

1938

Present : Keuneman J.

MATALE POLICE v. MURUGESU

711—P. C. Matale, 1,544.

*Milk—Hawking milk without licence—Authority to demand card from vendor and on refusal to arrest—May be verbal—By-law not ultra vires—Local Government Ordinance, No. 11 of 1920, ss. 164 to 168, by-law 8.*

Where a by-law, framed under sections 164 to 168 of the Local Government Ordinance "for the control of dairies and the sale of milk", provided as follows: "In the event of any person so refusing or failing to produce such card, it shall be lawful for such Sanitary Inspector or other authorized person to exercise the powers given to peace officers under section 33 (1) of the Criminal Procedure Code",—

*Held*, that the by-law was not *ultra vires*.

*Held*, further, that the authority to exercise the powers given under the by-law may be verbal.

**A** PPEAL from a conviction by the Police Magistrate of Matale.

No appearance for accused, appellant.

R. R. Crosette-Thambiah, C.C., for respondent.

*Cur. adv. vult.*

November 23, 1938. KEUNEMAN J.—

Accused was convicted under section 219 of the Penal Code with intentionally offering resistance to A. E. S. Abeykoon, Urban District Council Inspector, to the lawful apprehension of himself for the offence of hawking milk without a licence. Accused was fined Rs. 25 in default one month's rigorous imprisonment.

Regulations framed under sections 164 and 168 of Ordinance No. 11 of 1920 for the control of dairies and the sale of milk provide *inter alia* as follows :—By-law 8 (11) “In the event of any person so refusing or failing to produce such card, it shall be lawful for such Sanitary Inspector or other authorized person to exercise the powers given to peace officers under section 33 (1) of the Criminal Procedure Code”. Section 33 (1) of the Criminal Procedure Code relates to powers of arrest.

Two points of law are taken in the appeal.

(1) That the Inspector in question is a Revenue Inspector and not a Sanitary Inspector, and that authority to arrest could only be given to him in writing. In this case only verbal authority by the Chairman was proved. I cannot see anything in the by-laws which requires written authority, and I hold in the circumstances that verbal authority is sufficient.

(2) That the regulations are *ultra vires*. Under section 168 (10) (i) of Ordinance No. 11 of 1920, a District Council has power to make by-laws *inter alia* for “the regulation, supervision, inspection and control of dairies and the sale of milk”, I am of opinion that the right to demand production of the card, and on failure to do so to exercise the powers under section 33 (1) of the Criminal Procedure Code, viz., to demand the name and address of the person so failing to produce the card, and in case the person refuses to give his name and address, to arrest such person with a view to ascertaining his name and address, are powers which can fairly be said to come within the terms “control of the sale of milk”. Nor am I prepared to say that this by-law is unreasonable. *Kruse v. Johnson*<sup>1</sup> is an authority for the proposition that by-laws made by a representative body such as an Urban District Council, where adequate checks and safeguards are provided by the law as to the making of them, should be supported if possible. “They ought to be”, as has been said, “benevolently interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered”—*per Russell C.J.* Apart from this I cannot regard this by-law in its nature as unreasonable or unnecessary. I accordingly hold that this regulation is not *ultra vires*.

The appeal fails and must be dismissed.

*Affirmed.*

<sup>1</sup> L. R. (1898) 2 Q. B. 91.