.

The Police Magistrate assumed jurisdiction as District Judge on account of the first and second charges. Had he to deal with the third charge alone, he would, of course, have tried the case as Police Magistrate and the sentence which the accused can receive on a conviction on section 314 alone can be only that within the jurisdiction of a Police Court. It was urged that the Magistrate had in mind the possibility of the first two charges failing by reason of difficulties in establishing the status of the Inspector, and it is for that reason that he framed a charge under section 314. It was said that the sentence which he has imposed, two months' rigorous imprisonment, indicates his opinion of an appropriate sentence for a conviction under section 314, uninfluenced by any consideration of offences on the Inspector as a public servant. I am by no means certain that this is so. It is not unusual when a Judge imposes sentences of imprisonment to run concurrently, the maximum sentence really determining the punishment, that the sentence imposed for a lesser offence involved is not what it would be had it been the main object of consideration in the case. The sentence here was one of 1 year's rigorous imprisonment, and it did not really matter very much what sentence less than that was given for the others.

In my opinion, a sentence of two months' rigorous imprisonment is inadequate and from the opinion which the Magistrate has expressed, I feel sure, except for the sentences passed on the first and second counts, he would have awarded the maximum sentence which a Police Magistrate could have imposed.

I set aside the convictions under sections 323 and 344, and I alter the sentence on the third charge, section 314, from two months' rigorous imprisonment to six months' rigorous imprisonment.

Set aside.