

**Public Market—Nuisance — Licensing Traders and Hucksters—Obstructing Streets and Sidewalks—Loss of Rent—Damages.**—See *Davidson v. City of Montreal*, 28 S. C. R. 421.

**Tax on Wood.**—C. S. U. C. c. 54 does not authorize the imposition of a tax per cord upon wood brought into town and not placed in the public wood market for sale. *Farguhar v. City of Toronto*, 10 C. P. 379.

See *Houck v. Town of Whitby*, 14 Gr. 671.

#### 7. Other Cases.

**Chimney Sweeps—Restriction—By-law.**—A city by-law passed on the 26th October, 1868, providing that no persons other than the chimney inspectors appointed by the municipal council (of whom there were to be three) should sweep or cause to be swept, for hire or gain, any chimney or flue in the city:—Held, beyond the power of the corporation, under the authority given to them to enforce the proper cleaning of chimneys; and a conviction under it was quashed. It is not the practice to give costs on quashing a conviction. *Regina v. Johnston*, 38 U. C. R. 549.

**Second-hand Shops and Junk Stores—By-law Prohibiting Dealing with Minors.**—R. S. O. 1887 c. 184, s. 436 (R. S. O. 1897 c. 223, s. 484), which provides that "the board of commissioners of police shall in cities license and regulate second-hand shops and junk stores," does not authorize a by-law to the effect that "no keeper of a second-hand store and junk store shall receive, purchase, or exchange any goods, articles, or things from any person who appears to be under the age of eighteen years." Such a by-law is bad as partial and unequal in its operation as between different classes, and involving oppressive or gratuitous interference with the rights of those subject to it, without reasonable justification. *Regina v. Levy*, 30 O. R. 403.

**Shops.**—See INTOXICATING LIQUORS.

**Closing of—By-Law—Discrimination.**—A by-law passed by the town of A, under s. 2, s.-s. 2, of the Ontario Shops Regulation Act, 51 Vict. c. 33, provided (s. 1) that all shops, &c., where goods were exposed or offered for sale by retail in the town, should be closed at 7 p. m. on each day of the week, excepting Saturday, from the 15th January to the 15th September, &c. Section 3 provided that it should not be deemed an infraction of the by-law for any shopkeeper or dealer to supply any article after 7 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 s. 3 was illegal in discriminating between different classes of buyers and different classes of tradesmen, and was in contravention of s.-s. 9 of s. 2 of the Act. A conviction of the defendant under the by-law was therefore quashed. *Regina v. Flory*, 17 O. R. 715.

**Victualling Houses — Forfeiture of License.**—The power given to municipal corporations under s. 285 of R. S. O. 1887 c. 184 "to determine the time during which victualling licenses shall be in force," does not

confer any power to forfeit such licenses, but merely to fix the duration of the license. The power to create a forfeiture of property is one which must be expressly given to a corporation by the legislature, and such an extraordinary power is least of all to be inferred where the legislature has provided other means of enforcing by-laws by means of fine and amercement, as in this case. *Bannan v. City of Toronto*, 22 O. R. 274.

#### XXX. WATERWORKS.

**Arbitration and Award—Value—Notice to Mortgagees—Interest.**—The omission to serve notice on the mortgagees of a waterworks company, of arbitration proceedings under R. S. O. 1887 c. 164, to determine the amount to be paid by a municipality for such works and property, the mortgagees not being parties thereto, and in which the award made was less than the amount of their claim, does not entitle the company to have such award referred back, and the mortgagees made parties, as their rights could not be affected thereby. In such an arbitration the arbitrators are simply to value the existing property of the company at the sum it would cost to erect the works and purchase the property, allowing for wear and tear and perhaps for outlay of a necessary experimental character, but they are not to make any allowance for future profits or for the taking away from the company the right to supply water at a profit. Interest is allowable on outlay during the construction of the works, but not on the cost of construction after completion, and while the annual revenue of the company is less than the annual expenditure. *In re Town of Cornwall and Cornwall Waterworks Co.*, 29 O. R. 350.

**Amount to be Paid for Property—By-law — Possession — Mortgagees.**—Upon the making of an award fixing the amount to be paid for waterworks in an arbitration under R. S. O. 1897 c. 199, between a town corporation and a waterworks company, and the passing of a by-law for raising the amount of the award, the corporation are entitled, under s. 62, to the possession of the property; and, therefore, no action will lie against them to recover the possession so acquired, nor against their agent duly appointed to take possession. The six months provided for by s. 64, within which the amount must be paid or the company be entitled to resume possession, must have elapsed before action brought to recover possession by the company. It is not sufficient that that period should have elapsed at the time the action is tried. Mortgagees of a waterworks company, who are not parties to the arbitration, and who have taken no part in the taking of possession, are not necessary parties to an action by the waterworks company to recover possession. *Cornwall Waterworks Co. v. Town of Cornwall*, 29 O. R. 605.

**Payment into Court—Interest.**—Where a municipal corporation, taking over the works of a waterworks company under the statutory arbitration procedure, wishes to take advantage of the provisions of ss. 445 and 446 of the Municipal Act, it must pay into court the amount awarded, with interest to the date of payment in, and six months' interest in advance. Judgment in 30 O. R. 81 affirmed. *In re Town of Cornwall and Cornwall Waterworks Co.*, 27 A. R. 48.