

dealer is S. 123, S.S. 26. He is included in the general terms of S. 78, S.S. 2, allowing the imposition of the business tax, with the important provision that such business tax shall not exceed 7½ per cent. on the annual value of the premises occupied. Walker has paid this business tax. He is not included in S.S. 3; he is not included in S. 81, save and except for a business tax such as intended by S.S. 2 of S. 78. It remains to consider the powers conferred by S.S. 26, "To license and regulate junk stores, wherein bits of brass, lead, or iron, pipes, cocks, cord, old furniture, or other like articles are sold." I hold that the power to license and regulate junk stores, does not include a power to tax for revenue. Nothing is plainer to me than that a power to license and a power to tax for revenue, are entirely different, and a power to tax must be given in unequivocal terms to be exercised. Dillon, Municipal Corporations, § 763, 3rd edition: "It is a principle universally declared and admitted that municipal corporations can levy no taxes, general or special, upon the inhabitants or their property, unless the power be plainly and unmistakably conferred." § 764. Therefore the power to tax (using the word in its strict and proper sense, as a means of raising municipal revenue), cannot be inferred from the general welfare clause in a charter; nor is it usually to be implied from authority to license and regulate specified vocations, &c."

"§ 768. The taxing power is to be distinguished from the police power, &c. The power to license and regulate particular branches of business or matters is usually a police power; but when license fees or exactions are plainly imposed for the sole or main purpose of revenue, they are, in effect, taxes." See also §§ 769, 367, 358, and Cooley on Taxation, p. 408.

The conclusion of the whole matter is that I do not find any power in the corporation to exact the sum of \$50 for the license in question, though \$5 or \$10 might be beyond criticism. I would observe that I do not consider the judgments on the butchers' tax as assisting the decision in the present case. S.S. 27 of S. 123, referring to markets and butchers, confers a restraining power upon the Council, which is not given in S.S. 26, referring to junk dealers. On the whole, the judgment of the Court is that the conviction in question be quashed,

on the ground that the by-law is *ultra vires*.
Conviction quashed.

Ethier for the City of Montreal.

McGoun for Walker.

SUPERIOR COURT.

MONTREAL, June 23, 1882.

Before TORRANCE, J.

THE CITY OF MONTREAL v. GEDDES.

City taxes—Prescription.

The Municipal taxes of the City of Montreal are prescriptible only by the lapse of thirty years.

The plaintiff demanded from the defendant the City taxes on his house, namely, \$96, with interest amounting to \$29.12 more, alleged to be due for the year 1876. The defendant pleaded payment, and moreover that the debt was prescribed by the lapse of five years. The taxes in question were exigible, according to the City Treasurer, in the month of August, 1876, namely on the 24th August, 1876. The action was instituted on the 30th November, 1881.

PER CURIAM. Against the prescription, the plaintiff cited *Guy v. Normandeau*, 21 L. C. Jur. 300, and C. C. 1994, 2004, 2250, and the Court will follow the case cited of *Guy*, and pass on to the proof of payment. It is positively sworn by A. T. Patterson that payment had been made and the receipt had been lost. There is the further presumption in favour of the payment that the subsequent years were duly paid. The Court therefore receives the proof of payment and maintains the plea of payment.

Action dismissed.

Harnett for the City.

Beauchamp for Geddes.

SUPERIOR COURT.

MONTREAL, June 28, 1882.

Before TORRANCE, J.

TRUDEAU et al. v. THE SOUTH EASTERN RAILWAY CO.

Measurement—Contract by the "toise."

The plaintiffs demanded from the defendants the sum of \$347 as a balance due them by the company, under a contract by which they undertook to deliver stone at Longueuil at the rate of \$4.80 per toise. They alleged delivery.

The defendants said that the toise was a French measure and contained 261½ cubic feet,