

FIRST DIVISIONAL COURT.

DECEMBER 10TH, 1917.

REX v. BUTTERWORTH.

*Municipal Corporations—By-law Requiring Coal Sold to be Weighed upon Municipal Scales—Necessity for Request from Buyer or Seller—Construction of By-law—Prosecution for Infraction of By-law—Failure to Prove Request—Magistrate's Conviction Quashed.*

Appeal by the defendant (by leave of MIDDLETON, J.) from an order of ROSE, J., in Chambers, 30th August, 1917, dismissing a motion by the defendant to quash a conviction made by the Deputy Police Magistrate for the City of Ottawa on the 15th August, 1917, for an infraction by the defendant of a by-law of the Municipal Council of the Corporation of the City of Ottawa.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

Taylor McVeity, for the appellant.

F. B. Proctor, for the complainant, respondent.

The judgment of the Court was read by MEREDITH, C.J.O., who said the defendant was a coal-dealer, carrying on business in Ottawa, and the conviction was for his having, on the 9th and 10th days of August, 1917, at Ottawa, unlawfully caused five loads of coal sold by him to be delivered in Ottawa "without first having the same weighed upon one of the city weigh-scales, contrary to the by-law of the Corporation of the said City of Ottawa in such case made and provided."

The by-law was passed on the 6th May, 1912. By sec. 48 it was provided that "no person shall, upon or after the sale thereof, deliver any coal from a waggon or other vehicle or cause the same to be delivered without having the same weighed upon one of the city weigh-scales in accordance with the provisions of this by-law." Sec. 46: "Every buyer and seller of . . . coal . . . and all other articles exposed for sale may require the same to be weighed at one of the public weigh-scales or machines of the corporation."

The concluding words of sec. 48—"in accordance with the provisions of this by-law"—must refer to the provisions of sec. 46. The effect of sec. 48 is, therefore, not to make it compulsory on persons delivering coal from a waggon or other vehicle to have the coal weighed upon the city weigh-scales in all cases, but only