

[QUEEN'S BENCH DIVISION.]

REGINA V. PIPE.

By-law regulating width of tires—Unfair discrimination—Conviction.

A by-law of a town provided that no one should use any waggon, &c., upon any of the streets of the town for drawing brick, stones, &c., when the weight of the load should exceed 1,500 pounds, unless the tires of the wheels were of a specified width; but the by-law was not to apply to any waggon conveying lumber or goods from the mill or manufactory thereof into the town if distant more than two miles from the town limits, nor to any person passing through the town with vehicles loaded with the said articles.

Held, bad, as discriminating as against residents of the town in favour of others.

Held, also, that a conviction under such by-law was bad, for not shewing that defendant was not a person passing through the town, and for imposing imprisonment with hard labour.

January 31, 1882. *Rose, Q. C.*, obtained a rule *nisi* to quash the conviction in this case—which was for using a waggon of heavy draft in the public streets of Guelph, containing more than 1,500 lbs. weight, the tires on the wheels of which were less than three inches wide; said waggon not being laden with or in use for carrying garden or farm produce, or laden with lumber or goods, or used to convey same from the mill or place of manufacture, or distant therefrom more than two miles from the limits of Guelph, contrary to the by-law of the corporation of Guelph—on the following grounds:

1. The conviction was not warranted by the by-law.
2. Defendant not guilty of any offence under the by-law.
3. Said by-law was *ultra vires*.
4. Defendant being resident outside the limits of Guelph, the corporation had no power to pass a by-law to regulate the width of tires and wheels of a vehicle belonging to him.
5. The by-law unjustly discriminated in favour of certain persons and classes as against defendant and others.
6. By-law void as being in restraint of trade.
7. No evidence of the by-law, which had not been filed with the magistrate before the conviction.

The by-law is sufficiently set out in the judgment.