

Present: Pereira J.

THE ATTORNEY-GENERAL v. SILVA

153—P. C. Badulla, 531.

*Solicitor-General empowered by Attorney-General to exercise the power of appeal on the Attorney-General by s. 336 of the Criminal Procedure Code—Petition of appeal should run in the name of the Solicitor-General—Criminal Procedure Code, s. 393—Peon in the Excise Department—Public servant—Penal Code, s. 19—Is it duty of peon to help Excise Inspector to search a dwelling-house for excisable articles ?*

Where, under section 393 of the Criminal Procedure Code, the Solicitor-General is given by the Attorney-General a direction, general or special, to exercise the power of appeal conferred on the Attorney-General by section 336, the petition of appeal in a case in which this power is exercised by the Solicitor-General should run in the name of the Solicitor-General and be signed by him as such. It is irregular that the petition should be in the name of the Attorney-General and signed by the Solicitor-General for the Attorney-General.

A peon of the Excise Department is a public servant within the meaning of section 19 of the Penal Code.

It is no part of the duties imposed by law on an Excise peon to help an Excise Inspector to search a dwelling-house for excisable articles.

*van Langenberg, S.-G., K.C.*, in support of appeal.

*De Silva*, for accused, respondent.

*Cur. adv. vult.*

March 15, 1914. PEREIRA J.—

I have already indicated my opinion on two points involved in this case. The first is that the petition of appeal has not been duly signed. It runs in the name of the Attorney-General, but it has been signed by the Solicitor-General. I assume that the Solicitor-General has, under section 393 of the Criminal Procedure Code, a direction, general or special, to exercise the power of appeal conferred on the Attorney-General by section 336 of the Criminal Procedure Code. If I am right in the assumption, the Solicitor-General should in the petition of appeal have recited the fact of the direction mentioned above, and appealed as Solicitor-General. I

1914.

PEREIRA J.

*Attorney-General v. Silva.*

do not think that the signing by him of a petition of appeal that ran in the name of the Attorney-General was in order. The Solicitor-General was inclined to agree with me in this view; but, as I understand, the usual practice has been followed in this case, I shall not reject the appeal altogether, but deal with the case by way of revision.

The second question referred to above is whether an Excise peon can be said to be a public servant in terms of section 19 of the Penal Code. Under sub-section (9) of that section every officer of Government whose duty it is, as such officer, to give information of offences is a "public servant." Now, under section 3 (2) of the Excise Ordinance, No. 8 of 1912, any officer or other person invested with powers under section 7 is an "Excise officer." Section 7 provides that the Governor may appoint officers or persons to perform the acts and duties mentioned in sections 32, 34, and 45 (a) of the Ordinance, and by Proclamation of December 13, 1912, His Excellency has directed that petty officers and peons of the Excise Department on duty should be "Excise officers" for the purposes of sections 34 and 45 (a) of the Ordinance. Excise peons are therefore Excise officers, and, inasmuch as the provision of section 49 (1) (a) of the Ordinance in effect vests a duty in Excise officers to give information of offences under sections 43, 44, and 47 of the Ordinance, I think that an Excise peon is a "public servant" in terms of section 19 (9) of the Penal Code.

The next question in the case is whether, when the alleged assault was committed by the accused on the peon Charles, the latter was in the act of discharging any duty devolving on him as a public servant. He was at the time helping the Excise Inspector to search a dwelling-house for excisable articles. As pointed out by the accused's counsel, there is nothing to show that the search by the Excise Inspector was legal. He had no search warrant, and the record does not show that the provisions of section 36 of the Ordinance were observed to justify search without a warrant. However that may be, no authority has been cited to show that it is any part of the duty of an Excise peon to aid an Excise Inspector in making a search without a warrant. The Solicitor-General, who argued the case with some diffidence, cited section 37 of the Ordinance, which made the provisions of the Criminal Procedure Code relating to arrests, searches, search warrants, &c., applicable to all actions "taken in these respects under the Ordinance." The words "in these respects" are significant. They clearly mean that to arrests, searches, and search warrants under the Ordinance the provisions of the Criminal Procedure Code relating to the corresponding matters provided for in that Code should apply, but it has not been shown that under the Criminal Procedure Code it is the duty of any person to help another when the latter is engaged in making a search without a search warrant.

Then section 34 of the Ordinance has been cited. That section has no application, because it refers to the seizure and detention of excisable or other articles found in a place other than a dwelling-house ; but here the peon, Charles, was engaged in seizing things in a dwelling-house.

I agree with the Magistrate that the prosecution has made out no case against the accused, and I affirm his order discharging the accused.

*Affirmed.*

1914.

PERRERA J.

*Attorney-  
General v.  
Silva.*