

On the application he filed an affidavit of the applicant, who was styled in it as "of the city of Kingston, in the county of Frontenac, Esquire," and the first paragraph stated that he was "a resident in the city of Kingston," and that he obtained the by-law attached to his affidavit from Michael Flanagan, the city clerk of the said city of Kingston, and that the seal affixed thereto was the seal of such corporation of Kingston. The affidavit was sworn before C. F. Gildersleeve, "at the city of Kingston, in the county of Frontenac," who styled himself in the jurat "a Commissioner in B. R. and C. P., &c., for the said county." The by-law at the end was signed, "M. Flanagan, City Clerk," and opposite the name was the seal of the corporation, and above the signature of the clerk the words "A true copy."

The 48th section of the by-law was: "That the farmers or any other persons bringing produce, articles, commodities, or things, for sale to this market, if found or detected selling or offering for sale the same, or any part thereof, on any of the public streets, lanes, or within the city limits, to butchers, hucksters, vendors, or other persons, on their way to the market, or without having paid market toll, and before first offering said articles, commodities, or things, for sale at the proper market place, shall be deemed guilty of an infraction of this by-law, and shall be subject to the penalty in such case made and provided herein." And by the 60th clause of the by-law, any person guilty of an infraction of the by-law was liable to be fined not more than \$50, nor less than 50 cents, and costs, to be levied, &c., and in default of payment to imprisonment for not more than twenty-one days.

Read, Q. C., shewed cause, and took several preliminary objections. 1. That the affidavit filed was not entitled in this court, and that the jurat did not shew it was sworn before a commissioner of this court. 2. That the copy of the by-law was not duly certified, the words "A true copy" being insufficient, without some form of certificate. 3. That it did not appear from the affidavit that the applicant was a resident of the city of Kingston. He cited *Hirons and the Municipal Council of Amherstburgh*, 11 U. C. Q. B. 458; *Babcock and the Municipal Council of Bedford*, 8 U. C. C. P. 527; *Bogart v. The Town Council of Belleville*, 6 U. C. C. P. 427; *Hodgson and the Municipal Council of York and Peel*, 13 U. C. Q. B. 268; *Osburn v. Tatum*, 1 B. & P. 271; *Fisher v. The Municipal Council of Vaughan*, 10 U. C. Q. B. 492; *Baker v. The Municipal Council of Paris*, 10 U. C. Q. B. 621.

Crooks, Q. C., supported the rule citing *Lush's Practice*, 875; *Perse v. Browning*, 1 M. & W. 362; *White v. Irving*, 2 M. & W. 127; *Frazer and the Municipal Council of Stormont*, 10 U. C. Q. B. 286; *Grierson and the Municipal Council of Ontario*, 9 U. C. Q. B. 623; *Scarlett and the Corporation of York*, 14 U. C. C. P. 161.

MORRISON, J., delivered the judgment of the Court.

As to the preliminary objections, the cases of *Frazer and the Municipal Council of Stormont* (10 U. C. Q. B. 286), and *Murphy v. Boulton* (3 U. C. Q. B. 177), dispose of the first.

As to the second, it is sworn that the printed copy of the by-law filed was received from the clerk of the corporation. Attached to it at the

end is the seal of the municipality, which is also sworn to, and opposite to it is placed the signature of the city clerk, and his title of office, with the words, "A true copy." We think it is sufficiently verified, and, as said by Sir John Robinson in *Fisher v. The Municipal Council of Vaughan*, 10 U. C. Q. B. 495; "If this were not a true copy of the by-law, that could easily be shewn on the other side."

With respect to the third objection, it appears to us that the statement in the affidavit that the applicant is a resident of Kingston, coupled with the previous statement that he is of the city of Kingston, in the county of Frontenac, is quite sufficient.

Then as to the main question, we can have no doubt that the corporation has exceeded the powers given by the Municipal Institutions Act, in passing the 48th section of this by-law. In *Fennell and the Corporation of Guelph*, 24 U. C. Q. B. 241, which was not referred to in the argument, this court quashed so much of a by-law as restrained the sale of meat, fish, poultry, eggs, &c., within the town of Guelph, at any place but the public market, without first having paid the market fee thereon; and also because it prohibited the sale of poultry, eggs, cheese, &c., within the municipality at any other place but in the market, no power being given to regulate the place of sale of such articles.

The by-law now before us makes no distinction. It subjects to a penalty any person whatever selling or offering for sale to any other person any produce, articles, commodities or things, within the city limits, without having paid market toll, or before first offering them for sale at the proper market-place.

That part of sec. 294 of the Municipal Act which relates to markets, and under the provisions of which this corporation has assumed to act, gives by the 8th sub-section power for preventing or regulating the sale of certain specified articles by retail in the public streets, and by the 10th sub-section power for regulating the place and manner of selling and weighing other specified articles, and by the 9th sub-section for preventing or regulating the buying and selling of articles or animals exposed for sale or marketed in the open air.

The statute gives no authority for the passing of a by-law of so wide and general a character as the one now in question, or containing such conditions as it does. The provisions of the statute are specific and limited, and the by-law should be restricted in its operation to the purposes and articles mentioned in the different sub-sections, and by doing so the very proper object the municipality had in view would have been effected.

As it is, they have exceeded their powers, and the by-law must be quashed with costs.

Rule absolute.

REGINA V. ESMONDR.

Attempting to commit a felony—Aiding such attempt—27—28 Vic, c. 19, s. 9.

The prisoner was convicted of unlawfully attempting to steal the goods of one J. G. It appeared that he had gone out with one A. to Cooksville, and examined J. G.'s store, with a view of robbing it, and that afterwards A. and three others, having arranged the scheme with the prisoner, started from Toronto, and made the attempt, but were disturbed after one had got into the store through a panel