

ARMOUR, C.J., STREET, J.,]

[JUNE 13.]

REGINA v. ROCHE.

*Municipal corporations — By-law — Transient traders — Conviction —
Penalty—Costs—Imprisonment—Distress.*

The defendant was convicted before a justice of the peace for that she did on a certain day, and at other times since, occupy premises in the town of B., and did carry on business on said premises by selling dry goods, she not being entered on the assessment roll of the town for income or personal property for the current year, and not having a transient trader's license to do business in the town, as required by a certain by-law of the town; and was adjudged for her offence to forfeit and pay the sum of \$50 (to be applied on taxes to become due) to be paid and applied according to law, and also to pay to the justice the sum of \$11.45 for his costs in that behalf; and if the sums were not paid forthwith, she was adjudged to be imprisoned.

The first clause of the by-law provided that every transient trader who occupied premises in the municipality and who was not entered in the assessment roll, and who might offer goods or merchandise for sale, should take out a license from the municipality. The second clause provided that every other person who occupied premises in the municipality for a temporary period should take out a license. The eighth clause provided for the imposition of a penalty for a breach of any of the provisions of the by-law and that in default of payment of the penalty and costs, the same should be levied by distress, and authorized imprisonment in default of distress.

Held, that the defendant was not brought within either the first or second clause of the by-law, as it was not alleged or charged that she was a transient trader or that she occupied premises in the municipality for a temporary period; and these omissions were fatal to the conviction.

Regina v. Caton, 16 O. R. 11, followed.

Held, also, that the conviction was open to objection because of the application of the penalty, the award of the costs to the justice instead of to the informant, and the award of imprisonment upon default in payment of the penalty.

The conviction was quashed, and costs were given against the informant.

F. J. Roche, for defendant. *G. W. Lount*, for informant.

Boyd, C., Ferguson, J., Meredith, J.]

[June 14.]

KELLY v. DAVIDSON.

Master and servant — Foreman — Negligence — Evidence — Finding of jury.

An appeal by the plaintiff from the decision of MACMAHON, J., ante 214, was allowed with costs, and judgment ordered for the plaintiff for