

the conviction was right, the bread never having been weighed.—*Hill v. Browning*, L. R. 453.

2. By 3 Geo. IV. cap. 126, sec. 41, if any person shall leave upon any turnpike road any horse, cattle, beast or carriage whatsoever, by reason whereof the payment of any tolls or duties shall be avoided or lessened, he shall pay a fine. S. was driven by his coachman in a waggonette more than a quarter of a mile along a turnpike road to within about 140 yards of the turnpike gate, and he then got out and walked through the gate to a railway station, which was about 100 yards beyond; the waggonette was driven back by the coachman. *Held*, that "leaving" a carriage, in the sense of the statute, did not mean "quitting" it, and that the conduct of S. was not within the statute.—*Stanley v. Mortlock*, L. R. 5 C. P. 497.

## ONTARIO REPORTS.

### QUEEN'S BENCH.

*Reported by C. ROBINSON, Esq., Q. C. Reporter to the Court.*

#### MCKAY V. BAMBERGER ET AL.

*Sale for Taxes—Lands in cities—C. S. U. C. ch. 55.*

Under Consol. Stat. U. C., ch. 55, the chamberlain and high bailiff in cities had power only to sell the lands of non-residents for arrears of taxes.

A sale in 1865, of land belonging to and assessed to a resident, was therefore held invalid.

[30 U. C. Q. B., 59.]

Trespass to land situate in the city of Hamilton.

Plens—Not guilty; and land not the plaintiff's. Issue.

The cause was tried at Hamilton in the fall of 1868, before the late Mr. Justice John Wilson.

The plaintiff claimed under a deed, dated 30th November, 1865, from James McCracken, high bailiff of Hamilton, to the plaintiff, as purchaser of the land in question for arrears of taxes.

The warrant to the high bailiff to sell, granted by the city chamberlain, was dated the 29th of July, 1865.

A verdict having been found for defendants,

In Michaelmas Term, 1868, *John Read* obtained a rule *nisi* for a new trial.

A question arose as to the sufficiency of the description of the land sold, but this part of the case is omitted, as the judgment proceeds upon another point.

In this term, *Fenton* showed cause. The sale for taxes was made in 1865, under Consol. Stat. U. C. ch. 55. The chamberlain and high bailiff of Hamilton had no power to make a sale for taxes of the land in question, for they could only act as to the lands of non-residents, and this land was not of that class: sec. 138. By the Act of 1866 such officers have more authority in these respects than they had before it.

*M. O'Reilly*, Q. C. supported the rule. By Consol. Stat. U. C., ch. 55, sec. 163, the chamberlain and high bailiffs of cities have the like powers as the treasurer and sheriff of counties have in counties. If the powers of chamberlains and high bailiffs be restricted to the sale of non-

resident lands, the question then is, what are non-resident lands. Are they not unoccupied lands, or lands not resided upon? See secs. 6, 19, 22, 23, 168, 177, 179, 180, 183, 185. The Statute contemplated all lands of the like nature which could be sold in counties being sold in cities.

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

It was contended the sale by the chamberlain and high bailiff was illegal, for that they were enabled by the Consol Stat. U. C., ch. 55, sec. 158, only to fund, collect and manage the taxes due to their cities on the lands of non-residents, and not to sell the lands of residents at all.

Section 75 of the Act of 1853, which is the one consolidated by section 168 referred to, shews this more plainly than the one which was substituted for it. The *collecting* would authorize the sale by the city of the non-resident land, which, as well as other lands, counties may sell.

This lot in question was not non-resident land. Both occupant and owner were assessed for it, and both of them resided in Hamilton. The city could not, in 1865, sell this land, under the Consol. Stat. U. C. ch. 55. By the Act of 1866, 29-30 Vic. ch. 53, sec. 172, cities have the like general powers in selling land for arrears of taxes, whether on resident or non-resident lands, which counties have; but this sale was made before that Act was passed, and at a time when cities had not such a power.

The rule will be discharged.

*Rule discharged.*

#### SNELL AND THE CORPORATION OF THE TOWN OF BELLEVILLE.

*Municipal Corporations—Regulations of markets—Sale of meat.*

A By-law of a town for the regulation of the market enacted—That only butchers and persons occupying shops or stalls in the market, or in two specified wards of the town, for the sale of fresh meat, should sell or expose in any less quantity than by the quarter: that such butchers and persons might so sell at these places, but not otherwise; and that no person should sell any fresh meat in the town except in the market stalls or such place as the council should appoint, not less than 400 yards from the market, and within certain specified limits in the two said wards.—*Held*, valid.

2. That no person should buy, sell, or offer for sale any game, fish, poultry, eggs, butter, cheese, grain, vegetables, or fruits, exposed for sale or marketed in the town, until the seller had paid the market fees, or obtained a ticket from the collector of market tolls, as provided in a by-law referred to, and before a specified hour of the day: that no person should forestall, regrate, or monopolize any of the articles mentioned, within the town; and that before noon no butchers' meat, fish, hay, or straw, should be bought or sold in the town except at the market and in the shops or stalls in the two said wards. *Held*, valid, under the powers given by the Municipal Act of 1866, sec. 296, sub-sec. 9, and sub-sec. 10 as amended by 33 Vic. ch. 26, sec. 6, O, and sub-sec. 11.

3. That before 10 A.M. no huckster or runner within the municipality, or within one mile of its limits, should purchase any meats, fish, or fruit brought to the public market. *Held*, bad, as not confined to those living within the municipality or a mile therefrom; and *quære*, whether it should not exclude persons buying for their own use, not to resell.

4. That every person selling meat or articles of provision by retail, whether by weight, count, or measure, should provide himself with scales, weights and measures, but no spring balance, spring scale, spring steelyards, or spring weighing machine, should be used for any market purpose. *Held*, valid, under sub-sec. 10 above mentioned, and Consol. Stat. U. C. ch. 58.

5. That persons offending against the by-law should, on conviction by a magistrate, be fined not less than \$1 nor more than \$20, and in default of payment be imprisoned for not less than two nor more than twenty