

LATCHFORD, J.

JANUARY 29TH, 1919.

J. G. BUTTERWORTH & CO. LIMITED v. CITY OF OTTAWA.

CITY OF OTTAWA v. J. G. BUTTERWORTH & CO. LIMITED.

Municipal Corporations—City By-law Passed in 1912 Requiring Coal to be Weighed on City Scales and Fees to be Charged—Powers of City Council—Municipal Act, 1903, sec. 582—Erection of Weighing Machines within City Limits—Power to Lease—Power to Employ Weighmasters—Validity of Leases—Estoppel—Operation of By-law Limited to Cases where Buyer or Seller Requires Weight of Load to be Ascertained—Several Actions—Consolidation—Costs.

Two actions were brought by the company against the city corporation, and two by the city corporation against the company.

All four actions arose out of the demand of the city corporation that the company should weigh all coal delivered in the city upon the scales or weighing machines provided by the city corporation and should pay fees for weighing all loads, under the provisions of a city by-law, No. 3358, passed in 1912.

The four actions were tried together at a non-jury sittings in Ottawa.

Taylor McVeity, for the company.

F. B. Proctor, for the city corporation.

LATCHFORD, J., in a written judgment, after stating the facts, referred to *Rex v. Butterworth* (1917), 13 O.W.N. 263, and said that the question of the validity of by-law 3358 was not determined in that case. In the two actions brought by the company the provisions of that by-law were attacked; and the learned Judge proceeded to determine whether or not they were valid.

The Municipal Act in force in 1912 was the Act of 1903, 3 Edw. VII. ch. 19; and sec. 582 provided: "The councils of townships, cities, towns and villages may pass by-laws for erecting and maintaining weighing machines in villages and other convenient places, and charging fees for the use thereof." It was argued that this enactment enabled the city council to pass by-laws for the erection and maintenance of weighing machines only in villages or other convenient places of the same genus—in other words, outside the municipality; but the learned Judge was unable to agree with that contention. However ill-chosen or obscure the