

MANITOBA.

COURT OF QUEEN'S BENCH.

KILLAM, J.]

[April 8.

CROTHERS v. MUNICIPALITY OF LOUISE.

*Prohibition of sale of liquor—Liquor License Act, R.S.M., c. 90—Ultra vires
—Quashing by-law.*

This was an application to quash a by-law of the defendant municipality, forbidding the receipt of any money for licenses for the sale of liquors within the municipality, passed in accordance with section 58 of the Liquor License Act, which provides as follows: "No license shall be granted by the commissioners for the sale of liquors within the limits of a municipality when it shall have been made to appear to the commissioners that a by-law has been passed by said municipality forbidding the receiving by the said municipality of any money for a license for such purpose." Section 94 of the Act provides that any municipality may, by by-law, require each licensee for premises within the municipality to pay towards its municipal revenue such sum as it may determine, not exceeding the amount of provincial duty payable on such licenses, and forbids commissioners to issue any license without evidence that such fees have been paid. Other sections of the Act prohibit the sale of liquors without such license having been obtained.

Held, that section 58 must be construed as an attempt to confer the power upon the municipality to prohibit the liquor traffic within its boundaries, as such would be the effect of the by-law referred to therein being passed, although the language is that the by-law only forbids the receiving of any money for a license.

Held, also, that if the legislation in Ontario, and the circumstances appearing in the case of *Huson v. South Norwich*, 19 A.R. 343, were the same as in the present case, the decision of the Supreme Court in that case should be followed rather than the decision of the same court given on the same day in the case submitted for its opinion by the Provincial Government of Ontario, the two decisions being apparently conflicting; but the cases are not the same, because in the former the reason of the decision was that the prohibited sales were small retail sales which could be forbidden under the police powers proper to be committed to municipal bodies without interfering with trade and commerce; whereas the effect of the by-law in question in this case is to prevent a license of any kind from being granted.

Held, also, following the decision of the Supreme Court upon the questions submitted to them, that the provincial legislatures have no power to prohibit the selling of intoxicating liquors to any greater extent than such selling was prohibited in the case of *Huson v. South Norwich*, 19 A.R. 343, 24 S. C. R., and that the by-law in question should be quashed.

Wade for applicant.

Hough, Q.C., for the municipality.

McCLean for the Attorney-General.