

*Rose, Q. C.*, supported the rule, contending that the by-law was bad for discriminating between different classes in the community; and also that it was *ultra vires* the corporation. He referred to *Jonas v. Gilbert*, 5 S. C. 356.

*Bethune, Q. C.*, contra.

March 14, 1882. *OSLER, J.*—The Municipal Act, R.S.O. ch. 174, sec. 466, sub-sec. 54, enables the corporation of any city, town, or incorporated village, to pass by-laws "for regulating the conveyance of traffic in the public streets, and the width of the tires and wheels of all vehicles used for the conveyance of articles of burden, goods, wares or merchandize."

This clause empowers the corporation to protect the streets from injury caused by carrying thereon loads of great weight, or by the use of narrow wheeled vehicles, and they may do so either by providing that loads above a certain weight shall not be carried thereon, or that the weight of the load which may be carried shall be regulated by the diameter of the wheel and the width of the tire.

The by-law under which the conviction in question is made, provides generally that no one shall use, &c., any waggon, cart, dray, or other vehicle of heavy draught, upon any of the public streets of the town of Guelph for the purpose of drawing brick, sand, stone, iron, wood, coal, lumber, grain, merchandize, or articles of burden, when the weight of the load exceeds 1,500 pounds, unless, if the wheels are not less than three feet six inches in diameter, the tires upon such wheels are at least three inches in width; and if the wheels are less than three feet six inches in diameter, then the tires thereon shall be four inches in width.

Such a by-law is unobjectionable if it is made to apply equally to all persons who use the public streets in the manner forbidden by it.

The third clause provides that it shall not apply to any waggon laden with lumber or goods, and used for the purpose of conveying the same from the mill or place of manufacture thereof into the town, provided the mill or place