

1948

Present: Keuneman S.P.J.

JAYASEKERE, Appellant, and RAJAPAKSE, Respondent.

636—M. M. C. Galle, 9,224.

Sale of adulterated milk—Municipal by-law that City Analyst's Certificate shall be accepted as evidence of adulteration—Not ultra vires—Criminal Procedure Code, s. 406 (3)—Municipal Council's Ordinance (Cap. 193), ss. 110 (19) (g) and 272.

Where a Municipality passed a by-law, under section 110 (19) (g) of the Municipal Councils Ordinance, that "a certificate signed by the Council's Analyst to the effect that the portion of a sample of milk sent to him . . . is adulterated shall be evidence in any court that the milk from which the sample was taken was adulterated . . ."

Held, that the by-law related to a matter of evidence and was not repugnant to the provisions of section 406 (3) of the Criminal Procedure Code and section 272 of the Municipal Councils Ordinance.

A PPEAL against a conviction by the Municipal Magistrate of Galle.

S. W. Jayasuriya, for the accused, appellant.

E. B. Wikramanayake, for the complainant, respondent.

Cur. adv. vult.

September 14, 1945. KEUNEMAN S.P.J.—

The accused was charged under Rule 34 (1) and (2) of Chap. 21 (A) of the by-laws of the Galle Municipality, punishable under Chap. 22 of the said by-laws, with being the licensee of Dairy No. 5, Unawatuna, and with having caused or allowed A. L. Deonis, a registered vendor of his dairy, to sell or deliver or carry for sale milk found on examination to be adulterated.

The principal point raised in the appeal was that the certificate of the City Analyst relating to the adulteration was wrongly admitted in evidence without the City Analyst being called. Under Rule 33 made under Chap. 21 (A) "a certificate signed by the Council's Analyst to the effect that the portion of a sample of milk sent to him . . . is adulterated shall be evidence in any court that the milk from which the sample was taken was adulterated . . ."

It was contended that this rule is *ultra vires*. Under the Municipal Councils Ordinance, Cap. 193, section 110 (19) (g), power is given to the Municipality without prejudice to the generality of powers conferred under section 109 to make by-laws for and with respect to "Dairies including . . . the determination of the deficiency in any normal constituents of genuine milk . . . or what addition of extraneous matter or proportion of water shall . . . raise a presumption until the contrary is proved that the milk . . . is not genuine or is injurious to health".

Mr. Jayasuriya, however, claimed that Rule 33 offends against section 272 of the Municipal Councils Ordinance (Cap. 193) which states that

“ every prosecution under this Ordinance . . . shall be governed by the provisions of the Criminal Procedure Code ”. He pointed out that under section 406 (3) of that Code any document purporting to be a report under the hand of the *Government Analyst* upon any matter submitted to him for examination or analysis or report may be used in evidence at any trial, and that that section does not refer to a report by any *City Analyst*. He claimed that Rule 33 is repugnant to this section of the Criminal Procedure Code.

I do not think this argument can be sustained. As I understand the matter, Rule 33 relates to a matter of *evidence* and not to any of the matters governed by the Criminal Procedure Code. It is true that section 406 (3) of that Code relaxes a rule of evidence, and to that extent it was not open to the Council by its by-laws to abrogate that section. But I do not think section 406 can be regarded as laying down any rule of evidence which must be rigidly adhered to without variation. In my opinion Rule 33 does not offend against any of the provisions of the Criminal Procedure Code.

I do not regard Mr. Jayasuriya's argument as sound.

The appeal is dismissed.

Appeal dismissed.

