

There is a marked distinction between the prohibition or prevention of a trade and the regulation or governance of it. The power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed.

A municipal power of regulation or of making by-laws for good government, without express words of prohibition, does not authorize the making it unlawful to carry on a lawful trade in a lawful manner.

The effect of the by-law being practically to deprive residents of buying goods or trading with the class of traders in question, the question was one of substance, and should be regarded from the point of view of the public as well as of the hawkers.

[LONDON, Nov. 16th, 1895.]

This was an appeal from a judgment of the Supreme Court of Canada, reversing by a majority the previous decisions of the Court of Appeal for Ontario, and of Chief Justice Sir Thomas Galt. (22 S.C.R. 447 and 30 C.L.J. 355.)

The question for decision was whether a section of a by-law was competently and validly made by the corporation of the city of Toronto.

The section in question is designated as subsection 24 of section 12 of by-law 2,934, in amendment of section 12 of by-law 2,453. The last-mentioned section, as amended, requires a license to be taken out by —

"All hawkers, petty chapmen, or other persons carrying on petty trades, or who go from place to place, or to other men's houses, on foot or with any animal bearing or drawing any goods, wares, or merchandise for sale, or in or with any boat, vessel, or other craft, or otherwise carry goods, wares, or merchandise for sale; except that no such license shall be required for hawking, peddling, or selling from any vehicle or other conveyance, goods, wares, or merchandise to any retail dealer, or for hawking or peddling goods, wares, or merchandise the growth, produce, or manufacture of this province, not being liquors within the meaning of the law relating to taverns or tavern licenses, if the same are being hawked or peddled by the manufacturer or producer of such goods, wares, or merchandise, or by his *bona fide* servants or employees, having written authority in that behalf, and such servant or employee shall produce and exhibit his written authority when required so to do by any municipal or peace officer; nor from any pedlar of fish, farm, and garden produce, fruit, and coal oil, or other small articles that can be carried in the hand or in a small basket, nor from any tinker, cooper, glazier, harness-mender, or any person usually trading or mending kettles, tubs, household goods, or umbrellas, or going about and carrying with him proper materials for such mending."

Section 2 was the only part of the by-law complained of. It is in the following words:—

"No person named and specified in subsection 2 of this section (whether a licensee or not) shall, after the first day of July, 1892, prosecute his calling or trade in any of the following streets and portions of streets in the city of Toronto."

Then followed an enumeration of eight streets in the city of Toronto, and it was stated in the evidence that these streets comprise the busiest and most important thoroughfares of the city.

The statutory power under which the corporation claimed to make this by-law is contained in the Municipal Act of Ontario (c. 184 of the Revised