

*Present:* Mr. Justice Wendt.

1908.

ZILVA *v.* GIRIGORIS.

February 7.

*P. C., Galle, 39,214.*

*Person licensed to seize dogs—Public servant—Municipal Inspector holding license—Resistance and causing hurt—Penal Code, ss. 181 and 344.*

A person who holds a license from the Municipality to seize stray cattle is not a "public servant" within the meaning of the Penal Code, and resistance to a Municipal Inspector, acting under the authority of such a license, is not an offence, and is not punishable under the Penal Code.

**A** PPEAL by the accused from a conviction under sections 181 and 344 of the Penal Code.

The facts sufficiently appear in the judgment.

*A. St. V. Jayewardene*, for the accused, appellant.

*R. L. Pereira*, for the complainant, respondent.

<sup>1</sup> 1 *M. C. C.* 205.

<sup>2</sup> (1901) 3 *Bom. L. R.* 503.

<sup>3</sup> 8 *Burma L. R.* 81.

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The appellant has been convicted, first of using criminal force to a public servant, to wit, Mr. G. C. de Zilva, Inspector of Galle Municipality, Ward No. 4, in the execution of his duty as such public servant, namely, in seizing a stray calf belonging to the accused, an offence punishable under section 344 of the Penal Code; secondly, of offering resistance to the taking of the said calf by the lawful authority of the said G. C. de Zilva, knowing or having reason to believe that he was a Municipal Inspector, an offence punishable under section 181 of the Penal Code. To support the conviction under either charge it must be shown that De Zilva was a public servant, and was in the execution of his duty as such in seizing and taking the calf. It is proved that he is a Municipal Inspector of No. 4 Ward, and that he also holds a license to seize cattle in that Ward dated January 29, 1907, in which he is described as Mr. George C. de Zilva, Inspector of Ward No. 4. It is a fair inference that if, as Municipal Inspector, he had the power to seize stray cattle, the license would have been unnecessary, and would not have been issued. The mere holder of such a license, it has been decided, and I think, properly decided, is not a "public servant" within the meaning of the Penal Code (*Jayawardana v. Ismail*,<sup>1</sup> compare P. C., Anuradhapura, 19,719.<sup>2</sup>) A Municipal Inspector, however, is expressly stated in the illustrations to section 19 of the Penal Code to be a "public servant." The Magistrate in his judgment states that the complainant "as a Municipal Inspector is authorized to seize cattle. He is paid from Municipal funds."

This may mean either that his powers *quâ* Inspector authorize him to seize cattle, or that the license which gives him that authority was entrusted to him because he was such an Inspector. The complainant himself gives no evidence whatever as to his powers beyond saying "I am Municipal Inspector paid from Municipal funds. It is my duty to prevent nuisances, and I have a license to seize cattle." The Solicitor-General, appearing for the prosecution, referred me to section 70 of the Municipal Councils' Ordinance, which enacts that every Municipal officer and servant of every description paid out of the Municipal fund shall be held to be a public servant within the meaning of the Penal Code. There is no proof on the record as to how a cattle seizer is paid, but by-law No. 18 of chapter X. of the Municipal by-laws for Galle, published by the Proclamation of January 21, 1903 (*Gazette* of January 23, 1903), the very by-law 18 under which the license was issued to complainant, makes it clear that a cattle seizer is paid a certain sum for each animal seized, to be paid by the owner or levied by sale of the animal, and the balance proceeds sale, if unclaimed, goes to the Municipal fund. The cattle seizer therefore is not paid out of the Municipal fund within the

<sup>1</sup> (1905) 2 *Bal.* 186.

<sup>2</sup> *Koch's Reports* 63.

meaning of section 70. There is no proof that the animal which the complainant attempted to seize was a nuisance, so as to bring the seizure of it within the complainant's own definition of his duties.

In my opinion, therefore, it has not been shown that the complainant was a public servant acting in the execution of his duty as such. I therefore set aside the conviction and acquit the appellant.

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*Appeal allowed; accused acquitted.*

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