

1937

*Present : Soertsz J.*SCHOKMAN *v.* NADAR.180—*M C. Colombo, 10,306.*

Milk—Sale of milk deficient in fat—Liability of dairyman—Ordinance No. 8 of 1901, by-law 4a.

The dairyman as well as the vendor are liable under by-law 4A of Ordinance No. 8 of 1901, for the sale of milk deficient in fat.

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

Elliot, K.C. (with him A. F. Goonesekera), for second accused, appellant.

C. Nagalingam, for complainant, respondent.

Cur. adv. vult.

June 4, 1937. SOERTSZ J.—

The accused appellant was charged under by-law 4A of the by-laws made under Ordinance No. 8 of 1901, and published in *Government Gazette* No. 7,654 of July 13, 1928.

It is admitted that the milk was deficient in fat. But Mr. Elliot argued (a) as a matter of fact, that the milk came from cows belonging to the first accused and not to the appellant. The only connection the appellant had with these cows was that they were stalled in his dairy, the owner paying him a certain sum monthly on account of stall hire, (b) as a matter of law, that assuming the accused-appellant was the owner of these cows, still it was the actual vendor alone who was liable under by-law 4A. The dairyman as well as the vendor were liable only in cases of sales of adulterated milk under by-law 8 of March 3, 1911. In regard to the question of fact, it may well be that the facts are as stated by the appellant, but in view of the appellant's admission that he applied to the Municipal authorities and had the first accused registered as a vendor of his dairy, I do not see how he can claim exemption from liability if a dairyman is liable in law for milk deficient in fat sold by his registered vendor.

At any rate, in the face of that admission I cannot hold that the first accused was selling his own milk and not that of the appellant. The first accused has certainly not said so. This brings me to the question of law. It is true that in the case of sale of adulterated milk, by-law 8 expressly makes both the dairyman and the vendor liable. It would certainly have been better if that fact had been made equally clear in by-law 4A. But after careful consideration I am of opinion that on a correct interpretation of that by-law both the dairyman and the vendor are liable for milk deficient in fat. Having regard to the scope and intention of the section I cannot doubt that the master is criminally responsible for sales carried out by his salesman. As pointed out by Lord Russell in *Coppen v. Moore* "the master is the seller though not the actual salesman".

I dismiss the appeal.

Affirmed.