

privileged to sell by less than the quarter at the at the specified places shall not be entitled to sell out of these places otherwise than by the quarter: that is, when they sell out of such places they shall be on the same footing as other persons.

The third question has also been answered by what has been said. *Kelly and The Corporation of Toronto*, 23 U. C. Q. B. 425, is directly in point. The first section of the by-law is therefore valid.

The third section of the by-law is as follows: [The learned judge here read sec. 3, dividing it into four parts, (1), (2), (3) and (4), as at part 84, the original being in one paragraph only.]

The 9th sub-sec. of sec. 296, Consol. Stat. U. C., ch. 51, enacts that the council shall have power to pass by-laws "for preventing or regulating the buying and selling of articles and animals exposed for sale or marketed;" and the 10th sub-section, as amended by 33 Vic. ch. 26, sec. 6, Ontario, gives power also to pass by-laws "for regulating the place and manner of selling and weighing grain, meat, vegetables, fish, hay, straw, fodder, wood, lumber, shingles, farm produce of every description, small ware, and all other articles exposed for sale; and the fees to be paid therefor."

The power to prevent or regulate the buying and selling of articles exposed for sale or marketed is more extensive than the Legislature could probably have intended to give, and would, if literally exercised, cover almost any enactment.

All the articles mentioned in the first part of this section of the by-law are certainly "articles" within the 9th section of sec. 296. The by-law relates to the buying and selling of them; so does the statute; and the by-law says that these articles shall not be bought or sold or marketed until the seller has paid the market fees required by by-law No. 161.

The power to prevent the buying or selling of these things, and the power to regulate the buying and selling, includes, we think, the power to impose a reasonable fee for the buying, and selling, and marketing.

The 10th sub-section relates to the selling, not the buying; but if the seller can be restrained from selling till he has paid the market fee, it is not a very unreasonable thing to say also that people shall not buy. There can be no sale without a purchaser; and the fee is put on the seller, not on the buyer, and no penalty is put on either.

Now this 10th sub-section expressly provides for "the fees to be paid therefor," and it applies to a great number of articles specially named, and to "all other articles exposed for sale." The ticket of the collector and the hour of the day, are also within the power of the council to provide for.

The first part of the by-law is valid.

The second part of the third section of the by-law refers as to forestalling, &c., the obsolete English provisions enacted in sec. 296, sub-sec. 11, and does nothing more.

The third part of the section is also clearly within the two sub-sections already referred to.

The fourth part of the section, we think, is bad, because it prevents hucksters or runners within the town, or within a mile of it, buying certain things brought to the market till after

ten in the morning; that is, it prevents the buying in the town, or within a mile of it, while the Statute authorizes the preventing those only who live within the town, or within a mile of it, from buying in the town: *McLean and The Corporation of St. Catharines*, 27 U. C. Q. B. 603.

That branch of the third section must be quashed. The rest appears to be valid.

It may be a matter for consideration in re-enacting this clause as to hucksters, butchers, and runners, notwithstanding the generality of the 12th sub-sec. of the Statute, whether the by-law should not be so worded as not to exclude those persons from buying for their own use or the use of the family for consumption, or when not to be resold. See the section so modified in 24 U. C. Q. B. 238.

The section of the market regulations which has been objected to is as follows: "That any person wishing to sell fresh meat in quantities less than a quarter in a shop or stall in Coleman or in Baldwin wards, shall, before the first of March in each year apply in writing to the chairman of the market committee, stating the annual sum he or she will pay, in addition to the sum of \$40, to obtain a certificate from the proper authority authorizing the holder of the certificate to expose for sale and sell fresh meat in one stall in Coleman ward, or in Baldwin ward, for one year from the first of March of the year in which the certificate is obtained."

This provision is certainly bad by the general law, and is directly against the 220th section.

The portion of it contained in section 4, as to the person who may get the certificate giving a bond with sureties to obey the by-laws relative to the sale of fresh meat, and to stalls and shops where the same is sold, we do not think to be objectionable. It applies, of course, to valid by-laws, and does not bind the obligor to the observance of anything illegal; nor is it contrary to public policy, in hampering the free action of a member of the municipality from moving against any corporate abuse, usurpation, or illegality.

There is a question of much importance as to these regulations, whether they can be moved against as an order or resolution of the council, under sec. 198 of the Act of 1866.

It appears to us these regulations are within the meaning of these terms. They are operative, and they are so by reason of the being the order of the council.

The clause we have adverted to, and which has been complained of, is not a mere matter of detail, and of market or police routine. It is a serious order and direction, that every applicant for authority to sell fresh meat in the two named wards shall specify the amount of fee he is willing to pay for the license he asks for; and if this be not an order or resolution, it is difficult to say what can be one.

The affidavits show these regulations were reported to and received and adopted by the council.

Without for a moment entertaining the idea that market regulations can generally be moved against, and that this court is to revise them on motion or otherwise, we nevertheless feel that to the extent already alluded to in this case they may and can properly be quashed.