

The group of sections in which this sub-section is found is headed "Markets, etc.," and all of the sections deal with market matters, except, possibly, the one we are considering, and the one dealing with the seizing and forfeiting of bread and other articles for light weight.

Sub-section 5 of sec. 580 provides that the council of certain municipalities may pass by-laws for the regulating of the place and manner of selling and weighing grain, meat, vegetables, fish, hay, straw, fodder, wood, lumber, shingles, farm produce of every description, smallware and all other articles exposed for sale and the fees to be paid therefor.

Then follow various sub-sections dealing with other matters connected with the market. Then follows sub-sec. 9, "for regulating the measuring or weighing (as the case may be) of lime, shingles, laths, cordwood, coal and other fuel." It seems to me that this provision must be limited to such articles as are marketed or exposed for sale within the limits of the municipality, and it cannot have been intended by the legislature that where such articles have been the subject of a completed contract of sale made beyond the limits of the municipality, and the only act done within it is the delivery, there should be the right to impose what is practically a tax upon the vendor of the articles.

I think the applicants are entitled to invoke the rule that power to impose a tax is not given by legislation of this kind unless it appears in plain and unmistakable terms that it is intended to confer the power.

Now it seems to me that all that the legislature intended to accomplish in passing this sub-section will be attained if the sub-section is restricted in its application to cases in which the transaction takes place within the limits of the municipality. I do not say, and I should desire to take further time to consider whether, it is even as wide as that in its application, and whether it ought not to be confined to cases in which the articles are exposed for sale within the limits of the municipality.

I think the by-law is bad, and that the conviction ought to be quashed, and there is no reason why it should not be with costs. The magistrate will, if necessary, be protected.