

and worked upon by the press, always to the disadvantage of the accused ; that the place of trial accordingly should be changed to the town of K., in the county of Kings.

Harrington, Q.C., for the accused.

Congdon, for the Crown.

Province of Manitoba.

QUEEN'S BENCH.

BAIN, J.]

[May 20.

RE ELLIOTT AND CITY OF WINNIPEG.

Municipality—By-laws—Quashing by-law—Dairy inspection—Ultra vires.

This was an application under section 385 of the Municipal Act for an order to quash, in whole or in part, on the ground of illegality, a by-law passed by the city of Winnipeg providing for the inspecting and regulating of dairies and stables, and licensing vendors of milk. By secs. 593 and 607 of the Municipal Act, and by sec. 17 of 57 Vict., c. 20, the council is authorized to pass by-laws for inspecting and regulating dairies and stables, and licensing vendors of milk, and it is provided that the licensee shall submit to an inspection, whenever desired, of his dairy, etc., whether inside or outside of the city, by an officer to be appointed by the council.

The first section of the by-law in question required the owners of all dairies whose milk was sold in the city, to submit to an inspection, and to take out a license whether their dairies were in the city or not.

Held, that this section so far as it applied to the owners of dairies who did not sell their milk in the city, but to other persons who might or might not sell it in the city, was *ultra vires* and illegal.

Held, also, that section 3 of the by-law which required applications for licenses to satisfy the health officer of the city before their licenses could issue, and left it in his power to decide who should have a license and who should not, was also *ultra vires* as an illegal delegation of authority which the council itself should exercise.

Sections 1 and 3 quashed with costs.

Martin, for applicant.

Isaac Campbell, Q.C., for City of Winnipeg.

DUBUC, J.]

[May 26.

GOULENLOCK v. FERRY.

Practice—Appeal from order—Compliance with part of order—Striking out defence—Counter claim.

This was an appeal from the order of the Local Judge for the Western Judicial District, striking out the twelfth paragraph of the defendant's statement of defence. The action was for possession of certain lands, and that paragraph, by way of counter-claim, claimed damages from the plaintiff for illegal seizure, distress and sale of his goods, under an alleged claim for rent. The objection to this paragraph was that it raised an issue which should be