

LENNOX, J., IN CHAMBERS.

OCTOBER 4TH, 1915.

REX v. AITCHESON.

Municipal Corporations—Regulation of Vehicles for Hire—Police Commissioners' By-laws—Justice of the Peace—Conviction of Owner of Vehicle Plying for Hire—"Loiter about the Streets"—Evidence—Review of Magistrate's Finding—Motion to Quash Conviction—Costs—Mala Fides—License—Application to Licensee of Regulations in By-law Passed while License in Force—Quashing Convictions.

Motion by the defendant for orders quashing three convictions made against him by a Justice of the Peace for three alleged breaches of a by-law of the Board of Police Commissioners for the City of Berlin.

A. B. McBride, for the defendant.

W. H. Gregory, for the complainant.

LENNOX, J., said that the Police Commissioners' by-law (No. 4) in force when the defendant obtained his license provided for cab-stands according to municipal by-laws, and that "no owner or driver shall loiter about the streets with his cab;" and, although the evidence did not shew satisfactorily that the accused did in fact "loiter about the streets," within the meaning of the by-law, upon the occasion complained of, yet it was so essentially a question of fact for the determination of the Justice, that he (the learned Judge) had, after great hesitation, come to the conclusion that he should not interfere with the conviction. The application, upon this branch, should be dismissed; but, as the prosecution in the main was not justifiable nor undertaken in good faith, but with the ulterior purpose of putting the defendant to expense so as to eliminate competition with the civic railway system, the dismissal should be without costs.

The other two convictions were in a different position, depending as they did upon by-law No. 5. The learned Judge was of opinion that that by-law could not be read as governing the action of the defendant or controlling him in the operation of his automobile in any way. The defendant had been operating his vehicle in Berlin under license for hire for three years. For the last license he paid a fee of \$10; it was issued to him on the 5th June, 1915; it identified and described the automobile referred to in the evidence; and upon its face provided that it was