

Present: Lascelles C.J.

1914.

SOURJAH v. HADJIAR.

565—M. C. Colombo, 3,000.

By-laws framed by the Municipal Council—Validity cannot be questioned if formalities required by s. 109 of the Municipal Councils Ordinance, 1910, had been observed—Question whether tree is source of danger—Should the Council decide the question?—Decision of Chairman.

It is not competent to a Court to entertain the question of the validity of a by-law after it had been passed with the formalities required by section 109 of the Municipal Councils Ordinance of 1910.

The question whether a tree or a branch or a fruit of a tree is a source of danger may be decided by the Chairman as the executive officer of the Council.

A PPEAL from a judgment of the Municipal Magistrate of Colombo.

J. S. Jayewardene, for the accused, appellant.—The rule in question, No. 47, is *ultra vires*. Nuisance is defined in section 3 of the Municipal Councils Ordinance (No. 6 of 1910). Section 110 only empowers the Council to frame rules for the prevention of nuisances. The by-law in question does not deal with nuisances. It is therefore *ultra vires*. *Nicholas v. Happawana Terunnanse*.¹

A special remedy is provided in the rule itself, enabling the Chairman to pull down the trees. Therefore, the general provision as to prosecution does not apply.

The word "Council" in the rule does not mean Chairman.

The rule itself requires the cutting off of so much as is dangerous. Only nuts and branches are said to be dangerous to neighbours.

F. J. de Saram, for the respondent.—The definition of "nuisance" in the Ordinance is wide enough to cover this case, and the rule is therefore not *ultra vires*.

Even if the rule is *ultra vires*, objection cannot be taken to it now, as it has been passed by the Legislative Council. See section 109 of Ordinance No. 6 of 1910, section 6 of Ordinance No. 8 of 1901. *La Brooy v. Marikar*.²

The remedy propounded by rule No. 47 is not exclusive. A failure to carry out a lawful requirement of the Chairman is also punishable by rule 2, chapter XXV. of the by-laws.

¹ (1897) 2 N. L. R. 346.

² (1907) 2 A. C. R. 63.

1914.
Soujah v.
Hadjjar

All executive acts authorized to be done by the Council can be done by the Chairman (see section 46). In 389—M. C. Colombo, 8,080¹ it was held that it was competent to the Chairman to decide the question whether a tree is dangerous or not.

July 7, 1914. LASCELLES C.J.—

Several grounds have been taken in the appeal against the conviction of the accused. The first, which was principally pressed, is that the by-law No. 47 in the chapter is *ultra vires*. It is an objection that might, perhaps, have had some force, if the matter had not been disposed of in principle by a previous decision of this Court in *La Brooy v. Marikar*². It was there held that it was not competent to a Court to entertain the question of the validity of a by-law after it had been passed with the formalities required by section 109 of the Municipal Councils Ordinance of 1910. By that section it is provided that after the by-laws have been approved of by the Governor in Executive Council they are as legally valid, effectual, and binding as if they had been enacted in the Ordinance. The decision to which I have referred is based on a judgment of the House of Lords in *Institute of Patent Agents v. Lockwood*.³ The first point is, therefore, absolutely concluded by authority.

Then it is said that under the by-law it is for the Council, and not the Chairman, to decide whether a tree or a branch or a fruit of a tree is a source of danger. In my opinion, under section 46, this duty is an executive act which can be performed by the Chairman, and I find that the same view was taken of the function of the Chairman in a previous case decided in this Court, namely, No. 8,080 of the Municipal Court of Colombo.

With regard to the sentence, I cannot regard it as excessive. The appeal, in my opinion, fails, and must be dismissed with costs.

Appeal dismissed.

¹ S. C. Min., June 17, 1912.

² (1907) 2 A. C. R. 63.

³ (1911) 14 N. L. R. 484.