

they have implied power to do all that might be desirable or expedient with reference to the times and circumstances under which ice-creams should be sold, it seems to me that the argument entirely fails. What is sought to be done, whether directly by by-laws or indirectly by the language of the licence that is issued, is something that can only be done by the Legislature. It is a restraint of a common right which all His Majesty's subjects have—the right to open their shops and sell what they please, subject to legislative restriction; and if there be no legislative restriction which is appropriate to the particular thing in dispute, it seems to me that it would be a very serious inroad upon the liberty of the subject if it could be supposed that a mere single restriction which the Legislature has imposed could be enlarged and applied to things and circumstances other than that which the Legislature has contemplated.

So, to adopt the language of the learned Lord Chancellor, when it is argued that because the Commonwealth Parliament has here given to it the power to tax manufactures, therefore they have power to do all that might be desirable or expedient, with regard to the times and circumstances under which a manufacture should be carried on, it seems to me that the argument entirely fails. What is sought to be done, whether directly by a statute or indirectly by the conditions attached to the taxation, is something that can only be done by the competent Legislature—that is, in this instance, the State Legislature. This case also supplies an answer to the argument that such conditions are not in substance a regulation of the manufacture.

It is, however, suggested that, so regarded, regulation is not in the nature of a law, since the command of law imports that the Legislature can and does visit its displeasure upon those who disobey its commands, or fail to comply with its wishes. The visitation is called the "sanction" of the law. If the mode in which the displeasure is visited is by imposition of a pecuniary liability, it cannot be material whether that liability is enforceable in one Court as a debt, or in another Court under the name of penalty. The sanction is the same in substance, and