

Governor, who may, within three months, disapprove such by-law and render it null and of no effect.

The grounds urged by the petitioner for quashing the sentence of the Recorder were two:—1st. The City Council had no power to fix a limit within which private butchers' stalls could not be established. These by-laws were, therefore, *ultra vires*, and no condemnation can be based thereon. 2nd. The two by-laws have not been submitted to the Lieutenant-Governor within the time prescribed, and are consequently null.

Before entering into the merits of the case, his Honor said it might be well to determine the point of view from which such questions should be examined. Doubtless, recourse to the tribunals against the acts of corporations was an extremely precious guarantee for the citizens; but when these acts, performed in the exercise of the powers delegated to corporations by the Legislature, are intended only to promote the general welfare of the community, it seemed to him that the Courts should interpose with still more prudence and circumspection than in ordinary cases. Thus Dillon, on *Municipal Corporations*, Vol. 1, No. 353, says: "In prosecutions or actions to enforce ordinances, or in considering the question of their validity, Courts will give them a reasonable construction, and will incline to sustain rather than to overthrow them, and especially is this so when the question depends upon their being reasonable or otherwise. Thus, if by one construction an ordinance will be valid, and by another void, the Courts will, if possible, adopt the former." And in a note, the author thus resumes the jurisprudence now established in the United States on this subject: "Where the Legislature has conferred full and exclusive jurisdiction on a municipal corporation over a certain subject, the acts of the Corporation will be supported by every fair intendment and presumption. By-laws with penalties are not properly penal statutes. The penalty is in the nature of liquidated damages, established as such in lieu of damages which a Court would be authorised to assess. Therefore, the strict rules by which the validity of penal statutes are to be tested are not to be applied to the by-laws or ordinances of municipal corporations. It is well remarked that the by-laws of very

few of these corporations could stand such a test. They should receive a reasonable construction, and their terms must not be strictly scrutinized for the purpose of making them void." Such were the principles to be applied to this class of cases.

As to the first objection, that the City Council could not fix a limit, the by-law of 1875 fixed a limit of 300 yards, and the petitioner submitted to it, and took out a license. But the by-law of 1878, having increased the distance by 200 yards, the petitioner found himself too close to the public market, and could not get his license renewed, and it was for selling within the prohibited zone that he had been condemned. Sec. 123 of 37 Vict., ch. 51, gave power to prohibit the sale elsewhere than on the public markets. Then another clause authorises the city to permit the sale outside of the markets. What was the effect of this enactment? According to the petitioner the city had power only, either to prohibit the sale everywhere except on the markets, or to permit the sale everywhere on condition of taking out a license. The terms of the statute did not seem to the Court to bear this limited interpretation. The Council having power to sanction the sale outside of the markets, might designate especially the places where the sale would be allowed, and this designation might be of each place, or by fixing a general limit, as had been done here. The petitioner pretended that he had been put to expense in establishing his stall. The proof on this point not being before the Court, could not be taken into consideration, and besides, the petitioner was not without remedy for any damages suffered.

The second ground urged by the petitioner was the invalidity of the by-laws, because they had not been submitted to the Lieutenant-Governor with all possible diligence. The by-law of 22nd December, 1875, was only submitted 31st December, 1878, and when submitted, had already been amended by the second by-law passed 14th November, 1878. The law, however, did not declare the nullity of the by-law; on the contrary, the Lieutenant-Governor has three months within which to disapprove, and when the disapproval is notified to the Mayor, the by-law becomes null. Until a by-law has been disapproved, therefore, it is valid. The Court was against the petitioner on both