

1944

Present: Hearne J.

JUAN APPU, Appellant, and PERERA, Respondent.

177—*M. M. C. Colombo, 23,167*

Milk vendor—Employed to convey milk—not a person employed to expose milk for sale—Municipal Council By-laws, chapter XIV., rule 7.

Where a person was employed to convey milk from a dairy outside Colombo to a café in town for purposes of sale at the café,—

Held, that he was not a milk-vendor employed under a registered dairyman for exposing milk for sale within the meaning of rule 7 of chapter XIV. of the Municipal Council By-laws.

A PPEAL from a conviction by the Municipal Magistrate of Colombo.

P. Malalgoda, for accused, appellant.

No. appearance for respondent.

March 24, 1944. HEARNE J.—

The accused in this case was charged with the offence of exposing milk for sale "without having in his possession a printed and numbered card signed by the Secretary of the Colombo Municipal Council and issued to a milk vendor employed under a registered dairyman for the current year", and with having failed to produce on demand such a card for inspection as required by rule (7) chapter XIV. of the Municipal Council By-laws as amended by *Government Gazette* No. 7,903.

The facts of the case are that one J. C. Paiva, Manager of a café at Chatham street, Colombo, purchased milk from one Mr. Peter Fernando of Wennappuwa, a place outside Colombo town. Payments were made monthly and the accused was employed by Mr. Fernando to convey the milk from Wennappuwa to Colombo and to deliver it to Mr. Paiva at his café. The evidence also proved that on the day in question the accused was seen taking a quantity of milk in a can along Chatham street and delivering it at the café. I fail to see that any offence has been committed by the accused. He was certainly not, in any sense of the word, exposing milk for sale. What he did was to convey milk on behalf of his employer to J. C. Paiva, the vendee. No offence, in my opinion, was committed by the accused and the appeal is allowed.

Cases in point are—

(1) *White v. The Mayor of Yeovil* (*L. J. Reports M.C.N.S. Vol. 61, page 213.*)

(2) *Newton in Makerfield Urban Council v. Lyon* (1900) *L. J. Reports, Vol. 69 Q.B.D., page 230*)

Set aside.