

The rule was drawn up on reading the affidavit of the applicant Grand, and a certified copy of the by-law. The applicant stated that, from 1860 to the time of the swearing of the affidavit (3rd June, 1867), he had been the proprietor and keeper of a tavern or house of entertainment in Guelph, for the retail of spirituous, fermented and other manufactured liquors, to be drunk therein: that during each of the prior years and the present year the Council, on his petition, granted him a license to keep a tavern: that the Council exempted him and other persons, not exceeding in all four in any one year, from the necessity of having all the necessary accommodation required by the Statutes of this Province: that in each of the said years the Treasurer of the said town compelled him to pay \$101 for his certificate, to enable him to obtain from the Collector of Inland Revenue (on payment to such officer of the Provincial duty, amounting to \$10) a license to keep a tavern as aforesaid: that the Treasurer informed him that \$100 of such charge was made under clause six of such by-law, and \$1 under clause 14 of the same.

The by-law itself was entitled "Taverns and Inspectors," and it recited that it was expedient to make provisions relating to the inspectors and houses of entertainment. The second and third clauses declared what accommodations every inn and tavern keeper should at all times provide for guests, and for stabling for horses, hay, oats, &c. By the fifth clause, every person to whom an inn or tavern license shall be granted shall pay to the Treasurer £10, in addition to the Imperial tax, and to keep a temperance hotel shall pay £6; and then, by the sixth clause, the one referred to in this rule, it was provided that every person who should obtain a license to keep a saloon should pay to the Treasurer £25, and should be subject to all the conditions and regulations contained in the same by-law relating to inn and tavern keepers, except so far as stabling, oats, hay, bedding and bedrooms were concerned, and that all saloons should be closed at or before eleven o'clock each night, and during the whole of the Sabbath.

During this term *J. H. Cameron, Q.C.*, shewed cause.

He filed in answer the affidavit of *Jas. Hough*, the Town Clerk and Treasurer of the Corporation, which stated that the by-law in question, before the final passing thereof on the 3rd of December, 1856, was duly approved by a large majority of the electors of the Town of Guelph, in manner provided by the Municipal law: that before and since the passing of it there were and have been, and there are now, houses of public entertainment in Guelph for the sale of spirituous liquors, known as saloons, which houses are the saloons referred to in the sixth clause, and exempt from providing stabling, &c., as therein stated, being special privileges granted to them over ordinary taverns; that for several years past, up to some time in this year, the applicant kept a saloon in Guelph by the name of "The Shades Saloon," and in his yearly application for license to keep such saloon named his house as "The Shades Saloon;" that the Council, in granting licenses to the applicant and other saloon keepers, referred to such licenses as saloon licenses, as distinguished from ordinary taverns: that the applicant always sought and obtained his license un-

der the sixth clause, and availed himself of the privileges which that clause gives to saloons: that in June last the applicant sold his property in the said saloon to one Kenet, and the application to transfer the license issued for such saloon was supported by a certificate as to the character of Kenet, which was drawn up by the applicant and signed by him and others, and it referred to the premises in question as "Grand's Saloon."

Palmer supported his rule.

The Statutes referred to are cited in the judgment.

MORRISON, J., delivered the judgment of the Court.

The by-law in question was passed under the provisions of the 13 & 14 Vic. ch. 65, sec. 4, and after the passage of the Act 16 Vic. ch. 181, which enacted, by the fourth clause thereof, that any by-law requiring more than £10 for a license should be approved and adopted by a majority of the municipal electors.

By the fourth section of the 13 & 14 Vic. the Council of each town had power to make by-laws for limiting the number of inns or houses of public entertainment in towns, for which licenses to retail spirituous liquors to be drunk therein shall be issued, and for fixing the terms and conditions which shall be previously complied with by any person desiring such license, the description of house and accommodation he shall have, &c., and the sum which he shall pay for such license over and above the duty imposed by the Imperial Act 14 Geo. III.; and to make by-laws for similar purposes, with respect to ale or beer houses, and other houses for the reception and entertainment of the public, where fermented or other manufactured liquors are sold to be drunk therein.

It is obvious that the Legislature intended by these general provisions that the Town Council should have the power of discriminating with respect to houses of entertainment, determining the description of the house and accommodation, the terms and conditions upon which the keepers thereof were to obtain certificates for license, and the sums they should pay the treasurer for every such described class of houses of public entertainment. The Statute itself is entitled "An Act relative to Tavern Licenses," and its preamble refers to taverns, beer shops and houses of public entertainment, and in the enacting clause refers to inns and houses of, &c. Since the passage of that Act the laws relating to licensing such houses in some respects have been changed and were embodied in the Consolidated Statutes, and lately re-enacted by the Municipal Act of 1866, but all by-laws passed under the various Statutes so consolidated have been saved, and such by-laws remain in force, except in so far as they may be inconsistent with the later legislation.

All these Statutes, by the use of the general term houses of public entertainment, intended to include, besides those specially named, every kind of house in which spirituous liquors were drunk, and in the various Statutes in Upper Canada they are referred to under different classes, i. e., taverns, inns, hotels, ordinaries, and victualling houses, and public houses; and no doubt these various houses are, in many respects, differently kept and sustained. We find nothing in any of the Statutes shewing an intention on the part of the Legislature that there should be a