

Saturday, from 15th of January to 15th of September, etc. Sec. 3 provided that it should not be deemed an infraction of the by-law for any shop-keeper or dealer to supply any article after seven p.m. to mariners, owners, or others of steamboats, or vessels calling or staying at the port of A.

Held, that the by-law was bad, for that s. 3 was illegal in discriminating between different classes of buyers and different classes of tradesmen, and was in controvention of ss. 9 of said section 2.

A conviction of defendant under the by-law was therefore quashed.

Held, also, that a provision for distress in default of payment of the fine and costs imposed did not constitute a part of the penalty or punishment imposed by the by-law, but merely a means of collecting the penalty, as authorized by s. 2, ss. 14 of 37 Vict., c. 33 and s. 421 of the Municipal Act, R.S.O., c. 184.

Aylesworth for the applicant.

Langton contra.

REGINA v. COPP.

Municipal corporation—Internal walls of buildings—Right to prescribe thickness of—Party walls—What constitutes.

The 10th sub-sec. of sec. 496 of the Municipal Act R.S.O., c. 184, as regards walls of existing buildings, only applies to external walls thereof and not to internal walls, and therefore municipal councils have no power to prescribe of what materials or of what thickness such internal walls should be. Sub-sec. 18, relating to party walls, does not apply to internal walls separating buildings belonging to the same owner, for to constitute party walls they should separate the adjoining properties of different owners. Where, therefore, a by-law was passed by the corporation of the City of Hamilton, prescribing the material and thickness of the internal walls of every building, which therefore included existing buildings, and the defendant was convicted thereunder, by reason of, in the course of dividing a building owned by him into three separate shops, making the dividing walls of less thickness than that prescribed by the by-law.

Held, that the by-law was bad, and a conviction made thereunder was quashed.

Aylesworth for the applicant.

Mackelcan, Q.C., contra.

REGINA v. GOOD.

Indian lands—Removing hay from—What constitutes "hay"—Right to include costs of commitment and conveying to jail in conviction—Indian Act, R.S.C., c. 43, s. 26.

The defendant was convicted for removing hay from Indian lands, contrary to s. 26 of the Indian Act, R.S.C., c. 43.

Held, that the word "hay" used in the statute does not necessarily mean hay from natural grass only, but what is commonly known as hay, namely, either from natural grass, or grass sown and cultivated.

Held, also, that under this Act and the legislation incorporated therewith there is no power to include in the conviction the costs of commitment and conveying to gaol.

Mackenzie, Q.C., supported motion.

Aylesworth contra.

MADDEN v. HAMILTON FORGING CO.

Workman's Compensation for Injuries Act—Injury sustained by workman through improper instructions by superintendent—Liability of master.

The defendants, an iron works company, used in their business a pair of shears for cutting up boiler plate and scrap iron prior to its being placed in the furnace to be melted. It was the duty of the plaintiff and another workman to put the iron into the shears. While a large iron gate was, by the superintendent's orders, being put into the shears to be cut up, by reason of the improper instructions given by the superintendent the plaintiff in the course of his duty was injured. The plaintiff, though apprehensive of danger, was not aware of the nature and extent of the risk, and obeyed through fear of dismissal. In an action against defendants under the Workman's Compensation for Injuries Act for the damage sustained by plaintiff,

Held, that defendants were liable.

Carscallen for defendant.

Bain, Q.C., and *Waddell* for defendant.

GOOSE v. GRAND TRUNK RAILWAY CO.

New trial—Omission to swear juror.

The court will not grant a new trial because one of the jurors has not been sworn when no injustice has been done thereby.

Douglas, Q.C., for plaintiff.

Osler, Q.C., for defendant.