

REGINA v. GUNN.

Livery stable-keeper—Restricted to place mentioned in license.

Held, that under the by-laws relating to livery stables and cabs a person licensed as a livery stable-keeper, but not having a cab license, cannot, for the purpose of soliciting passengers stand with his cab at places, though owned by him, other than at the place mentioned in his license.

Bigelow, Q.C., for the applicant.

H. M. Mowat contra.

REGINA v. ELBORNE.

Liquor License Act—Sale by druggist—Omission to enter in book—Effect of.

S. 52 of The Liquor License Act, R.S.O., c. 194, provides that the prohibitory sections of the act were not to prevent the sale of liquor by a druggist for strictly medicinal purposes, in packages not more than six ounces, except under a medical certificate; but it should be the duty of such druggist to record in a book every sale, etc.; and in default thereof every such sale, etc., should be *prima facie* held to be in contravention of the act.

Where, therefore, a druggist made a sale of liquor not exceeding six ounces for strictly medicinal purposes, but made no entry thereof in a book, merely, as was his custom, recording such sale on a slip of paper,

Held, that this non-entry in a book did not constitute an absolute contravention of the act, but merely threw on the defendant the onus of rebutting the *prima facie* presumption of such contravention; and having done so, a conviction only on the ground of the omission to record such sale in a book was quashed, but under the circumstances without costs.

C. W. Meyer for the applicant.

Langton, Q.C., *contra.*

IN RE THE TOWNSHIPS OF ANDERTON AND COLCHESTER.

Drainage—Necessity for petition—Whether new work—Municipal Act, ss. 569, 585, 598.

On a petition therefor, a by-law was passed and the usual proceedings taken for the construction of a drain from a point in the township of C. to the townline between the township

of A. and C., where it connected with an existing drain, whereupon certain landowners on the said townline petitioned the council of C., threatening that if their lands were damaged by the said drain they would hold the township of C. liable therefor, and prayed that they would order the surveyor to continue the drain to a sufficient outlet. Instructions were given to the surveyor, who made the necessary examination and reported in favor of a drain along the townline; and a by-law was introduced for the construction thereof, reciting that a majority of the landowners benefited had petitioned (referring to the petition last mentioned), and assessing the cost on the lands benefited, etc., and naming the proportion thereof to be borne by the lands in A. On receiving notice of the proposed by-law, the township of A. gave notice of appeal, and arbitrators were appointed. Subsequently the township of A. moved for a prohibition against the arbitrators further proceeding in the matter, on the ground of the absence of a proper petition for such drain.

Held, per STREET, J., that the drain in question came within either ss. 569 or 598 of the Municipal Act, R.S.O., c. 184, and not within s. 585, so that a petition was an indispensable preliminary to the passing of the by-law, whereas the alleged petition was clearly insufficient; that the mere fact of its not being quashed within the period limited by s. 572 would not prevent its being treated as invalid in other proceedings as here; and that prohibition would be granted, notwithstanding the by-law was good on its face, especially as there had been no laches.

On appeal to the Divisional Court, the court was equally divided, and the appeal failed.

Langton, Q.C., in support of appeal.

Aylesworth, Q.C., *contra.*

Practice.

MACMAHON, J.]

[Jan. 7.]

NESBITT v. ARMSTRONG.

Married woman—Summary judgment—Separate estate—Amendment—Writ of summons—Special indorsement.

In an action upon a covenant in an agreement, whereby the defendants covenanted to pay the plaintiff the moneys then owing to him and