LEGAL DEPARTMENT.

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Hawkers and Peddlers' Act.

We published in this paper in January, 1895, sub-section 3 of section 495 of the Municipal Act, relating to hawkers and pedd.ers, showing, in italics, certain proposed amendments which the county council of Elgin considered necessary to render it of some use, hitherto it has been practically almost a dead letter. We believe that efforts have been made from time to time to induce the Legislature to amend the act, so as to affect the object, which was intended when it was originally passed, but with the exception of two unimportant amendments, to which we shall refer, nothing has been done.

The object of the Legislature in passing the act was to protect, on the one hand, fair traders, particularly established merchants, resident permanently in towns and other places, and paying rent and taxes there for local privileges, from the mischief of being undersold by itinerant persons to their injury; and on the other hand to guard the public from the impositions practiced by such persons in the course of their dealing who, having no known or fixed residence, carry on a trade by means of vending goods conveyed from place to place by horse or on foot.

The means of evading the act was soon discovered, for we find in 1884 one of these itinerant traders succeeded in having a conviction quashed upon the ground that he did not come within the letter of the act.

The words of the act are "bearing or drawing any goods * * * * for sale * * * * or otherwise carrying goods * * * * for sale."

This person was a tea dealer, who carried samples with him and took orders for tea; he forwarded the orders to his employer, who sent the tea to him and he filled the orders by subsequently delivering the tea. This case, though not within the act, as it then stood was certainly within the mischief aimed at, and the legislature ought to have at once amended it, as the hawker's act was amended in England as long ago as 1861, by the addition of the words "*On carrying and exposing samples or patterns of any goods, etc., to be afterwards delivered.* Instead of amending the act so as to prevent any hawker or peddler evading it in this manner, the legislature in 1885, by 48 Vic. c. 40, Sec. 1 enacted the following: "The word "hawkers" shall include all persons who being agents or persons not resident within the county, sell or offer for sale, tea, dry-goods, or jewelry, or carry and expose samples or patterns of any such goods to be afterwards delivered within the county to any person not being a wholesale or retail dealer in such goods, wares or merchandise," and by 55 Vic., chapter 43, section 36, it was further amended by inserting the words "Watches, plated ware, silverware" after the words "dry-goods" in the above amendment.

Now when these amendments are examined closely and in the light of a number of decisions it will be found that they are of very little value. They effect no change whatever in the act except in the case of the particular goods mentioned, so that the hawkers may take orders for any other class of goods to be delivered afterwards in pursuance of such orders with impunity. And even in the case of the goods mentioned, the hawker cannot be convicted unless it can be shown that he is "agent" for persons "*not resident within*" the county. A person who is trading on his own account is not within the amendments, and is therefore at liberty to take orders and afterwards deliver goods without rendering himself liable in any way. The member of a firm, though agent for the firm, is not agent within the meaning of this section. Another objection which we have to point out, is that these amendments do not appear to apply to cities or towns. The council of a city or town is empowered to pass by-laws, to license and regulate the hawkers and peddlers, but the word "county" only is mentioned in the amendments. Since this matter was before the council of the county of Elgin we have learned, that another method has been resorted to by some hawkers, which we have no doubt has been adopted, to evade the act as amended. It is this: The hawker calls on a farmer and leaves a caddy of tea with him; afterwards he calls on the farmer, and if he finds the tea has been consumed, he asks for and receives what it is worth, if he should be prosecuted on this state of facts, he would no doubt contend that he did not violate the act, because he did not offer the tea for sale, nor did he solicit an order and afterwards deliver the tea, within the letter of the act.

From what we have shown, it must be conceded that this act in its present shape is of little of any value, and ought to be amended so as to effect the object which we have stated was intended, and we would suggest that it be amended by repealing the amendments made in 1885 and 1892, and substitutes in their stead the following."

"This sub-section shall apply to, and include all such persons as aforesaid (except those expressly exempted) who sell or offer for sale goods, wares or merchandise, or carry and expose samples, or patterns of, or take orders for, any such goods, wares or merchandise to be afterwards delivered within the county, city or town, not being a wholesale or retail dealer in such goods, wares or merchandise, or who deliver any goods, wares or merchandise to any person within the county, city or town not being a wholesale or retail dealer in such goods, wares or merchandise, and who subsequently receives payment therefor."

In the case of Regina vs. Coutts, the opinion was expressed, that the defendant could not be convicted as a "peddler" for the reason alleged, that there was no such word in the statute.

While entertaining the greatest respect for the opinion of the learned judge, who expressed this opinion, we think the act did at that time, and does now apply to "peddler." It is true that the word "peddler" is not found in the body of the section, but it appears in the heading or caption which is "Hawkers and Peddlers," and we submit that it and the general words in the body of the section must be read together to ascertain what the intention of the legislature was. To remove any doubt, however, upon the point, we would suggest that the word "peddler" be inserted after the word "Chapmen" in the body of the section.

Our object in publishing this article in the present issue of THE WORLD, is that the matter may be considered by county councils at their first session, and that the legislature may be petitioned to amend the act as proposed, or at all events to amend it in such a way that it may be of some practical value.

LEGAL DECISIONS.

UNION SCHOOL SECTION VS. LOCKART.

Public School—Union School Section—Alteration of—Petition of Ratepayers—Award—54 Vic. chap. 55, sections 87, 95 (O)

The petition for the formation, alteration or dissolution of a Union school section under 54 Vic. ch. 55, sec. 87, sub-sec. 1 (O), must be, in all cases, the joint petition of five ratepayers from each of the municipalities concerned, otherwise the award based upon it will be void *ab initio*, and section 96 validating defective awards where there has been no notice to quash given within the time prescribed has no application.

When the award in such case is that no action be taken, the restriction in sub-section 12 of section 87 against new proceedings for a period of five years does not apply.

Chief Justice Meredith in giving his judgment in the above case refuses to follow the decision of the chancellor in re union school section, East and West Wawanosh, in which case the chancellor held that no new proceedings could be taken for five years where the award was that no action should be taken.

FISHER VS. WEBSTER.

Deed—Construction of—Grant of Road—Easement—Right of Way.

Where a deed, after granting certain land described by metes and bounds, continued, "also a road forty feet wide," adding to the description thereof "and not included in the above quantity of land.

Held, that by the conveyance of the road, the fee in the freehold therein did not pass to the grantee, but merely an easement of the right of way over the land.