

the same as sec. 583 (14) (c); the by-law purported to relieve such a town from the necessity of declaring in a by-law passed by such town that the county by-law was not to be in force; and it might be that the county had no power to make such a provision. If so, the provision was a mere nullity, not affecting the validity otherwise of the by-law; and in any event this was not a case of such a town. Part of a by-law may be invalid without affecting the validity of another part: *In re Fennell and Corporation of Guelph*, 24 U. C. R. 238.

8. Section 7 of the by-law was complained of as being contrary to sec. 708 of the Consolidated Municipal Act, 1903. Assuming that "the pecuniary penalty . . . levied under this Act" was the pecuniary penalty imposed by a by-law passed under the authority of this Act, the defendant was not advanced. If the clause was valid, *cadit quæstio*; if not, there was no provision for the division of the penalty, and sec. 708 applied to the full extent. In either case the defendant was not interested; he paid his fine to the justice, and the justice must apply it legally.

9. Section 8 was attacked as being in effect an offer of a reward for "securing" a conviction. In some instances this might be so; and the section might be *ultra vires* of the county council. [Reference to *Cornwall v. West Nissouri*, 25 C. P. 9.] But this did not affect the defendant; if sec. 8 were elided, nothing in the present proceedings would be affected.

[Nothing opposed to this decision in *Rex v. Little*, 1 Burr. 610; *Rex v. Buckle*, 4 East 346; *Johnson v. Hudson*, 11 East 180; *Regina v. Whelan*, 4 Can. Crim. Cas. 277; *Regina v. Chayter*, 11 O. R. 217; *Regina v. Bassett*, 12 O. R. 51; or *Regina v. Henderson*, 18 O. R. 144.]

10. The by-law was not artistically drawn, but it did not so invite a motion that costs should be withheld; the motion had no merits, and should be dismissed with costs.

DIVISIONAL COURT.

SEPTEMBER 29TH, 1909.

RE MOORE AND TOWNSHIP OF MARCH.

Appeal to Divisional Court—Right of Appeal—Municipal Drainage Act—Certificate of County Court Judge upon Audit of Engineer's Account—3 Edw. VII. ch. 22—9 Edw. VII. ch. 46—Persona Designata—Leave to Appeal.

Appeal by J. H. Moore from a certificate of the Judge of the County Court of Carleton, dated the 28th May, 1909, whereby he