

after selling their contents, would be subject to the penalty imposed by the by-law, and liable to expulsion from the market. Section 1 of art. ix, declared that no person should sell any fresh fish elsewhere than in such places as should be allotted and designated by the standing committee on markets, in any of the aforesaid markets. Section 1 of article x, declared that the vendors of any articles in respect of which a market fee might, under the Municipal Act, be imposed, might lawfully, without paying market fees, offer for sale any article at any place within the city except at the market-places thereof. The by-law was a consolidation of previously existing by-laws passed from time to time. It appeared that, many years before, certain stalls in each market were set apart as fish markets; that no application was ever made for standing room for carts or other vehicles from which to sell fish; and no provision made by the council for so bringing fresh fish to the market.—Held, that s. 5 of art. iv., though wide enough to cover fresh fish, would appear not to have been framed with reference to it; and that, reading s. 1 of art. ix, and s. 1 of art. x, together, they could be reconciled by construing them as providing that fresh fish might be sold in stalls and nowhere else in the markets, but outside of the markets no restriction should be placed on selling. *Re Borthwick and City of Ottawa*, 9 O. R. 114.

Held, that a by-law passed pursuant to s.-s. 6 of s. 503 of the Municipal Act, 1883, for granting licenses and regulating the sale of fresh meat in quantities less than by the quarter carcase, and the convictions thereon were not bad because the by-law did not embody or refer to the exceptional proviso as to time mentioned in s. 500; for s. 500 did not refer to the subject of s.-s. 6 of s. 503; and that, apart from that, s. 500 was expressly limited to municipalities wherein no market fees were imposed or charged, whereas here a by-law was in existence imposing such fees and charges. Held, also, that the by-law was not ultra vires, express power being given by s. 503 to pass a by-law respecting the matters mentioned in s.-s. 6; and that, as the reasonable or unreasonable exercise of the power could only be considered on a motion to quash the by-law, the objection was not open on this motion, which was to quash the conviction. Held, however, that the conviction was bad, because, while covering two several and distinct offences under the same by-law, it imposed only one penalty. *Regina v. Gracie*, 10 O. R. 735.

Sub-section 2 of s. 8 of 45 Viet. c. 24 (O.) subjects "such vendors of articles in respect of which a market fee may be now imposed as shall voluntarily use the market-place for the purpose of selling such articles," whereas s. 12 of the by-law in question was, "any person or persons who shall voluntarily come upon the said market-place, &c., for the purpose of selling," &c.—Held, that "vendors who shall voluntarily use the market-place for the purpose of selling" was not identical with or equivalent to "any person or persons who shall voluntarily come upon the said market-place for the purpose of selling;" nor was the expression "use the market-place for the purpose of selling" the same as "come upon the market-place for the purpose of selling;" and that the conviction was bad on this ground. Held, that the conviction

was bad, as differing from both statute and by-law, being for refusing to pay the fees on eight quarters of beef "exposed for sale," whereas s. 13 of the by-law applied only to cases of butchers' meat exposed for sale. *Regina v. Reed*, 11 O. R. 242.

Section 503, s.-s. 5, of the Municipal Act of 1883 empowers the council of a municipality to regulate the place and manner of selling meat, subject to the restrictions in the five next preceding sections. Section 497 authorizes the sale after certain hours at places other than the market of any commodity which has been offered for sale in the market:—Held, affirming the judgment in 15 A. R. 75, which affirmed the judgment in 11 O. R. 603, that by-law 629 of the city of Ottawa requiring everybody offering fresh meat for sale in the city to take out a license, and providing that no meat should be sold in any place except in the stalls of the different city markets, was a valid by-law and within the power of the city council to pass. 50 Viet. c. 24, s. 29 (O.), passed since this decision, has now settled the law on this subject. *O'Meara v. City of Ottawa*, 14 S. C. R. 742.

Neither under s. 580, nor under s. 583 (2), of the Municipal Act, R. S. O. 1897 c. 223, can the municipal council of a city prohibit an auctioneer from carrying on his business in the public markets of the city in respect of any commodities which may properly be sold there. Judgment in 30 O. R. 7 affirmed. *Bullander v. City of Ottawa*, 27 A. R. 335.

(b) Other Cases.

Market Fees—Lease of—Obstruction of Market-place—By-law.—Defendants leased to plaintiff the market fees of a wood market established in one of the streets of the city, covenanting against their own interference, or that of any one by their license. Twenty years previously they had passed a by-law giving the right to deposit materials for building purposes on the highways of the city, and they subsequently demised certain premises adjoining the market to M., who obstructed a portion of the same with building materials. The plaintiff thereupon sued defendants on their implied covenant for undisturbed collection of said fees, and charging a wrongful license to M. to obstruct said market.—Held, that such action was not maintainable; that the by-law was one which the defendants had authority with a view to public improvement and convenience to pass, and that the plaintiff must be taken to have been cognizant of it when he became their tenant; that M., without the license of the defendants, have occupied a reasonable portion of the highway, the by-law apparently merely restricting without expressly conferring the right of occupation; that the market being fixed on the public highway, which is *prima facie* for purposes of public travel, the exercise of the rights incident to such market must be subordinate to the primary and principal purposes of the highway; that there was no such implied covenant for quiet enjoyment as the plaintiff asserted, for there could not be in the highway any such absolute and exclusive enjoyment as alleged was secured to him. *Reynolds v. City of Toronto*, 15 C. P. 276.