

tion erected, or allowed to remain erected upon any licensed premises which does or shall in any way prevent the bar room from being open to view from the nearest public street, and any person who shall erect or allow to remain erected any such obstruction, or curtain, and infringe upon this regulation shall be liable to a penalty of not less than \$10, and not exceeding \$50 for every day during which such obstruction or curtain shall remain erected or placed." It appeared from the evidence at the trial that the defendant, a license holder, allowed the blinds of his bar room to remain on his windows, the license inspector having observed them on several days. Several witnesses testified that the exposure of the bar room to the light and heat of the sun was injurious to the liquors—and that at least four bar rooms in Brockville were so arranged as not to be seen from any public street. The defendant was convicted and fined \$10 and costs. The defendant appealed to the county Judge in Chambers.

Haverson, K.C., for the appellant. The resolution is ultra vires of the License Board. Sec. 4 of the License Act authorizes the passing of resolutions, and the imposition of penalties for their infraction. Under s. 100, "such penalties may be recovered and enforced in the manner and to the extent that by-laws of municipal councils may be enforced under the authority of the Municipal Act under s. 702 of that Act. By-laws may be passed by municipal councils for inflicting reasonable penalties not exceeding \$50, exclusive of costs, for any breach of any of the by-laws of the corporation." The offence under the resolution is erecting or allowing to remain erected. It is one act, and no matter how many days it is allowed to remain it is one offence, if for six days the penalty in such case would be from \$60 to \$300, a sum beyond the power conferred by ss. 100 and 702 respectively. *Paley on Conviction*, 207. *Reg. v. Scott*, 4 B. & S. 368, *Collins v. Hopwood*, 15 M. & W. 459; *Attorney-General v. McLean*, 1 H. & C. 750; *McCutcheon v. Toronto*, 22 U.C.R. 613.

For the distinction between separate penalties and those of a cumulative character many instances can be cited in the License Act. For separate penalties see ss. 57, 59, 68, 75, 78, 85, 124 and 125; for those of a cumulative character see ss. 47, 71 and 77.

The resolution is unreasonable in that it requires the license holder, a tenant, to interfere with permanent partitions in a house not his own. Its operations are confined to houses with their bars facing a public street and not to those not so placed.

M. M. Brown, contra, cited *Reg. v. Martin*, 21 A.R. 145; *Queen v. Hodge*, 9 Ap. Cases 117; *Reg. v. Waterhouse*, L.R. 7 Q.B. 545; *Wentworth v. Mathieu*, 3 Can. Crim. Cases 429.

McDONALD, Co. J.—In my judgment the resolution of the License Commissioners cannot be upheld.

In the first place it is ultra vires. I have come to this conclusion with some hesitation, and content myself with referring to the Liquor License Act, ss. 4, 5, 100; the Municipal Act, 702; the sections of the Liquor Li-