

or other goods and chattels, whatsoever, on the Lord's day. Any person guilty of an infraction of this by-law shall upon conviction forfeit or pay a sum not exceeding five pounds sterling, or an equivalent in Canadian currency together with costs of prosecution, and in default of payment of such fine and costs within a time to be named by the Justice, the Justice may commit such person to the common goal for any period not exceeding two months without hard labor, unless the fine and costs are sooner paid.

*Held*, that the legality of the by-law may be questioned on these proceedings, although no application is made to quash it: *Regina v. Osler*, 32 U.C.R. 324, *Regina v. Cuthbert*, 45 U.C.R. 19, and in that it purports to affect all persons without exception, and would include a minister of religion, farmers, and others, who are not included in the statute, 29 Car. 2, c. 7, which statute is the law of the Province, the by-law was intended to operate outside the Act, and is ultra vires as creating new offences.

BOLE, Loc.J.]

[Oct. 26.

FENSON v. CITY OF NEW WESTMINSTER.

*Criminal Code—Appeal from Justice of the Peace—Costs.*

This was an application under sec. 880 of the Criminal code, that the fine, costs and costs of appeal from a Justice of the Peace be paid out of the deposit in Court to the respondent, the appeal having been dismissed.

*Held*, that when a statute confers an authority to do a judicial act in a certain case it is imperative on those so authorized to exercise the authority when the case arises and its exercise is duly applied for by a party interested, and having the right to make the application: *McDougall v. Patterson*, 27 L.J., C.P.; *Julius v. Bishop of Oxford*, 5 A.C. 224. Application granted, and the fine, costs and costs of appeal ordered to be paid forthwith to the respondent out of the deposit in Court.

BOLE, Loc. J.]

[Oct. 26

STEVENSON v. BOYD.

*Partnership—Illegal contract.*

In this case the plaintiff alleging the existence of a partnership between himself and the defendant comes into Court to have the usual accounts taken. The defendant admits the partnership but says as it was formed for an illegal act, and, as the consideration therefor was illegal and contrary to public policy, the agreement is void and should not be enforced against him. The corporation of Vancouver invited tenders for certain works in connection with the water-works of that city. The defendant had handed in his tender when he met the plaintiff who also proposed tendering, and in consequence of a conversation that then took place, the defendant withdrew his tender. Thereupon,