

to condemn by-laws made under such authority as these were made as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say "Parliament never intended to give authority to make such rules, they are unreasonable and ultra vires," but it is in this sense, and this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent, or necessary, or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. And in this connection see *Strickland v. Hayes*, L.R. 1 Q.B. (1896) 290; *Gentel v. Rapps*, L.R. 1 K.B. (1902) 160, and *Thomas v. Sutter*, 1 Ch. Div. (1900) 10.

The legislature of Ontario has in respect to the enactment of resolutions or the regulation of many matters connected with the liquor traffic virtually clothed the License Commissioners with legislative powers, within certain limitations, and the remarks of Lord Russell in *Kruse v. Johnston* above quoted, seem to be applicable in considering resolutions passed by them. Considered from that point of view is the resolution now in question a reasonable one? It seems to me it is not.

I am not much impressed with the evidence offered by the appellant in support of his theory as to the injury caused to his liquor by exposure to sunlight, and as to his inability, owing to the narrowness of his bar room to remedy the difficulty. Nor can the resolution be considered unreasonable because the publicity given to a bar room by virtue of it would prevent people who wish to drink quietly and away from the public eye from frequenting it. But when owing to the resolution being "partial in operation" these people find licensed houses not affected by it as is that of the appellant and hence give him the go by he may not unfairly put it forward as a ground in favor of his appeal.

It has been clearly shewn, and is not disputed, that the resolution now under consideration is not applicable to and does not affect four out of the ten licensed houses in the town of Brockville. Thus it is not directed against "all within the sphere" of its operations, and does not "operate equally." The other six licensed houses are saddled with requirements and restrictions from which the four above-mentioned are free.

Surely this is unreasonable. Had the resolution been so framed as to cover all the licensed houses it would, subject to the question of validity as to the penalty enacted for the breach of it, have been valid. And there is not any reason given why it could not have been so framed. For instance had it provided that in every licensed house the bar room must face upon and open into a public street, and that no screen blind, etc.,