1955 *Present :* Gunasekara, J.

SENEVIRATNE, Appellant, *and* SUBRAMANIAM, Respondent

S. C. 323—M. C. Vavuniya, 26,174

Appeal—Points of law—Certification—Form—Criminal Procedure Code, s. 340 (2) and Schedule II, Form 12.

Sentence—First offender—" Deterrent punishment ".

(i) The accused appellant had no right of appeal except on a matter of law. The petition of appeal, in which the grounds of appeal were all grounds of law, bore a certificate by a proctor in these terms :— " I certify that the points of law raised in this petition of appeal are fit matters for adjudication by the Supreme Court ".

Held, that the certificate complied sufficiently with the requirements of section 340 (2) of the Criminal Procedure Code although it did not follow the very words of the prescribed Form.

(ii) Sentence of imprisonment passed as " deterrent punishment " on a first offender altered to one of fine.

APPEAL from a judgment of the Magistrate's Court, Vavuniya.

Colvin R. de Silva, with *K. Shinya* and *H. D. Thambiah*, for the accused appellant.

M. M. Kumarakulasingham, for the respondent.

Cur. adv. vult.

April 21, 1955. GUNASEKARA, J.—

This is an appeal from a conviction on a charge of wilfully obstructing an officer of a town council in the performance of his duty, an offence punishable under section 236 of the Town Councils Ordinance, No. 3 of 1946.

The sentence passed on the appellant was one of rigorous imprisonment for one month, and therefore, in terms of section 335 of the Criminal Procedure Code, he has no right of appeal except upon a matter of law. The learned counsel for the respondent objected to the hearing of the appeal on the ground that it did not comply with the provision in section 340 (2) that where the appeal is on a matter of law "the petition shall contain a statement of the matter of law to be argued and shall bear a certificate by an advocate or proctor that such matter of law is a fit question for adjudication by the Supreme Court". The petition contains several grounds of law and bears a certificate by a proctor in these terms :—

> "I certify that the points of law raised in this petition of appeal are fit matters for adjudication by the Supreme Court."

It was contended for the respondent that this certificate is insufficient for the reason that it fails to specify the grounds of appeal to which it applies and is not in the prescribed form, which reads :—

> "I certify that the matters of law stated in the . . . . ground of appeal is a fit question for adjudication by the Supreme Court."

In support of his objection Mr. Kumarakulasingham cited the cases of *Bruin v. Wijesinghe* [1] and *The Additional Controller of Establishments v. Lewis* [2]. In the former case what was certified was "the matter of law in the petition of appeal", but there were "four things stated in the petition of appeal as if they were matters of law". It was thus not possible to distinguish the matter that was certified from the three that were not, and Schneider J. held that the certificate was so vague that it could not be regarded as satisfying the requirements of the Criminal Procedure Code. In the present case it is not difficult to identify the matters which are the subject of the certificate, for the grounds of appeal are all grounds of law and the certificate relates to all of them. In *Lewis's Case* the certificate, which relates to "the matters of law stated" in the petition, is similar to the certificate in the present case ; but it is not equally easy to ascertain which of the grounds of appeal were regarded by the proctor who signed the certificate as grounds of law, and therefore

[1] *(1927) 5 T. C. L. R. 71* [2] *(1949) 40 C. L. W. 3.*

which of them were covered by the certificate. The result of the departure from the prescribed form in that case was that in effect there was no such certificate as is required by the Code. It is true that Basnayake J. points out that the prescribed form requires that the grounds of appeal should be stated in consecutively numbered paragraphs and that the certificate should specifically refer by its number to the ground of appeal in which the matter of law to be argued is stated ; but I do not understand him to imply that a certificate that does not follow this form to the letter is necessarily bad, even though it may state clearly what are the various matters of law that are certified. In *The Police Officer, Dondra, v. Baban*,[1] which is cited in *Lewis's Case*, the petition contained seven grounds of appeal, of which only one raised a matter of law, but the proctor certified "that the above matters of law stated in this petition are fit and proper for the consideration of the Honourable the Supreme Court". Jayawardene A. J. pointed out that the certificate was "not regular" and that it "should refer specifically to the ground which embodies the point of law raised", and he sent the case back for the proctor to state what the paragraphs were which contained the matters of law certified. In the present case the information could be obtained from the petition itself although the certificate did not follow the very words of the prescribed form. I therefore overruled the preliminary objection and heard the appeal.

The facts giving rise to the prosecution of the appellant are as follows:— On the 18th September 1953 the Chairman of the Town Council of Vavuniya, issued to the complainant respondent, who is the council's distraining officer, a distress warrant in the prescribed form for the recovery of certain sums shown in the schedule to the warrant as due from certain persons as arrears of rates in respect of certain premises. The appellant was one of the persons named in the schedule as defaulters and a sum of Rs. 160·30 was shown as due from him as rates for the years 1950, 1951 and 1952, and the 1st and 2nd quarters of 1953. The respondent went on the same day to the premises in question, which were occupied by the appellant, and demanded payment of the sum for the recovery of which the warrant had been issued. The appellant refused to pay and the respondent thereupon told him that he would seize his movable property. Then the village headman, who had accompanied the respondent, pointed out a chair that was in the premises as the appellant's property, and the respondent seized it. The appellant snatched the chair and said that he would not let him seize any property. The obstruction complained of consisted in this conduct.

The appeal was pressed on two grounds, one of which was that the warrant was illegal for the reason that the council had failed to notify to the appellant the decision upon an objection taken by him to the assessment of the premises, and the other was that there is no evidence that the property seized was property liable to be seized. Section 179 of the Town Councils Ordinance provides that the assessment of any immovable property for the purpose of any rate under that Ordinance shall, with the necessary modifications, be made in the manner prescribed by section 117

[1] *(1923) 25 N. L. R. 156.*

of the Municipal Councils Ordinance (now section 235 of the Municipal Councils Ordinance, No. 29 of 1947) with respect to immovable property within municipal limits, and all the provisions of that section, together with those of section 118 (now section 242 of Ordinance No. 29 of 1947), among other sections, shall, with the necessary modifications, apply with respect to every such assessment made for the purposes of the Town Councils Ordinance. Section 235 (7) of Ordinance No. 29 of 1947 provides among other things that when any objection to an assessment is disposed of the council shall cause the decision thereon to be notified to the objector. Section 242 provides that no movable property found in any premises in respect of which any rates may be due shall be seized for any arrears of rates beyond two quarters next preceding such seizure, unless the movable property belonged to a person who was the owner or joint owner of the premises at the time the arrears beyond such two quarters accrued and became due, or unless such movable property belongs to any person who has occupied the premises when these arrears accrued and became due. The two grounds of appeal that were pressed were based on these two provisions of Ordinance No. 29 of 1947.

According to the evidence that has been accepted by the learned magistrate, notice of the assessments in respect of each of the years 1950 to 1953 was duly served on the appellant and he objected only to the assessment in respect of 1950. There is no evidence that the decision on this objection was not notified to him. The distress warrant is regular on the face of it and there is no evidence to rebut the presumption that it was validly issued. The contention that the warrant is illegal must therefore be rejected.

In the course of his argument on this point Dr. de Silva also sought to maintain that there was no proper inquiry, in the sense of an inquiry that satisfied the requirements of the law, into the appellant's objection to the assessment. But this is not one of the matters of law covered by the proctor's certificate and therefore it does not raise a question for decision in this appeal.

As regards the other ground of appeal that was argued, there was sufficient evidence, in my opinion, to prove that the chair that was seized was the appellant's property and that the appellant was in occupation of the premises when the arrears of rates beyond two quarters next preceding the seizure accrued and became due. When the respondent told the appellant that he would seize his movable property and the headman pointed out the chair for seizure and it was seized the appellant did not deny that it was his property. Nor did he say at the trial that it was not his property. Moreover, as the learned magistrate points out, it was found in premises occupied by the appellant. According to the respondent's evidence the appellant was in occupation of the premises in question throughout the period 1950 to 1953, and the respondent himself served on him all the notices of assessment in respect of those years.

I see no reason to interfere with the conviction.

The maximum punishment for the offence is a fine of Rs. 50 or imprisonment of either description for three months. The learned magistrate has taken the view that deterrent punishment is desirable because

several cases have recently been brought before him " where the constituted authority of the Town Council had been challenged ". But the appellant himself is apparently a first offender and his own act of obstruction was not accompanied by any aggravating circumstances. With all respect to the learned magistrate it seems to me that the case is not one that calls for a sentence of imprisonment to be passed on a first offender in order to deter others from committing similar offences. I set aside the sentence passed by the learned magistrate and I sentence the appellant to a fine of Rs. 50 or two weeks' rigorous imprisonment in default of payment of the fine. Subject to this variation in the sentence the appeal is dismissed.

Conviction affirmed.

Sentence varied.