

MIDDLETON, J., agreed that the appeal should be dismissed with costs. In a written opinion he set forth the history of the locus and discussed the facts and the law.

RIDDELL, J., agreed in the result.

TEETZEL, J., IN CHAMBERS.

FEBRUARY 28TH, 1911.

*REX v. BARBER ASPHALT PAVING CO.

Public Health Act—Construction of sec. 72—Ejusdem Generis Rule—Noxious or Offensive Trade—“Such as may Become Offensive”—Conviction—Jurisdiction of Magistrate—Evidence.

The defendants were convicted before a Justice of the Peace for having unlawfully established and carried on, without the consent of the municipal council of the village of Eastview, a certain noxious and offensive trade, business, and manufacture, of heating and preparing asphalt and other paving material.

The conviction was under sec. 72 of the Public Health Act, R.S.O. 1897 ch. 48, which provides that “in case a person establishes, without the consent of the municipal council of the locality, any offensive trade, that is to say, the trade of blood boiling, or bone boiling, or refining of coal oil, or”—specifying a number of trades, but not the one alleged to have been carried on by the defendants—“or any other noxious or offensive trade, business or manufacture, or such as may become offensive, he shall be liable to a penalty. . . .”

The defendants moved to quash the conviction, on the ground that, upon the evidence, the Justice had no jurisdiction to convict, because: (1) the evidence did not establish that the trade was noxious or offensive, within the meaning of the Act; and (2), even if the trade was noxious or offensive, it did not, upon a proper interpretation of sec. 72, come within the provisions of that section.

E. E. A. DuVernet, K.C., for the defendants.

C. J. Holman, K.C., for the prosecutor.

*To be reported in the Ontario Law Reports.