

and Durham, held at the town of Bowmanville on the 26th November, 1914.

Evan H. McLean, for the appellant.

No one appeared for Jarvis, the respondent.

WARD, Co. C.J.:—I find that the appellant was convicted under the provisions of a by-law of the town of Bowmanville, passed in pursuance of sec. 583, sub-sec. 14, of the Municipal Act, 1903.

In *Regina v. Coutts* (1884), 5 O.R. 644, under the law as it then existed, Mr. Justice Rose decided that the defendant did not come within the definition of a hawker, the circumstances being precisely the same as in the present case, and the learned Judge expressed the opinion that, under the statutes referred to, it was not within the power of a municipality to pass a by-law prohibiting unlicensed traders sending out agents to take order for goods, etc., from private persons and subsequently delivering the goods; and, if it was deemed desirable that such power should be given to municipalities, the Legislature could be applied to, etc.

This suggestion was evidently acted upon, as, by the Consolidated Municipal Act, 1892, 55 Vict. ch. 42, sec. 495, sub-sec. 3 (a), the word "hawkers" was defined to "include all persons who, being agents for persons not resident within the county, sell or offer for sale, tea, dry goods, watches, plated ware, silver ware, or jewellery, or carry and expose samples or patterns of any such goods to be afterwards delivered," etc.

This was found not to be wide enough; and, by the Municipal Amendment Act, 1896, 59 Vict., ch. 51, sec. 16, sec. 495 was amended by adding the words, "furniture, carpets, upholstery and millinery," after the words "silver ware" in the fourth line of paragraph (a) in sub-sec. 3 of sec. 495, and, by a subsequent Act, spectacles and eye-glasses have also been included.

This, to my mind, shews clearly that the intention of the Legislature has been to define and set out the different articles of merchandise coming within the terms of the Acts as passed; and, "carpet sweepers" not being mentioned, I find that the appellant should not have been convicted; and I direct and order that the conviction herein be and the same is hereby quashed, and that the respondent do pay to the appellant his necessary disbursements in this Court.

CORRECTION.

IN WEIR v. HAMILTON STREET R.W. Co., ante 495, on p. 496, 15th line from the bottom, for \$375 read \$735.