

Act are limited, and can be exercised only *sub modo*, and in accordance with the authority derived under the former.

As regards the motion to quash the by-law; it succeeds on the very plain principle that the defendants have attempted to exercise their powers not *bona fide* in the interest of the public generally—their only right to act under sec. 559—but at the request and in the private interests of a few members of the public, and upon being indemnified by them against doing an act the impropriety of which, as being contrary to their agreement, the council appear to have been fully alive to: In re Morton and City of St. Thomas, 6 A. R. 323; In re Peck and Town of Galt, 46 U. C. R. 211.

On every ground, I think the appeal fails and should be dismissed.

MACLENNAN, J.A.—If restricted from designating a part of the street as a stand, the defendants must necessarily be restricted as to every part, and therefore as to the whole. Nor do I think any of the other arguments urged by the appellants are entitled to prevail. The case is simply one of contract, and whatever question there might be of the power of the city to enter into it, is set at rest by the Act of the Legislature. The by-law is a distinct violation of the agreement, for which an action is a proper mode of seeking redress, and, in my opinion, the jurisdiction of the Court is clear to declare the by-law illegal, and to restrain further violation by injunction. The only way in which the defendants could violate the agreement was by passing a by-law, and an injunction to restrain the violation of the agreement necessarily extends to future by-laws. The judgment might have included an award of nominal damages for the breach of contract, and it would then be in form, what it is now in substance, a common law action, with an award of an injunction rendered proper and necessary, inasmuch as the breach of the agreement was deliberate.

It is not necessary to do so, and I refrain from expressing my opinion upon the rights of licensed cab and express men to use the streets in question in following their business; or on the question whether, in the absence of by-law to the contrary, they may not stand anywhere upon any street waiting for employment, so long as they do not obstruct traffic.

Moss, J.A.—I agree.

MacMurchy, Denison, & Henderson, Toronto, solicitors for plaintiffs.

DuVernet & Jones, Toronto, solicitors for defendants.