

BOYD, C.

DECEMBER 27TH, 1909.

RE KARRY AND CITY OF CHATHAM.

Municipal Corporations—By-law Regulating Victualling Houses—Sunday Closing—Powers of Council—Municipal Act, 1903, sec. 583 (34)—Reasonable Restrictions—Licensed Hotels—Duty of Innkeepers to Provide Entertainment for Travellers.

Motion by James Karry, a restaurant-keeper of Chatham, for an order quashing by-law No. 369, passed on the 26th July, 1909, intituled "A by-law for regulating victualling houses and other places for refreshment or entertainment of the public."

The by-law provided that every victualling house, etc., and all other places of like entertainment, should be closed every Sunday from 2 p.m. till 5 p.m. and also from 7 p.m. on Sunday till 5 a.m. on the following Monday.

J. M. Ferguson, for the applicant.

H. L. Drayton, K.C., for the city corporation.

BOYD, C.:— . . . The Court is not to sit in judgment upon the propriety or alleged unwisdom of the by-law, if it admits of reasonable justification. These local public representative bodies (such as the municipal council) are now regarded as having a free hand in dealing with subjects committed to their jurisdiction by the legislature, and they are usually the best judges to determine what is expedient under existing circumstances and conditions. . . .

"It is difficult to see how the council can make efficient by-laws for such objects as . . . regulating places of amusement . . . providing for the general health . . . not to mention others, unless they have substantial power of restraining people, both in their freedom of action and in their enjoyment of property." Lord Hobhouse in *Slattery v. Naylor*, 13 App. Cas. 446, 449, 450.

These places of public entertainment, by whatever name called . . . are proper subjects of municipal license. In this we have followed English precedent: see *Muir v. Keay*, 40 J. P. 120; *Kelleway v. Macdougall*, 45 J. P. 207; and *Howes v. Board of Inland Revenue*, 1 Ex. D. 385. The power to license involves the power to regulate, and the power to regulate involves the consideration of considerations and times of restriction in the working of the licensed premises. The Municipal Act, 3 Edw. VII. ch.