

horses, and having its seating accommodation on the top, where there were four or five exposed seats, ranged one behind the other, and extending across its full width, each capable of holding several people. A charge of \$1 per head was made to every passenger desiring to be conveyed on the trip or excursion, which was one planned and controlled by the appellant, and upon which a distance of about twelve miles was regularly traversed by a customary route, the limits of the city being usually overpassed in its course. Evidence was also adduced to show that the appropriate designation for the vehicle was "brake" or "drag"; and that it did not correspond, in any essential feature, with either a cab or omnibus, the two classes of conveyance which were subject to the by-law.

The vehicle was run intermittently for a few months of the year, and during fine weather only; and it stopped, *en route*, to take up passengers at certain hotels in the southern or lower part of the city, the proprietors of which were authorized to solicit and book passengers upon it for the appellant, on commission. It was further shown that the conveyance, if not entirely unknown, was, at all events, not a public competitor for favor, or sought to be used for hire, in the city, before the passage of the statute or by-law.

It appeared that the appellant was the duly qualified holder of a license for a livery-stable, under another and separate by-law of the Commissioners; and that the cab by-law did not sanction or establish rates of fare for travel *beyond* the city limits, such as were fixed thereby affecting only cabs and omnibuses plying for hire *within* them, and to which no more than two horses were to be attached. In the case of an omnibus, there was a special provision, defining the streets and route upon which its running was permissible, and another which prescribed its seating capacity, inside as well as out.

The by-law was passed under the statute before mentioned, the language of which, so far as material, is, "The Board of Police Commissioners shall, in cities, license and regulate * * * the owners of livery stables, and of horses, cabs, carriages, carts, trucks, sleighs, omnibuses and other vehicles used for hire within the said city, and shall establish the rates of fare to be taken by the owners or drivers of such vehicles, for the conveyance of goods or passengers, either wholly within the limits of the city, or from any point within the city to any other point not more than three miles beyond said limits."

Held, that from the general trend of the by-law, and having regard to the conditions and restrictions imposed, and which were to govern the licensing and regulating of the vehicles dealt with, the conveyance in question could not be said to be covered by it, more especially since such conveyance could not have been in contemplation of the framers of the by-law, when passed.

Held, further, that the convictions charged the three separate and distinct offences of "setting up," "using" and "driving," and for this reason also, could not be supported; and that the powers of amendment conferred by the criminal code, assuming them to be applicable to the case of a conviction under a by-law, did not authorize the removal from the conviction of all the offences so charged, but one, and its retention therein alone.

Du Vernet, for the appellant.

Drayton and McBrady, for the respondent.