

In the opinion of their lordships, it cannot be relied on in justification of the section now in question, and indeed the point was not pressed by the learned counsel for the appellants.

It appears to their lordships that the real question is, where under oath power to pass by-laws "for regulating and governing" hawkers, etc., the council may prohibit hawkers from plying their trade at all in a substantial and important portion of the city, no question of any apprehended nuisance being raised. It was contended that the by-law was *ultra vires*, and also in restraint of trade and unreasonable. The two questions run very much into each other, and in the view which their lordships take it is not necessary to consider the second question separately.

No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise, both as to time, and, to a certain extent, as to place where such restrictions are, in the opinion of the public authority, necessary to prevent a nuisance, or for the maintenance of order. But their lordships think there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed. An examination of other sections of the Act confirms their lordships' view, for it shows that when the Legislature intended to give power to prevent or prohibit it did so by express words.

Their lordships refer (amongst others) to section 489, subsections 25, 26, 28, 29, 44, 46, 51, and section 496, subsections 3, 13, 14, and 15. The language of these subsections, "Preventing or regulating," "Preventing or regulating and licensing," tends to show that the framers of the Act did not intend to include a power to prevent or prohibit in a power to regulate or govern. Several cases in the English and Canadian reports were referred to in illustration of the respondent's argument. None of these cases are direct authorities, because the statutes from which authority was derived to make the by-laws there in question were framed in terms different from the statute now under consideration. But through all these cases the general principle may be traced, that a municipal power of regulation or of making by-laws for good government, without express words of prohibition, does not authorize the making it unlawful to carry on a lawful trade in a lawful manner.

It is argued that the by-law impugned does not amount to prohibition, because hawkers and chapmen may still carry on their business in certain streets of the city. Their lordships cannot accede to this argument. The question is one of substance, and should be regarded from the point of view as well of the public as of the hawkers. The effect of the by-law is practically to deprive the residents of what is admittedly the most important part of the city of buying their goods of, or of trading with, the class of traders in question. And this observation receives additional force from the very wide definition given to "hawkers" in the Act. At the same time, the "hawkers," etc., are excluded from exercising their trade in that part of the city. There was no evidence, and it is scarcely conceivable that the trade cannot be carried on without occasioning a nuisance. The appellants in their printed case wisely disclaim any intention on the part of the council to discriminate against hawkers