

1959

Present : Sansoni, J.

B. WIJETILLEKE (Municipal Sanitary Inspector), Appellant, and
S. D. M. DEEN, Respondent

S. C. 174 of 1958—M. M. C. Colombo, 91760

*Municipal Council of Colombo—By-law 39 requiring licence for keeping cattle—
Validity—Municipal Councils Ordinance, No. 17 of 1887—Municipal Councils
Ordinance (Cap. 193), ss. 3, 109, 110 (5) (19)—Municipal Councils Ordinance,
No. 29 of 1947, ss. 272 (5) (24) (25), 318.*

By-law 39, the main provisions of which were passed under the Municipal Councils Ordinance No. 17 of 1887, has been kept in force by the combined effect of section 3 of Chapter 193 and section 318 of Ordinance No. 29 of 1947.

By-law 39, which requires a licence for keeping cattle in certain places, could well have been framed under section 110 (5) of Chapter 193.

APPEAL from a judgment of the Municipal Magistrate's Court, Colombo.

H. V. Perera, Q.C., with G. F. Sethukavalar and C. Navaratnarajah,
for the complainant-appellant.

G. T. Samerawickreme, with N. D. H. Samarakoon, for the accused-respondent.

Cur. adv. vult.

June 22, 1959. SANSONI, J.—

This is an appeal from an acquittal. The accused was charged with the following offence: "that you did within the jurisdiction of this Court at 4/1 Longden Terrace on the 5th day of June, 1957, keep two head of cattle therein without a licence from the Municipal Commissioner for the use of such place for the said purpose in breach of By-law 39, Chapter XIII of the Colombo Municipal Council's By-laws published in the *Ceylon Government Gazette* No. 6,080 of October 20, 1905, as amended by Proclamation published in *Government Gazette* No. 8,624 of June 14, 1940, and as further amended and published in *Ceylon Government Gazette* No. 10,352 of February 8, 1952, and did thereby commit an offence punishable under the said By-law 39, Chapter XIII of the said Municipal Council's By-laws".

After trial the Municipal Magistrate acquitted him on the ground that no licence is necessary for keeping cattle in a cattle shed. By-law 39 reads: "The owner or occupier of any of the following places, viz., any livery or hack stable, horse lines, veterinary infirmary, cart stand, cattle shed or yard in which one or more horses or head of cattle or sheep or goats are kept or allowed to be together, shall apply to the Commissioner for a licence for the use of such place for any of the purposes aforesaid."

Three reasons were urged by Mr. Samerawickreme as to why the order of acquittal should not be interfered with. One was that the charge is defective. I can see no substance in that objection. The charge is framed in accordance with the terms of the by-law and contains the essential ingredients.

The next reason was that the by-law itself had ceased to be in force as soon as the former Municipal Councils Ordinance, Cap. 193, was repealed by Ordinance 29 of 1947. Now Section 318 of Ordinance 29 of 1947 kept in force all by-laws published under Chapter 193 so far as they were not inconsistent with the provisions of the later Ordinance, but Mr. Samerawickreme urged that this by-law was not published under Chapter 193 but under the earlier Municipal Councils Ordinance No. 17 of 1887. I am unable to agree with this submission, because Section 3, Chapter 193, in effect provided that all by-laws published under Ordinance 17 of 1887 shall be deemed to have been published under Chapter 193. I therefore think that the combined effect of section 3 of Chapter 193 and Section 318 of Ordinance 29 of 1947 was to keep in force the by-law in question. To hold otherwise would not be to give proper effect to the expression "shall be deemed" in Section 3.

The only other submission made by Mr. Samerawickreme was that By-law 39 is inconsistent with Section 110 (19) of Chapter 193 and therefore was not kept in force even under Section 3 of that Ordinance. Section 110 follows upon Section 109, which empowered the Council to make by-laws which may appear necessary for the purpose of carrying out the provisions of the Ordinance; and Section 110 provided that in particular

and without prejudice to the generality of the powers conferred by Section 109, such by-laws may be made for various matters specified therein. Sub-section 19 refers to dairies, and Mr. Samerawickreme urged that as only dairies run by persons following the trade of dairymen are contemplated, By-law 39 could not have been framed under Sub-section 19. Even if that be conceded, it does not conclude the matter, for the by-law could well have been framed under Section 110 (5) which relates to sanitation including the prevention and abatement of nuisances, as it probably was. There is then no inconsistency. Nor is there any inconsistency when one considers the section corresponding to Section 110 in Ordinance No. 29 of 1947, that is Section 272. Section 272 (5) deals with sanitation including the prevention and abatement of nuisances, while sub-sections 24 and 25 deal with dairies and the registration of cows kept in premises other than licensed dairies. The by-law could well be framed under Section 272 (5).

I therefore hold that this by-law is valid. It is not disputed that the facts necessary to establish the charge have been proved.

I set aside the order of acquittal and fine the accused Rs. 20/- in default two weeks simple imprisonment.

Acquittal set aside.
