

Unquestionably, but for our law, the statement by the notary, protesting a bill or note, that he had sent notice by post to the endorser or drawer, would not be proof of that fact. And if we had no such law, then I should think that section 6 would mean no more than that all protests shall be received as *prima facie* evidence of these facts, which belong to the act of protesting.

A protest made abroad, of non-acceptance or non-payment of a foreign bill, proves itself, but the dishonour of an inland bill was not proved by such a protest. (Chitty on Bills, 224, 10th ed.)

I think the term "protest," in the sixth section, therefore, should be construed according to its ordinary meaning and acceptance among mercantile men; and that to make it evidence of notice of dishonour having been sent to drawer or endorser, it must be made by a notary public in Upper or Lower Canada, in his own writing, and signed by him, that is, it must be in conformity with the 7th section.

Now, on the face of this protest, it appears to have been made in the State of New York, and by a notary resident there, and therefore it is not *prima facie* such a protest or instrument as the 7th section requires and makes presumptive evidence of notice.

On this ground, therefore, I am of opinion a new trial should be granted.

As to the second objection, I do not dissent from the conclusion of the learned judge of the county court.

On the third point, as at present advised, I think the plaintiff might have recovered interest at the rate allowed by our law.

Per cur.—Judgment accordingly.

IN RE BRIGHT V. THE CITY OF TORONTO.

Corporation—By-law—Tavern licenses—Committee—Bar-room closing of.

11th. That the appointment of a committee of the corporation for the purpose of granting or refusing tavern licenses is authorized by sub-sec. 1 of sec. 246 of the Municipal Corporation Act.

2ndly. That it is within the power and scope of the Corporation to compel, by by-law, the closing of bar-rooms within certain hours of the night, and a by-law compelling their being closed between 12 p.m. and 5 a.m. was not deemed to be beyond their power.

3rd. That it was not an excess of authority to compel the removal from over the door of such houses, not licensed to sell liquor, of a signboard or other notice of such license being granted them.

4th. A clause in a by-law which cancelled the license of a person convicted of a penalty for the infringement of a by-law held to be beyond the authority of the corporation, and a clause rendering such infringement a cancellation was quashed with costs.

[T. T., 26 Vic.]

Hallinan obtained a rule *nisi* to quash sections numbered five, eleven, seventeen, nineteen and twenty of by-law No. 310, respecting the licensing and regulating hotels, taverns, and other places of public entertainment and places where spirituous liquors are sold, passed the 20th of February, 1860, on the ground of illegality in this, that the corporation therein try to exceed the powers given by law to them to pass by-laws for the purposes mentioned in the by-law, that they have no power to pass such sections or to delegate their powers to a committee.

The sections objected to were as follows:

Section 5. "The committee on licenses shall examine all applications for license or transfers of license, which the inspector may lay before them, and in their discretion grant or refuse the same, and if granted, approve of the names of sureties tendered by the applicant for such license or transfer, and the chairman, with two members of the committee, shall countersign the license or transfer to be issued.

Section 11. "The bar-room of every hotel or tavern, and of every other place licensed under this by-law, shall be closed on every Monday, Tuesday, Wednesday, Thursday and Friday night at twelve o'clock, and shall remain closed until five o'clock on the morning following each of the said days respectively; and every such place shall be closed on every Saturday night at eleven o'clock, and remain closed until five o'clock on the Monday morning thereafter.

"And whereas by statute 22 Vic. cap. 6, it is enacted," &c., (setting out the first section, which prohibited the sale of intoxicating liquors from seven on Saturday night until eight on Monday morning, but omitting the following words, "and during any further time on the said days, and any hours on other days, during which by any by-law of the municipality wherein such place or

places may be situated, the same or the bar-room or bar-rooms thereof ought to be kept closed.") This section, commencing by words importing a recital, "and whereas," &c., contains nothing but a portion of the first section of the statute.

Section 17. "No person who has not a tavern license shall exhibit, or suffer or permit to be exhibited or continued over his or her door or otherwise, 'licensed to sell wines, beer, or other spirituous or fermented liquors,' or the words bar-room or tavern, or inn or saloon, or any other words or sign or signs, or sign-boards, indicating that the person keeps or that the person is authorized to keep such bar-room, tavern, inn or saloon, or any house or place of public entertainment.

Section 49. "In case any person who has taken out a license under this by-law is convicted of a breach of any of the provisions of the same, or of this by-law, such person, upon such conviction, in addition to the penalty imposed for the infraction thereof shall, in the discretion of the convicting magistrates, there being not less than three convicting magistrates concurring in such forfeiture, forfeit his or her license for the remainder of the current year; and the general inspector of licenses is required to notify the party in writing thereof.

Section 20. "Every person who has not a tavern license, who shall, after the passing of the by-law, exhibit any word or words, or sign or sign-boards, contrary to the seventeenth section of this by-law, shall be liable to a penalty of not more than fifty dollars, exclusive of costs, upon every conviction for any such offence."

J. H. Cameron, Q. C., showed cause.

DRAPER, C. J.—I think the 5th section is within the power given by the Municipal Corporation Act, sec. 246, sub-sec. 1, which enables the councils to pass by-laws for granting tavern licenses. I think the word "granting" does not impose the necessity of the council sitting with a majority of the whole number present, to consider or determine on granting or refusing a license to each applicant, and to pass a by-law or by-laws granting licenses to those whose application is acceded to. I think the mode of dealing with the applications, considering and granting, and refusing applications and issuing licenses, is intended by the language used. When the license is granted it is under such by-law the act of the corporation.

I also think the 11th section is good. It does not contravene the statute which it recites, but it adds to it provisions which may lawfully be done, as to the times and hours when the houses and bar-rooms must be kept closed. Its provisions may be administered in compliance with those of the statute.

I have had more difficulty as to the 17th section. No part of the Municipal Corporation Act was pointed out to us, which in direct terms or even by obvious inference, confers authority to make such a law. The nearest approach to it is in the 5th sub-sec. of sec. 282. The "suppressing of tippling houses" may, to some extent, be aided by this regulation. And I am the more disposed to uphold it, because no one can or ought to complain of injury arising from being prevented from exhibiting publicly a false notification, the principal object of which may well be deemed to be to induce persons in the streets to enter, and so to facilitate some illicit or immoral proceeding within.

The 20th section depends on the 17th, the one creating the offence, the other imposing the penalty. If the first can be supported, as I think it may, the latter is sanctioned by sub-sec. 6 of sec. 213, of the Municipal Corporation Act.

I think the 19th section must be quashed. I fail to distinguish this case from that of *Smith v. The City of Toronto*, 10 U. C. C. P. 225. The 5th section of this by-law is of the same character as the 254th section of the Municipal Corporation Act. The very next section of the statute imposes a penalty of not less than \$20 with costs for a first offence against its provisions; for a second offence not less than \$10 with costs; for a third, not less than \$100 with costs; for a fourth, not less than three months' imprisonment with hard labour, but in no case forfeits the license for such offence, however frequently repeated. The 264th section of the statute authorizes a forfeiture of the license on a conviction of having a riotous or disorderly house, but it gives the power to the mayor, or police magistrate of a town or city, with one justice having jurisdiction therein, or to the reeve of a township or village, with one justice having jurisdiction therein. The Legisla-