

1932

Present : Jayewardene A.J.

POLICE SERGEANT WALASMULLA *v.* RAJAPAKSE.

74—*P. C. Tangalla, 29,037.*

*Public servant—Peon employed under S. P. C. A.—Offering obstruction—
Penal Code, s. 19.*

A peon employed by the Society for the Prevention of Cruelty to Animals is not a public servant within the meaning of section 19 of the Penal Code.

A PPEAL from a conviction by the Police Magistrate of Tangalla.

L. A. Rajapakse (with him *J. R. Jayewardene*), for accused, appellant.

H. L. Wendt, C.C., for Attorney-General.

June 22, 1932. JAYEWARDENE A. J.—

The appellant has been convicted under sections 183 and 323 of the Penal Code for obstructing a public servant and voluntarily causing hurt to him in the discharge of his public duty. He has been sentenced to pay a fine of Rs. 50, in default two weeks' rigorous imprisonment. The public servant concerned is a peon employed by the Society for the Prevention of Cruelty to Animals. It has been contended that a peon of this Society is not a public servant within the meaning of section 19 of the Penal Code. Ordinance No. 13 of 1907 makes provision for the prevention of cruelty to animals, and section 10 of that Ordinance empowers the Governor to direct that any fine recovered in respect of offences under the Ordinance, which shall have been prosecuted by any officer of any society established for the prevention of cruelty to animals, be paid to such society. The Ordinance does not provide that such officer is to be deemed a public servant.

Section 19 of our Code corresponds to section 21 of the Indian Penal Code. The section makes no attempt to define public servants. It merely described them by enumeration. The wording of the section is exhaustive. A public servant is one falling under any of the eleven classes given. The section uses the word "denote" and not "include", so that no one is a public servant who is not in any of these classes. Clause 10 of section 19 is the general and miscellaneous provision and includes within its comprehensive grasp a large mixed class of nondescript officers who could not be specially provided for. Clause 11 compendiously states what is more elaborately stated in the preceding clause in respect of officers of Government, and deals *mutatis mutandis* with similar officers in the service of Municipalities, Local Boards, District Councils, Sanitary Boards or other similar bodies. (1 Gour 246, 4th ed.). Though this section with its clauses is professedly exhaustive of the persons described as public servants special provisions appear in various enactments of the Indian Legislature declaring certain persons as public servants for the purposes of the Penal Code, e.g., under the Cattle Trespass Act, Museum Act, Emigration Act, Factories' Act, Telegraph Act, Railway Acts and many others. So, in Ceylon, under the Forest Ordinance, No. 16 of 1907, section 58, all forest officers shall be deemed to be public servants within the meaning of the Penal Code, but no such provision has been made as regards any officer of the Society for the Prevention of Cruelty to Animals. It cannot be said that a peon of the Society is concerned with any property or interests, pecuniary or otherwise, of Government or Municipality or other Local Board or body, or that he falls within these eleven classes. In India it has been held that a peon employed by the manager of an estate under charge of the Court of wards is not a public servant, *Rex v. Arayi*¹, and that labourers and menial servants employed to do work or labour on account of Government are not officers and do not fall within the purview of this section, *Rex v. Natchi Muttu*². It was held in *Palaniappa v. Fernando*³ that a tidewaiter is not a public servant as he holds no fixed appointment under Government but is a person who does job work for which he is paid a daily wage on such days as he chooses to work. A licensed cattle seizer, it has been held, does not become a public servant by the mere fact of his being a Municipal Inspector. *Zilwa v. Girigoris*⁴, following *Jayawardene v. Ismail*⁵ and *P. C. Anuradhapura, 19,719*⁶.

Where an accused, who was Secretary of the Local Board, Matale, was entrusted during the food control period by the Chairman of the Board, who was also Deputy Food Controller, with the duty of issuing permits to retail dealers to enable them to purchase rice from wholesale dealers and to perform other duties connected with food control, for which he was not paid anything extra, and the criminal charge was in connection with these duties, it was held that apart from his official status as Secretary, the accused was not a public servant, and that he held no office, any more than any member of the Social Service League or other voluntary helper, and that clause 10 of section 19 of the Penal Code referred solely to officers connected with Government. (*Rex v. Selliah*.⁷)

¹ 7 Madras 17.

² 7 Madras 18.

³ 1 A. C. R. 27.

⁴ 3 Bal. 245.

⁵ 2 Bal. 186.

⁶ Koch's Rep. 63.

⁷ 24 N. L. R. 18.

In India officers of the Society for the Prevention of Cruelty to Animals appointed under the Bengal Police Act, 5 of 1861, are public servants. (*Rex v. Upendra Kumar Ghose*¹ and *Rex v. Nataraja*². (*Ratanlal, Law of Crimes, p. 28, 4th ed.*). It is to be noted that they hold certificates signed by the Inspector-General of Police appointing them Police Officers under Act 5 of 1861. I issued a notice on the Attorney-General and he was represented at the second argument but learned Crown Counsel was unable to support the position that a peon of the Society for the Prevention of Cruelty to Animals was a public servant. I would hold that a peon of the Society does not come within section 19 of the Penal Code and is not a public servant. There is no express authority on the point but in analagous decisions it has been held that such an officer is not a public servant. The charges under sections 183 and 323 of the Penal Code cannot be sustained and I set aside the conviction and acquit the accused.

Set aside.
