

of \$1.50 for certified copies of by-laws is not warranted by R.S.O., c. 78.

Another objection is that the by-law, being No. 274, was passed Sept. 15th, 1879, before the town council had power to prohibit livery tables in certain parts of the town, and that the amending by-law, No. 394, passed 5th February, 1892, after the power was given by 52 Vict., c. 36, cannot be read as re-enacting the whole of by-law No. 274 so as to make a conviction good under that by-law for an act which could not legally be prohibited when the first by-law was passed. There are other objections taken to this conviction, but I do not consider it necessary to refer to them now, since I think either of the two objections mentioned must prevail.

It seems a minute of the conviction was made at the time of the trial in the police court, which was signed by the two presiding magistrates. This stated the fine and the item of the costs, of which the item in dispute was not one; but afterwards the clerk added this item without informing the magistrates of what he had done, and the magistrates signed the formal conviction with this item in it. The clerk states that no attention was called to this addition, and that he cannot say whether the magistrates read over the conviction or not. If, however, the item was a legal one, possibly all that need now be done would be to amend the conviction; but under the decision in *Reg. v. Elvitt*, 12 Q.R. 524, I must consider in the language of ROSE, J., "the proceeding is not one of form, but of substance, and involves a principle," for I am of the opinion that the charge cannot legally be made. Item 12 of the schedule to R.S.O., c. 78, refers to copies of papers that have been used at the trial, and not to copies of papers which copies are to be used at the trial. If copies of the minutes taken at the trial, or of any other paper connected with it, other than those specially mentioned in previous items, are wanted, then under this item 12 the magistrates can charge 10 cents per folio for the same. The Act relates to fees of the justices and their clerks, and cannot be construed to relate to the preparation of documents or copies of documents to be used as evidence on the trial, which would be work done by or for the prosecutor. The conviction must be quashed, then, on this ground if on no other.

But I consider the conviction is also bad

under the other objection mentioned. Mr. Nesbitt's argument that the two by-laws must be read together as the latter by-law was ingenious and plausible, but I think the most that can be done is to read the earlier by-law as amended by the later one; and if the clause as it now reads is not justified by the state of the law as existing when the first by-law was passed and bears date, the amendment must fail to take effect. If we are to incorporate the whole of the first by-law into the later one simply because of the amending clause, and in effect so make a new by-law, we could, by amending an important by-law in some unimportant particular, obtain all the effect of a new enactment embodying recent powers without going through even a single reading of the new law complying at all with any of the formalities required to pass a by-law, except as regarded the one amended clause.

Conviction quashed without costs.

COUNTY COURT, COUNTY OF YORK.

(Reported for THE CANADA LAW JOURNAL.)

STOTT v. SPAIN.

Chattel mortgage—Distress for rent—Mortgaged goods property of wife—R.S.O., c. 143, s. 28.

Where a landlord distrained on and sold certain goods temporarily upon the tenant's premises, but belonging to his wife, who had mortgaged them to a third party,

Held, that this was not a case intended to be covered by R.S.O., c. 143, s. 28, and that such goods were exempt from seizure.

[TORONTO, June 8, 1892.]

The facts appear in the judgment.

John McGregor for the plaintiff.

Delamere, Q.C., for the defendant.

MCDUGALL, J.: In this case the plaintiff claims for the detention and conversion by the defendant of a team of horses and a wagon. These articles he claims by virtue of a chattel mortgage made by one Mrs. O'Rourke to him to secure the payment of a sum of money advanced by him to her some considerable time prior to the seizure of the above-mentioned articles by the defendant. James O'Rourke (husband of Mrs. O'Rourke, the mortgagor above named) was the tenant of the defendant of certain premises near West Toronto Junction