[HIGH COURT OF AUSTRALIA.]

GROOM . . . . . APPELLANT;

AND

THE CORPORATION OF THE CITY OF PORT ADELAIDE . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1922.

ADELAIDE, *Aug.* 24.

SYDNEY, *Dec.* 14.

Knox C.J., Higgins, Gavan Duffy and Starke JJ.

Local Government—By-law—Validity—Power to make by-laws compelling branding of packages—By-law prohibiting sale of unbranded packages—Rule nisi to quash—Ground of illegality—Municipal Corporations Act 1890 (*S.A.*) (*No.* 497), *secs.* 314, 316, 337—*Municipal Corporations Amendment Act* 1903 (*S.A.*) (*No.* 833), *secs.* 23, 24—*Municipal Corporations Act Amendment Act* 1914 (*S.A.*) (*No.* 1183), *sec.* 28—*Trade Marks Act* 1892 (*S.A.*) (*No.* 551), *secs.* 46, 61 (3).

Practice—High Court—Appeal from Supreme Court of State—Ground not taken until hearing of appeal—Duty of High Court to entertain ground—Judiciary Act 1903-1920 (*No.* 6 *of* 1903—*No.* 38 *of* 1920), *sec.* 37.

Sec. 23 of the *Municipal Corporations Amendment Act* 1903 (S.A.) (which is incorporated with and to be read with the *Municipal Corporations Act* 1890 (S.A.)) authorizes municipal corporations to "make . . . by-laws for any of the following purposes:— . . . (II.) For compelling—(*a*) The branding of packages, tins, and jars containing tea, coffee, honey, jams, or other edibles or condiments, with the 'gross' or 'net' weight:" &c. Sec. 24 provides that "Any corporation may pass by-laws for any purpose not mentioned in this Act, so long as the same shall not be repugnant to this Act or to the general spirit and intendment of the laws of the State:" &c.

A by-law was made providing that "No person shall deal in, offer, or expose for sale, or sell any package, tin, or jar containing tea, coffee, cocoa, honey, jam, golden syrup, treacle, candles, pepper, flour, self-raising flour, baking powder, or butter, unless the 'net' weight thereof respectively is distinctively branded on each and every such package, tin, or jar."

Held, by *Knox* C.J., *Gavan Duffy* and *Starke* JJ. (*Higgins* J. dissenting), that sec. 23 (II.) (*a*) does not authorize the making of a by-law which does not impose an obligation to brand but merely forbids the offering or exposing for sale or the selling of unbranded packages, &c., containing specified material,

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and that sec. 24 does not extend the area of legislation with respect to subject matters specifically dealt with by sec. 23; and, therefore, that the by-law was invalid.

Per Higgins J.: The by-law is within the power of sec. 23 as it is made for one of the purposes specified, that is to say, "for compelling" the branding of packages, &c., that are for sale; even if it were not within the power conferred by sec. 23, it is within the general power conferred by sec. 24.

Sec. 337 of the *Municipal Corporations Act* 1890, as amended by sec. 28 of the *Municipal Corporations Act Amendment Act* 1914, provides that "(1) Any person who desires to dispute the validity of any by-law made or purporting to be made under this Act or any other Act relating to municipal corporations may apply to the Supreme Court, upon an affidavit setting out the facts, for a rule calling upon the council concerned to show cause why such by-law should not be quashed, either wholly or in part, for illegality. . . . (4) No such by-law shall be challenged or disputed in any other manner."

In an affidavit in support of a rule *nisi* under sec. 28 of the Act of 1914 the deponent stated that he believed and contended that the by-law was *ultra vires*, illegal and invalid on the ground that it was repugnant to the Municipal Corporations Acts and to the general spirit and intendment of the laws in force within South Australia, and should therefore be wholly quashed for illegality. The rule *nisi* recited this affidavit, and called upon the council concerned to show cause why the by-law should not be quashed, either wholly or in part, for illegality. In the Supreme Court the only ground of illegality argued or dealt with was that mentioned in the affidavit. The question whether the making of the by-law was within the power conferred by sec. 23 (II.) (*a*) was raised for the first time on the hearing of an appeal to the High Court, and from the Bench.

Held, by *Knox* C.J., *Gavan Duffy* and *Starke* JJ. (*Higgins* J. dissenting), that such question was covered by the rule *nisi* and that the High Court should determine it.

Decision of the Supreme Court of South Australia in part reversed on another ground.

APPEAL from the Supreme Court of South Australia.

The Corporation of the City of Port Adelaide made a by-law, No. 4, which was confirmed by the Governor in Council on 14th August 1919, in respect of "branding packages, &c." The by-law was in the following terms:—

"1. No person shall deal in, offer, or expose for sale, or sell any package, tin, or jar containing tea, coffee, cocoa, honey, jam, golden syrup, treacle, candles, pepper, flour, self-raising flour, baking powder, or butter, unless the 'net' weight thereof respectively is distinctively branded on each and every such package, tin, or jar.

"2. It shall be lawful for any inspector, at any time during usual

business hours, to enter the shop or premises used for trade of any person who deals in, offers, or exposes for sale, or sells any package, tin, or jar containing tea, coffee, cocoa, honey, jam, golden syrup, treacle, candles, pepper, flour, self-raising flour, baking powder or butter, for the purpose of examining such packages, tins, or jars; and if they or any of them so exposed for sale be not branded with the net weight, or be deficient in weight according to the weight per package, tin, or jar, at which such package, tin, or jar is branded or professed to be sold, then the person who shall expose, offer for sale, or sell any such package, tin, or jar not branded, or which is deficient in weight as aforesaid or both, or the person in whose service such last-named person may be, shall be guilty of an offence.

"3. Any inspector may, at all reasonable times, inspect all packages, tins, or jars containing tea, coffee, cocoa, honey, jam, golden syrup, treacle, candles, pepper, flour, self-raising flour, baking powder, or butter which are in the possession of any person for the purposes of trade, and may weigh every such package, tin, or jar, and may seize and detain any such package, tin, or jar, which is liable to be forfeited in pursuance of this by-law; and may for the purpose of such inspection enter any place, whether a building or in the open air, and whether open or enclosed, where he has reasonable cause to believe that there is any package, tin, or jar containing tea, coffee, cocoa, honey, jam, golden syrup, treacle, candles, pepper, flour, self-raising flour, baking powder, or butter, which he is authorized by this by-law to inspect.

"4. No person shall obstruct or hinder any inspector in making such inspection as hereinbefore is authorized to be made, or the seizure of any package, tin, or jar which shall be deemed on any such inspection not to comply with the requirements of this by-law.

"5. Every seller of tea, coffee, cocoa, honey, jam, golden syrup, treacle, candles, pepper, flour, self-raising flour, baking powder or butter, in packages, tins, or jars, shall use the avoirdupois weight of sixteen ounces to the pound and the several gradations of the same.

"6. Every person in whose shop or premises used for trade any package, tin, or jar containing tea, coffee, cocoa, honey, jam, golden syrup, treacle, candles, pepper, flour, self-raising flour, baking

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powder, or butter not distinctly branded with the net weight thereof, which shall, after due examination, be adjudged by a Special Magistrate, or two or more justices of the peace, not to comply with the provisions of this by-law, shall be deemed to be guilty of an offence; and, in addition to any penalty which may be imposed, such package, tin, or jar, or such quantity of them as may be comprised in the adjudication, including the contents, may be ordered to be forfeited or otherwise dealt with as such magistrate or justices may think fit.

"7. Nothing in this by-law contained shall apply to butter offered or exposed for sale or sold between the first day of November and the first day of April in each year."

On 3rd May 1921 Eugene Stuart Groom obtained in the Supreme Court a rule *nisi* calling upon the Corporation to show cause why by-law No. 4 "should not be quashed wholly or in part for illegality." The applicant stated in his affidavit in support of the rule *nisi* (par. 15): "I am advised and believe and I claim and contend that the aforesaid by-law No. 4 is *ultra vires*, illegal and invalid on the ground that the same is repugnant to the . . . Municipal Corporations Acts, and to the general spirit and intendment of the laws in force within the State of South Australia, and should therefore be wholly quashed for illegality."

The Full Court made the order absolute and ordered that pars. 3 and 6 of the by-law, and those portions of par. 2 consisting of the words "or be deficient in weight according to the weight per package, tin, or jar, at which such package, tin, or jar is branded or professed to be sold," and the words "or which is deficient in weight as aforesaid or both," should be quashed for illegality.

From that decision Groom now, by special leave, appealed to the High Court. It was a condition of the special leave that the respondent should be at liberty to contend that the whole by-law was valid.

Bennett (with him *G. C. Campbell*), for the appellant. The whole of the by-law should be quashed. The by-law makes it an offence to stamp with an inaccurate weight; and, that being so, it is, within the meaning of sec. 316 of the *Municipal Corporations Act* 1890 (S.A.), repugnant to the spirit and intendment of secs. 46 and 61 (3) of the

Trade Marks Act 1892 (S.A.) and of sec. 21 of the *Food and Drugs Act* 1908 (S.A.); for it takes away the defence of acting innocently which is given by those sections and imposes a liability upon a servant who is protected under sec. 61 (3) of the former Act. Sec. 23 (II.) (*a*) of the *Municipal Corporations Amendment Act* 1903 (S.A.) does not confer a power of making by-laws prohibiting the sale of unbranded packages of goods and imposing penalties for falsely branding them, but only confers a power to make by-laws directing persons to brand such packages.

Cleland K.C. (with him *Norman*), for the respondent. Sec. 23 (II.) (*a*) was intended to give power to make by-laws compelling the branding of packages with the true weight of the goods therein, the object being to prevent short-weight sales. That was also the object of sec. 46 of the *Trade Marks Act* 1892. If the power conferred by sec. 23 (II.) (*a*) is limited to compelling the branding of a statement of weight which may be either true or false, the by-law is within the power conferred by sec. 24 of the *Municipal Corporations Amendment Act* 1903, which was intended to get rid of the doctrine of *ejusdem generis*. There is no repugnancy—that is, inconsistency—between the by-law and either the *Trade Marks Act* or the *Food and Drugs Act*. (See *Thomas* v. *Sutters* (1); *Shakespeare* v. *King* (2); *Widgee Shire Council* v. *Bonney* (3).) There is nothing in either of those Acts which makes the incorrect branding of packages lawful.

Bennett, in reply.

Cur. adv. vult.

Dec. 14.

The following written judgments were delivered:—

KNOX C.J., GAVAN DUFFY AND STARKE JJ. The question for our consideration in this case is whether by-law No. 4 of the Corporation of the City of Port Adelaide should be quashed wholly or in part for illegality. It is sought to support the legality of the by-law in two ways.

First, it is said to be made in exercise of the power conferred by sec. 23 (II.) (*a*) of the *Municipal Corporations Amendment Act*

(1) (1900) 1 Ch., 10, at p. 16. (2) (1914) S.A.L.R., 105.
(3) (1907) 4 C.L.R., 977.

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1903, which is as follows:—"In addition to the provisions of Part XIV. of the principal Act, in respect to by-laws, every corporation may make, amend, or repeal by-laws for any of the following purposes:— . . . (II.) For compelling—(*a*) The branding of packages, tins, and jars containing tea, coffee, honey, jams, or other edibles or condiments, with the 'gross' or 'net' weight." In our opinion a by-law cannot be valid under this sub-section unless it imposes an obligation to brand. The by-law under review imposes no such obligation, it merely forbids persons to offer or expose for sale or sell unbranded packages, tins, or jars containing specified material. No doubt the by-law affords a strong incentive to such persons to take care that the goods which they propose to deal with shall be branded in the prescribed manner, but that is not enough; so would a by-law prohibiting the carriage of unbranded articles or the dealing with them in any fashion by any person who wished to deal with them in that fashion. We think that the whole by-law is bad because it does not create any compulsion to brand. We express no opinion as to whether all or any of the impugned provisions would be valid as ancillary or auxiliary to a direction compelling branding if the by-law contained such a direction.

In the next place, it was urged that the by-law was a valid exercise of the legislative power conferred by sec. 24 of the *Municipal Corporations Amendment Act* 1903, which runs as follows:—"Any corporation may pass by-laws for any purpose not mentioned in this Act, so long as the same shall not be repugnant to this Act or to the general spirit and intendment of the laws of the State: and provided also, that the same shall have no force and effect until the same shall have been passed and confirmed in the manner provided by sec. 316 of the principal Act." In our opinion this section does not extend the area of legislation with respect to subject matters specifically dealt with by sec. 23. That section defines the power which it intends to confer with respect to the branding of the "gross" or "net" weight on certain packages, tins, and jars, and that power cannot be enlarged by an appeal to the provisions of sec. 24.

During the argument counsel for the parties were invited to discuss the extent of the power conferred by sec. 23 (II.), and it was the subject of some argument by them. The suggestion that the rule *nisi*

does not cover the ground on which we hold the by-law to be invalid was not then made and cannot be supported. The amending Act of 1914, sec. 28, provides that any person who desires to dispute the validity of a by-law may apply to the Supreme Court upon an affidavit setting out the facts for a rule to show cause why such by-law should not be quashed wholly or in part for illegality. An affidavit was filed setting out facts which open the question of the extent of the power. It is true that a contention of law is also stated in par. 15 of the affidavit as follows: "I claim and contend that the aforesaid by-law No. 4 is *ultra vires*, illegal and invalid on the ground that the same is repugnant to the . . . Municipal Corporations Acts, and to the general spirit and intendment of the laws in force within the State of South Australia," and that the rule *nisi* was made upon reading the affidavit; but the order to show cause was general in its terms, and in no wise limited to this contention.

For the reasons we have stated, we think the appeal should be allowed.

HIGGINS J. Groom, the managing partner of a retail grocery firm carrying on business in the City of Port Adelaide, obtained on 3rd May 1921 a rule *nisi* from the Supreme Court of South Australia, which ordered the Corporation to show cause why by-law No. 4 of the City should not be quashed wholly or in part for illegality; and on 1st March 1922 the rule was made absolute, and an order made quashing the by-law in part only. The applicant appeals to us, contending that the by-law should have been wholly quashed. The rule *nisi* recites the reading of the affidavit of Eugene Stuart Groom and the exhibits thereto; and the only ground stated by Groom for believing and contending that the by-law was invalid was "that the same is repugnant to the above-mentioned Municipal Corporation Acts, and to the general spirit and intendment of the laws within the State of South Australia, and should *therefore* be wholly quashed for illegality" (par. 15). The rule cannot be made absolute on any ground other than that on which the rule *nisi* was granted (*Smith* v. *Clarke* (1); *Doe d. Fish* v. *MacDonell* (2)); and as the

(1) (1833) 2 Dowl., 218. (2) (1840) 8 Dowl., 488.

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only ground taken in the rule *nisi* is repugnancy to the Act or to the general spirit and intendment of the laws of the State (following the words of the proviso to sec. 316 of the principal Act and of sec. 24 of the amending Act of 1903), it was not, in my opinion, competent for the Full Supreme Court, nor is it competent for this Court on appeal, to entertain any other ground. It has been suggested from the Bench that, apart from repugnancy as alleged, the by-law is not a by-law for the purpose of "compelling" the branding of packages, &c., at all, and that it is therefore invalid as exceeding the substantive power conferred by sec. 23 (II.) of the amending Act of 1903. This is not the ground taken by the rule. The rule assumes that, but for some repugnancy to the Act or to the laws, the by-law is within the scope of the power conferred.

The procedure adopted is that prescribed by sec. 28 of the amendment Act of 1914. Under that section, which replaced sec. 337 of the principal Act of 1890, any person who desires to dispute the validity of any by-law purporting to be made under the Acts may apply to the Supreme Court, upon an affidavit setting out the facts, for a rule calling on the council concerned to show cause why the by-law should not be quashed either wholly or in part, for illegality; and "no such by-law shall be challenged or disputed in any other manner." The Full Supreme Court addressed itself to the only ground referred to in the rule (the affidavit must be treated as if set out in full in the rule); and the point that the by-law is not a by-law "compelling" the branding of packages was not considered by the Supreme Court at all. The point was not mentioned before the Supreme Court; it was not referred to in the affidavit supporting the application for special leave to appeal to this Court, or in the order giving leave, or in the notice of appeal. The point was not even argued by counsel before us—they were evidently taken by surprise when it was vaguely suggested; and it is our duty to "give such judgment as ought to have been given in the first instance" by the Supreme Court on the application to make the rule *nisi* absolute (*Judiciary Act*, sec. 37).

I am assuming, in favour of the appellant, that the word "illegality" in sec. 28 includes invalidity for excess of the power conferred. But there are many kinds of illegality; and the applicant

chose to confine his rule *nisi* to illegality for repugnancy to law. A respondent is surely entitled to make up his mind as to opposing the rule after an examination of the applicant's own statement of his grounds for urging illegality. If the applicant says that the by-law is repugnant to Act A, and get a rule *nisi* on that ground, he is not, in my opinion, entitled to get the rule made absolute on the ground that the by-law is repugnant to Act B ; or on the ground that the by-law was not passed and confirmed as prescribed by sec. 316 of the principal Act (see sec. 24 of the *Municipal Corporations Amendment Act* 1903). To decide now, on these materials, and without giving notice to the respondents, that the by-law is illegal as not "compelling" the branding of packages, and should be wholly quashed, although the applicant relied expressly on the sole argument that the by-law was repugnant to law, seems to me not only to violate all sound procedure, but to contravene the first principles of justice. I propose therefore to address myself to the point of repugnancy.

Under the *Municipal Corporations Act* 1890 every council has power to make by-laws for the purposes specified, including a general power "for more effectually regulating, observing, and carrying out all and every the powers and authorities by this Act given to corporations, and for the good rule and government of the municipality ; for the convenience, comfort, and safety of the inhabitants thereof." This shows, I think, that the power conferred to make by-laws is not to be treated in a niggardly spirit, as to the methods of constraint adopted, so long as the purposes for which the by-laws may be made are adhered to steadily. The by-laws may inflict penalties not exceeding £10 for each offence (sec. 314). Under sec. 316 no by-law can be made unless two-thirds of the whole of the members constituting the council be present ; any by-law must be laid before Parliament for thirty days, must be confirmed by the Governor and published in the *Gazette*, must not be repugnant to the Act or to the general spirit, &c., of the State laws, and, when lawfully made and confirmed, it has the same force and effect as if enacted in the Act. By an amendment Act of 1903, which is incorporated with the principal Act, power was given to make by-laws for additional specified "purposes." One of these purposes is "For compelling—

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(*a*) The branding of packages, tins, and jars containing tea, coffee, honey, jams, or other edibles or condiments, with the 'gross' or 'net' weight."

The *Trade Marks Act* 1892 had already provided (sec. 46) that every person who applies a false trade description to goods, or who sells, or exposes, or has in his possession for sale, goods to which a false trade description is applied shall be guilty of an offence unless he prove that he acted innocently (as described). But although this latter Act compelled a vendor to put a true statement of weight on the package, &c., if he put any at all, it did not compel him to brand the weight on the package; and it cannot be said that a by-law compelling the alleged weight to be branded would "repugnant" to the *Trade Marks Act*, or to the spirit and intendment of the State laws. It would be supplemental rather than repugnant. But inasmuch as the *Trade Marks Act* allowed a vendor to escape punishment if he proved that he acted innocently, in branding the weight untruly, or in selling, &c., with an untrue weight branded, it may well be, as *Murray* C.J. says in his judgment, that a by-law imposing a penalty without excepting the case of innocence should be treated as repugnant to the spirit and intendment of the State law as to false trade descriptions (*Gentel* v. *Rapps* (1), and other cases referred to in the judgment). Now, the first paragraph of the by-law attacked is as follows:—"1. No person shall deal in, offer, or expose for sale, or sell any package, tin, or jar containing tea, coffee, cocoa, honey, jam, golden syrup, treacle, candles, pepper, flour, self-raising flour, baking powder, or butter, unless the 'net' weight thereof respectively is distinctly branded on each and every package, tin, or jar." This paragraph is capable of bearing either of two constructions—either that it compels branding only, leaving it to the *Trade Marks Act* to prescribe the consequences of untrue branding, or that it compels also truthfulness in the brand. If the paragraph were to be considered by itself, without its relation to the existing law, the second alternative might probably be adopted; but inasmuch as Parliament must be supposed to have the existing *Trade Marks Act* before its mind when passing the *Municipal Corporations Amendment Act* of 1903, and as the words used in sec. 23 of the latter Act

(1) (1902) 1 K.B., 160.

are consistent with the other construction—the construction that the by-law to be made imposes no greater obligation than not to sell, &c., without some brand of net weight—it is, in my opinion, our duty to accept such a construction of the by-law as will not render it obnoxious to the objection based on repugnancy to the existing law—that is to say, to accept the construction that it compels branding only. In this conclusion I respectfully concur with *Murray* C.J. and *Gordon* J. For the same reasons, I concur with all the three Judges of the Supreme Court in the view that the words of par. 2 of the by-law, imposing a penalty for deficient weight—deficiency of the net weight as branded in comparison with the true net weight—are invalid.

There is, however, a provision in sec. 61 (3) of the *Trade Marks Act* 1892 which exempts a servant who *bonâ fide* acts in obedience to the instructions of his master; and yet, under par. 2 of the by-law, a servant is made liable for not branding, *simpliciter*—he is not exempted on the ground of his master's instructions. This provision of par. 2 seems to me to be repugnant to the *Trade Marks Act*, and it ought, in my opinion, to be included in the order quashing (if it is severable).

If and so far as it is my duty to discuss the suggestion that the by-law is invalid on the ground that it does not impose on some person or persons an obligation to brand, and therefore is not a by-law "for compelling the branding," I can only say that I cannot accept the suggestion. The sub-section (sec. 23 (II.)) does not say even that the by-law shall *compel* to brand, but that it shall be directed to that "purpose." That purpose cannot be better served, as to packages, &c., for sale, than by prescribing, as here, that no person shall sell or deal in or offer or expose for sale any package, &c., unless branded with the net weight. It is always competent for the by-law making authority to limit the by-law to such cases as it thinks fit; and here, instead of availing itself of its power to oblige all such packages, &c., to be branded whether in the hands of the consumer or of the trader, the Corporation limits its by-law to packages, &c., sold, offered or exposed for sale. The by-law says, in effect, that packages, &c., *for sale* must be branded; it does not require packages, &c., *not for sale* to be branded. So long as the

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by-law is *bonâ fide* limited to the purpose contemplated by the Act, the method of constraint to be adopted is left to the discretion of the council. If there is power to make a by-law for the purpose of compelling fowls not to trespass on neighbour's yards, the compulsion may be effected by prescribing that no fowls shall be kept except within a paling fence; there need not be an order imposing a direct obligation on the fowls, or even on the owner of fowls. In the ordinary vernacular, it would be correct to say that a man by his will made provision for the purpose of "compelling" his lazy son to work by cutting him off with, or without, a shilling; or that a Government made an Act for the purpose of "compelling" Kaffirs to work in the mines by enacting that they must all pay a poll-tax in money. The money must be found somehow; and if there are no other available industries than mining, it must be found by working at the mines. I am speaking of the ordinary use of "compel"; I do not say that to impose a poll-tax would be a proper exercise of a special power to "compel" work in mines. The "purpose" of protecting a country's industry from "dumping" may be achieved not only by prohibition of importation, but by the imposition of a heavy duty on importation. It is all a mere matter of interpretation of ordinary English non-technical words—*uti loquitur vulgus*.

It is to be noticed that in sec. 314 of the principal Act the word "compelling" appears in several of the "purposes" for which a by-law may be made. For instance, there is a power to make by-laws "for" the purpose of "compelling the consumption in factories of the smoke caused by such factories, or by the operations carried on therein or incidental thereto." Is it to be said that a by-law would be invalid which imposed a penalty on all factories from whose chimneys smoke issued? Is it necessary to prescribe directly that all persons who cause smoke to issue from a factory shall be liable to the penalty? If so, there would arise a host of questions as to who caused the smoke to issue, and so forth.

It is quite true that the by-law now in question affords only a strong "incentive" to dealers to take care that the goods in which they deal shall be branded with the net weight; but the position is the same with all such penal laws. A law is made for the "purpose"

of compelling men not to murder; but the penalty of hanging attached is merely a strong incentive not to murder. The purpose of "compelling" not to murder is never absolutely achieved; but the law is "for the purpose" of bringing constraint on men not to murder by holding out the prospect of the penalty.

Then sec. 24 of the amending Act has to be considered: "Any corporation may pass by-laws for any purpose not mentioned in this Act, so long as the same shall not be repugnant to this Act or to the general spirit and intendment of the laws of the State." These words certainly create a real difficulty in ascertaining the outside limits of this general power. But it seems safe to say that this power justifies the inclusion of "candles" (not edible), and probably baking powder in the first clause of the by-law. Effect must be given to the wide terms of this general power; and even if this by-law cannot be supported under the specific power given by sec. 23 (II.), I cannot see that it is not amply supported by sec. 24. Either it is passed for the specific purpose mentioned in sec. 23 (II.), or it is not: if it is passed for that purpose, it is valid under sec. 23; if it is not passed for that specific purpose, it is valid under sec. 24. For it is not repugnant to the Act or to the general spirit and intendment of the laws of the State.

I concur also in the view that the provisions of the by-law for forfeiture, and the provisions incidental thereto, are beyond the powers of the corporation.

In my opinion, the appeal should be dismissed in the main, but the words of clause 2 as to servants should be struck out. This would probably involve the striking out of all the words of clause 2 after "packages, tins, or jars."

Appeal allowed. Order appealed from discharged. Order nisi to quash by-law made absolute. Respondent to pay costs of appeal to this Court.

Solicitors for the appellant, *Bennett, Campbell & Ligertwood.*
Solicitors for the respondent, *Wadey, Norman & Waterhouse.*

B. L.