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No. 43.

COURT OF APPEAL.

JULY 8TH, 1910.

*RE KARRY AND CITY OF CHATHAM.

Municipal Corporations—Power to Regulate Victualling Houses—Consolidated Municipal Act, sec. 583 (34)—Sunday Closing By-law — Reasonable Restraint — Motive — Enforcement of Lord's Day Act.

Appeal by James Karry, a restaurant-keeper in the city of Chatham, from the order of BOYD, C., 20 O. L. R. 178, dismissing a motion to quash a by-law passed by the city council providing that victualling houses should be closed on Sundays from 2 p.m. till 5 p.m. and from 7.30 p.m. till Monday at 5 a.m.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

J. M. Ferguson, for the appellant.

H. L. Drayton, K.C., for the respondents.

MACLAREN, J.A.:— . . . The by-law purported to be passed under sec. 583 (34) of the Municipal Act, which authorised the council to pass by-laws "for limiting the number of and regulating" such houses. The question is, was this by-law a "regulation" authorised by the statute?

It was strongly argued by the applicant that it was not a regulation but a prohibition; and *Virgo v. City of Toronto*, [1896] A. C. 88, was relied upon as an authority. An examination of the by-law, and judgment in that case, however, shews that there

* This case will be reported in the Ontario Law Reports.