

KELLY, J.

FEBRUARY 9TH, 1921. .

*RE DAINES AND CITY OF TORONTO.

Municipal Corporations—Powers of Council—By-law Regulating Time of Closing of Certain Shops—Discrimination—Uncertainty—Restraint of Trade—Monopoly—Necessity for Petition—Factory Shop and Office Building Act, R.S.O. 1914 ch. 229, sec. 84 (1), (3), (7)—Amendment to sub-sec. 7 by 10 & 11 Geo. V. ch. 86, sec. 3—Effect of.

Motion for an order quashing by-law 8276 of the City of Toronto, passed on the 1st December, 1919, requiring grocery-shops and fruit-shops within the city to be closed during certain hours.

The motion was heard in the Weekly Court, Toronto.

J. M. Ferguson, for the applicant.

G. R. Geary, K.C., for the city corporation.

KELLY, J., in a written judgment, said that several grounds were relied on: that the by-law was ultra vires; that it was unreasonable, unfair, and unjust; that it discriminates between different persons dealing in the same commodities; that it is uncertain, indefinite, and ambiguous; and that it is in restraint of trade, and creates a monopoly.

It was passed under the authority of the Factory Shop and Office Building Act, R.S.O. 1914 ch. 229. The learned Judge referred to the provisions of sec. 84 of that Act, sub-secs. 1, 3, and 7.

On the 2nd June, 1919, the city council passed by-law 8140, which, after reciting sub-sec. 7, enacts that "for the purposes of the said section 84 and of any by-law passed under said section, and of any application for such by-law, grocers' shops and fruit-shops shall be and are classified together as one class of shops."

Sub-section 3 of sec. 84 was on the 4th June, 1920, amended by the Factory Shop and Office Building Act, 1920, 10 & 11 Geo. V. ch. 86, sec. 3, by adding at the end thereof: "All by-laws heretofore passed under the authority of this sub-section shall on and after the 30th day of April, 1920, cease to be effective in so far as they apply to the sale of fresh fruit, and all by-laws hereafter passed under the provisions of this sub-section shall not apply to the sale of fresh fruit."

It was contended that a petition was necessary to initiate the by-law, and that such a course is implied from sub-sec. 7. That is not the case. Sub-section 3 is permissive; it gives the council a