

Gen. Ses.]

THOMAS V. TURNER.

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GENERAL SESSIONS—COUNTY OF
BRANT.

*Referred to.
Regina v.
Coutts* (Reported by B. F. Fitch, Esq., Barrister-at-law.)
5th Oct.
644.

THOMAS V. TURNER.

*Municipal Act, 1873, sec. 495, sub-sec. 3—Imperial
Act, 50 Geo. 3 cap. 41, sec. 6—Hawkers
and petty chapmen.*

An agent of a grocer doing business in London went from house to house in Brantford taking orders for tea, and the goods were delivered by J., another agent. The police magistrate fined J. for an infraction of the by-law passed by the city council under the Municipal Act. On an appeal to the General Sessions it was

Held, that it was an infraction of the by-law to thus deal without a license. The Provincial Act differs from the Imperial Act in not containing the words "exposing for sale." *Rex v. McKnight*, 10 B. & C. 734, held therefore not to be applicable.

[Brantford, 1883.]

The Municipal Act, 1883, sec. 495, sub-sec. 3, provides that councils may pass by-laws "for licensing, regulating and governing hawkers or petty chapmen, and 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 carrying goods, wares, or merchandise for sale, and for fixing the sum to be paid for a license for exercising such calling within the county, city or town, and the time the license shall be in force."

The Imperial Act, 50 Geo. III. chap. 41, sec. 6 is as follows:—"There shall be paid to His Majesty the rates and duties following, viz.: By every hawker, pedlar, petty chapman, and every other trading person going from town to town, or to other men's houses, and travelling either on foot or with horses, or otherwise carrying to sell or exposing to sale any goods, a duty of \$4 for each year."

The appellant was convicted by the Police Magistrate of the city of Brantford for a breach of the city by-law No. 342, to prevent pedlars and hawkers from exercising their calling within the city without a license, and a

fine of \$10 and costs was imposed on the appellant for the breach of the by-law.

From this conviction the appellant appealed to the December General Sessions of the Peace, when the appeal was heard before His Honour Judge Jones without a jury.

Smyth, for the appellant, relied on *Rex v. McKnight*, 10 B. & C. 734.

Wilkes, for the respondent.

JONES, Co. J.—The by-law was passed on the 18th June, 1883, and follows the words of the statute, Municipal Act, 1883, 46 Vict. sec. 495, sub-sec. 3.

The case of *Rex v. McKnight* has been cited on the part of the appellant as being a case in point with the facts as shown by the evidence in the present case. That case was decided under the English Act, 50 Geo. III. ch. 41, sec. 6.

The facts as to the manner in which the sale in that case was made are very similar to those in the present case, so that if the English Act and ours are the same the above decision would seem to be in point, and would decide the present case. There, as here, the orders for the sales were first taken, and after that the party who was fined for not having a license delivered the goods and received the pay therefor.

The Court there held that such a sale was not one that under the statute required the seller to have a license as a hawker and pedlar, and the Court remarked that there was "no exposing to sale" of the goods sold, such as there would be had the defendant taken the goods with him in the first instance instead of taking orders and afterwards supplying the goods.

Our statute, however, does not contain the words in the English Act "exposing to sale," and the city by-law was apparently framed also to meet a case like the present when there was not an exposing of goods for sale, and it prohibits making sales by taking orders by samples or otherwise.

I therefore think that the defendant has committed a breach of the by-law in question, and of our statute under which the by-law was framed, and was liable to be committed therefor. The evil that was intended to be guarded against by the statute and by-law exists just the same in the case where the goods are sold by first taking orders by samples and then