

a by-law passed under a misconstruction of its powers, unless such liability is expressly or impliedly imposed by the statute.

A city corporation acting in excess of its powers, passed a by-law amending an existing by-law for licensing pedlars, prohibiting them from peddling on certain streets, and the officers of such corporation in carrying out the by-law, declined to issue licenses except in the restricted form, which the plaintiff refused to accept, and, while attempting to peddle without a license was interfered with by the police, over whom the corporation had no control.

Held, that the corporation were not liable.

Neither does any liability arise where a licensee, who had taken out a license in the restricted form is damnified by being prevented by the police, from peddling on prohibited streets.

DuVernet, for the plaintiff.

Fullerton, Q.C., and *H. L. Drayton*, for the defendants.

ARMOUR, C.J.]

[May 18.

MCCULLOUGH *v.* NEWLOVE.

Interest—Work and services—Reference—58 Vict. ch. 12, sec. 118 (O.)

On a reference in an action in which money is claimed for work and services, agreed to be paid for at a fixed rate, the referee may, under 58 Vict. ch. 12, sec. 118 (O.), allow interest on the amount claimed from the time they became payable.

Watson, Q.C., for the plaintiff.

S. H. Blake, Q.C., and *W. H. Blake*, contra.

Province of New Brunswick.

SUPREME COURT.

En Banc.]

[June 10.

EX PARTE LEBLANC.

Canada Temperance Act—Recount—Lost Ballots.

In 1896 an election was held in Westmoreland County under the Canada Temperance Act, the result being to uphold the Act.

A recount was demanded, but when Wells, Co.J., opened Court for that purpose it was discovered that a number of the ballot boxes had been stolen, and an adjournment was made to give an opportunity to find them. At the re-opening of the Court the missing boxes had not been obtained. Wells, Co.J., held that he could not go on with the recount without having all the ballots before him, and dismissed the application for a recount.

In Easter Term *Welch* and *Atkinson*, showed cause against a rule nisi for a mandamus to compel Wells, Co.J., to proceed with the recount, arguing that the recount could not be held unless all the ballots were before the Judge and that secondary evidence could not be admitted.