1889

*Feb. 21,22.

*June 14.

WILLIAM F. DANAHER..... APPELLANT ;

AND

B. LESTER PETERS AND JOHN R. MARSHALL..... RESPONDENTS.

JOHN O'REGAN..... APPELLANT ;

AND

B. LESTER PETERS..... RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

New Brunswick Liquor License Act, 1887—*Constitutionality of—Prohibition of sale of liquor—Granting a license—Powers of Mayor of a city—Disqualifying liquor sellers—Effect of.*

The New Brunswick Liquor License Act, 1887, provides that "all applications for license, other than in cities and incorporated towns, shall be presented at the annual meeting of the council of the municipality and shall then be taken into consideration, and in cities and incorporated towns at a meeting to be held not later than the first day of April, in each and every year." The interpretation clause provides that in the City of St. John the expression "council" means the mayor who has the powers given to a municipal council. It is also provided that when anything is required to be done at, on or before a meeting of council, and no other date is fixed therefor, the mayor may fix the date for doing the same in the City of St. John.

Held, affirming the judgment of the court below, that the provision requiring licenses to be taken into consideration not later than the first day of April is directory only, and licenses granted in St. John are not invalid by reason of the same being granted after that date.

Held, per Gwynne J., that this provision does not apply to the city of St. John.

Applications for licenses under the act must be endorsed by the certificate of one-third of the rate-payers of the district for which the license is asked. No holder of a license can be a member of the

*PRESENT.—Strong, Fournier, Taschereau, Gwynne, and Patterson JJ.

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

municipal council, a justice of the peace, or a teacher in the public schools.

Held, that the legislature could properly impose these conditions to the obtaining of a license, and the provision is not *ultra vires* the local legislature as being a prohibitory measure by reason of the rate-payers being able to prevent any licenses being issued ; nor is it a measure in restraint of trade by affixing a stigma to the business of selling liquor.

APPEAL from a decision of the Supreme Court of New Brunswick, refusing a writ of prohibition to restrain the defendants from enforcing a conviction for selling liquor without license, contrary to the provisions of the Liquor License Act, 1887 (1).

This appeal raises only two questions which are dealt with in the following judgments of the Supreme Court. One question is as to the constitutionality of the act; the other as to the validity of licenses issued under it in the City of St. John.

The act provides that applications for licenses must be accompanied by a certificate of the applicant's fitness to hold a license, and that the premises for which it is asked are suitable, signed by at least one-third of the rate-payers for the polling sub-division established for the purposes of the last previous Dominion or Provincial Election for the district for which the license is asked. It was contended by the appellants that this provision enabled the rate-payers, by acting in concert, to prevent the granting of any licenses, and that it was, therefore, in effect a measure prohibiting the sale of intoxicating liquors, and *ultra vires* of the local legislature.

Another provision of the act was that no holder of a license should be qualified to sit on the commission of the peace, to be a member of a municipal council or a teacher in the public schools. The contention of the appellants under this provision was that it interfered with the public rights of persons engaged in the

(1.) 50 Vic. (N.B.) Ch. 4.

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

liquor business and, by affixing a stigma to that business, was calculated to prevent persons engaging in it, which made it a measure in restraint of trade and *ultra vires* of the local legislature.

The power to grant licenses under this act is vested in the municipal councils and, for the City of St. John, in the mayor, who has all the powers of a council. Applications for license in cities and incorporated towns are to be considered at a meeting of the council, (the expression council in relation to St. John meaning the mayor) to be held not later than the first day of April in each year. Anything required to be done at, or on or before, a meeting of council, when no other date is fixed therefor, shall be done in St. John on a day to be fixed by the mayor, of which he shall give notice by advertisement in a newspaper.

The mayor of St. John gave notice for, and received and considered applications for, license on the 26th day of April. The appellants, who were applicants for a retail and wholesale license respectively, appeared before him on that day and protested against any licenses being issued, and they afterwards sold liquor without license, and were convicted of an offence against the act for so doing by the respondent Peters, Police Magistrate for the city. They then applied for, and obtained, a rule *nisi* for a prohibition to prevent the said magistrate and the Chief of Police from enforcing the conviction. On the return of the rule *nisi* it was argued before the full court and discharged. This appeal was then brought to the Supreme Court of Canada.

The different sections of the act on which the decision of this court and that of the court below is founded are set out in the judgments of Gwynne and Patterson JJ.

McCarthy Q.C. and *Milledge* (*Quigley* with them) for the appellants. That the power to prohibit abso-

lutely the sale of liquor in Canada is vested in the Dominion Parliament is settled by authority. *Russell* v. *The Queen* (1) ; *City of Fredericton* v. *The Queen* (2).

It is not necessary that prohibition should appear as a feature apparent on the face of the act. If it can be utilized as a means for effecting prohibition it is beyond the legislative authority of the province.

Then can licenses be granted in the City of St. John later than April 1st ? By the act certain privileges are granted to a certain class of traders and the procedure provided must be strictly followed. That was not done in this case. The act negatively provides that applications for license must be considered on or before the first of April. See *Becke* v. *Smith* (3) ; *River Wear Commissioners* v. *Adamson* (4) ; *Sussex Peerage Case* (5); Maxwell on Statutes (6) ; *Williams* v. *Swansea Canal Navigation Co.* (7) ; *Howard* v. *Bodington* (8).

There is no such thing in England as an unconstitutional act of Parliament. The English decisions on construction of statutes must be looked at in the light of our different position. *White* v. *Tyndall* (9) ; *Leader* v. *Duffey* (10) ; *Caldwell* v. *McLaren* (11), can only be upheld on a strict and literal construction of statutes.

The learned counsel referred also to *Hodge* v. *The Queen* (12), and the decision of the Privy Council in *re Dominion Liquor License Act*, 1883.

Jack, Recorder of the City of St. John for the respondents, cited the following cases and authorities : *Sharp* v. *Dawes* (13) ; *Pearse* v. *Morrice* (14) ; *Le Feuvre* v. *Miller* (15) ; *Siddell* v. *Vickers* (16) ; *The People* v. *Allen* (17) ;

(1.) 7 App. Cas. 829.
(2.) 3 Can. S.C.R. 505.
(3.) 2 M. & W. 195.
(4.) 2 App. Cas. 764.
(5.) 11 C. & F. 143.
(6.) 2 Ed. p. 456.
(7.) L. R. 3 Ex. 158.
(8.) 2 P.D. 203.
(9.) 13 App. Cas. 275.
(10.) 13 App. Cas. 301.
(11.) 9 App. Cas. 392.
(12.) 9 App. Cas. 117.
(13.) 2 Q.B.D. 26.
(14.) 2 A. & E. 96.
(15.) 8 E. & B. 332.
(16.) 39 Ch. D. 92.
(17.) 6 Wend. 486.

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

Maxwell on Statutes (1); *Severn* v. *The Queen* (2); *Bank of Toronto* v. *Lambe* (3); R.S.N.B. (1).

STRONG J.—Was of opinion that the appeals should be dismissed.

FOURNIER J.—I am of opinion that these two appeals should be dismissed with costs for the reasons mentioned in the very elaborate notes of the judges of the court below.

TASCHEREAU J.—I am of opinion that whether the Mayor could hold the meeting for the issue of licenses after the first of April or not is immaterial in this case (Danaher's). If he could do so, as he has done, the appellant stands without a license; if he could not do so the result is the same, the appellant is without a license and could not sell liquor without infringing the provisions of the Liquor License Act. As to the constitutionality of the act there can be no doubt. This is not a statute to prohibit, it is a statute to regulate, to permit under certain conditions. If these conditions are not fulfilled it may be that the consequences are that the sale of liquor is virtually prohibited, but that consequence cannot render the act unconstitutional.

As to O'Regan's case, he also sold liquor without a license. Whether he sold wholesale or retail is immaterial. It is not because he sold a large quantity that he can claim to have the action against him dismissed.

GWYNNE J.—The first question which arises in these cases is as to the authority and jurisdiction of the mayor of the City of St. John, in the Province of New Brunswick, under the Provincial Statute 50 Vic. ch.

(1.) Ed. of 1875, p. 334, *et seq.*
(2.) 2 Can. S.C.R. 70.
(3.) 12 App. Cas. 575.
(4.) Vol. 3 p. 1006.

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

Gwynne J.

4, to issue the licenses issued by him on the 26th April, 1888. In the construction of this obscure act all that we are concerned with is as to its application to the City of St. John in relation to the issue of licenses to sell liquors therein. We are bound to find, if we can, an intelligible meaning for the seeming obscurity and this, I think, a careful study of the act will enable us to do, although not, perhaps, without some difficulty.

Sec. 2, sub-sec. 4, enacts in substance in so far as the City of St. John is concerned, that by the word "council" where it occurs in the act standing thus alone, shall be understood, unless the context otherwise requires, "the mayor of the city" whom the act invests with all the powers and duties which in other municipalities are imposed upon the councils of the municipalities, and then sec. 8 enacts that:

Every application for a license to sell liquors (in the City of St. John) either by wholesale or retail shall be by petition of the applicant to the mayor of the city.

Sec. 9. Every petition for a license shall be filed with the chief inspector of the city on or before the first day of March in each year.

Sec. 13. The chief inspector shall cause to be posted up in his office the name of each applicant for license, the description of license applied for, and the place, described with sufficient certainty, where such applicant proposes to sell, at least fourteen days before the first day of April.

Sec. 15. It shall be the right and privilege of any person residing in the ward for which the license is required to file objections in writing to the granting of any license. The objections which may be taken to the granting of a license may be one or more of the following:

1. That the applicant is of bad fame or character or of drunken habits, or has previously forfeited a license, or that the applicant has been convicted of selling liquor without license within the period of three years; or

2. That the premises in question are out of repair, or have not the accommodation hereby required, or reasonable accommodations if the premises be not subject to the said regulations; or

3. That the licensing thereof is not required in the neighborhood, or that the premises are in immediate vicinity of a place of public

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

Gwynne J.

worship, hospital, or school, or that the quiet of the place in which such premises are situate will be disturbed if the license is granted.

Sec. 17. Any petition or memorial against the granting of a license shall be lodged with the chief inspector not less than four clear days before the day on which the application shall be considered.

Sec. 18. The chief inspector shall keep a list posted in his office for three days previous to such day of all certificates and petitions lodged with him as aforesaid, and every such petition or memorial shall be open for public inspection without fee.

Sec. 20. Every application for a license, and all objections to every such application shall be investigated by the chief inspector of the city;

1. Every such investigation shall be open to the public.

2. The chief inspector may, at his discretion, adjourn such investigation from time to time.

Sec. 21. On every application for a license, the chief inspector shall report in writing to the mayor of the city, and such report shall contain, &c.

Sec. 22. The inspector shall with his report return to the mayor of the said city the evidence taken by him at any investigation, and such report and evidence shall be for the information of the mayor of the city who shall nevertheless exercise his own discretion in each application.

Then sec. 23 enacts that—

Whenever by this act anything is required to be done at a meeting, or on or before a meeting of council, and no other day is fixed therefor in this act, *such act or thing may be done in the City of St. John on or before a date to be named and fixed by the mayor of the said city*, of which date he shall give seven days previous public notice by advertisement in one or more of the daily newspapers published in the city.

This section read in connection with sec. 17 shows that the day upon which the applications for licenses in the City of St. John are to be considered must be a day to be appointed and fixed by the mayor, of which seven days notice by advertisement in one or more of the daily newspapers published in the city must be given, and, therefore, that such day may be, and indeed, generally, perhaps, would be, a day subsequent to the first of April in each year.

I have stated above what appears to me to be the correct reading of sections 17 and 18 in relation to the

issuing of licenses in the City of St. John, and that this is the correct reading will, I think, appear by applying to their construction this 23rd section.

Sec. 17 literally reads as follows:

Any petition or memorial against the granting of a license shall be lodged with the Chief Inspector not less than four clear days before the day of the meeting of the Council at which the application shall be considered.

Now, this expression—

Not less than four clear days before the meeting of Council at which the application shall be considered—

supplies the very condition precedent required by sec. 23 to determine its application to sec. 17.

The lodging a petition or memorial against the granting of a license which has been applied for, is a thing required by the act to be done—

Before a meeting of Council, and no other day is fixed therefor in the act.

It must, therefore, in the City of St. John, be done by force of sec. 23 not less than four clear days *before a day to be named and fixed by the mayor of the city* for taking applications for licenses into his consideration, of which day seven days previous public notice by advertisement in one or more of the public newspapers published in the city must be given. In so far, therefore, as the City of St. John is concerned a day to be fixed by the mayor, of which seven days public notice, as aforesaid, is given, is the day upon which applications for licenses in the City of St. John are to be considered, and such day may be subsequent to the first of April in each year, notwithstanding the ingenious arguments of the learned counsel for the appellants founded upon the words—

Not later than the first day of April in each and every year,

in the 27th section, the sentence in which these

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

Gwynne J.

words occur, properly understood, having no application whatever to the City of St. John.

That section enacts that

> All applications for license other than in cities and incorporated towns shall be presented at the annual meeting of the council of the municipality, and shall then be taken into consideration, and in cities and incorporated towns at a meeting to be held not later than the first day of April in each and every year.

As to the first branch of the sentence it is expressly limited to municipalities other than cities and incorporated towns. The word "council" as it is used in that sentence cannot be construed as coming within the 4th sub-section of section 2 of the act; the context requires that it should not be so construed; what the sentence relates to is an annual meeting of a council of a municipality other than a city or an incorporated town. So likewise, as it is the manifest design of the act to make special provision for the City of St. John different from the provision made for all other cities and for all incorporated towns, the City of St. John cannot be comprehended under the words in the latter clause of the sentence "and in cities and incorporated towns, &c." The cities and incorporated towns there referred to are these at the meeting of whose municipal councils the applications are to be presented; the word "meeting" as here used would be manifestly insensible as applied to the mayor of the city to whom, by sections 8 and 21 read in the light of section 2, sub-section 4, applications for licenses in the city of St. John are to be presented. Moreover, the expression "council" is not used in the latter branch of the sentence at all, so that for these reasons it is apparent that the sentence has no application to the City of St. John as to which special provision is made quite different from that made for all other cities and for all incorporated towns. The same observation applies to the 1st sub-section of sec. 27. The word "council" as there used in connec-

tion with the words "at such meeting" refers to the municipal council of a municipality other than a city or incorporated town and to the municipal council of cities and incorporated towns in the previous sentence referred to, that is to say to cities whose councils receive and take into their consideration applications for licenses at a meeting of council held not later than the first of April in each year—in other words all cities except the City of St. John; the context requires that the word "council" in this sub-section is not to be read as meaning the mayor of the said City of St. John.

The word "council" in the 2nd sub-section and wherever it occurs in the other sub-sections can be applied in relation to the City of St. John to the mayor of the said city. Thus sub-section 3:

The mayor of the City of St. John shall hear and determine all applications, &c.

Sub-sec. 5. No objection from an inspector shall be entertained unless the nature of the objection shall be stated in his report furnished to the mayor of the city.

Sub-sec. 6. Notwithstanding anything in this act contained, the mayor of the said city may of his own motion, &c., &c.

Thus reading the 27th section all argument based on the words in it "at a meeting to be held not later than the first day of April in each and every year" is removed, and these words have no application as regards the issuing of licenses in the City of St. John. Whether, therefore, the language of the section is imperative or directory is unimportant in the present case.

It was contended that in effect the act operates as a total prohibition of the sale of liquor in the City of St. John and that it was therefore *ultra vires* and void. The argument in support of this contention was rested upon sections 27 and 10. In so far as section 27 is concerned I have already, I think, shewn that it has no application to the issuing of licenses in the City of St.

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

Gwynne J.

John, and it is with this point alone that we are concerned.

Sec. 10 enacts that—

In case of an application for a license, the petition must be accompanied by a certificate signed by one-third of the rate-payers in the polling sub-division in which the premises sought to be licensed are situate, which polling sub-division shall be that established by law for the purposes of an election for the House of Commons, or if none such be established then the polling sub-division used for the last election.

The argument based upon this section was that it shewed clearly the intention of the legislation to be that any number of rate-payers in a polling sub-division exceeding two-thirds should have the power of totally prohibiting the sale of liquor by refusing to sign the certificates for applicants for licenses. Then it was contended that section 31 authorises the majority of the rate-payers in a city or incorporated town to prohibit the sale of liquor by petitioning against the granting of licenses, and for those reasons it was contended that the act was, in effect, an act for the total prohibition of the sale of liquor in the City of St. John, and therefore *ultra vires* and void; but there is nothing in the language of the act which would justify us in pronouncing the intention of the Legislature to have been to enact a prohibition of the sale of liquors in a municipality or in any part thereof under colour of passing an act upon the subject of municipal regulations relating to the sale of liquors, which is a subject clearly within the jurisdiction of the local legislatures.

The objections which alone the act authorises to be urged by petition against the granting of a license to a particular person or for a particular house, enumerated in section 15, seem to be very reasonable grounds of objection as affecting the person and place sought to be licensed as regards the retail trade in liquors, and although these objections may seem to be unreasonable

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

Gwynne J.

if applied to a person or shop for which a license to sell liquors by wholesale is sought to be obtained, we cannot for that reason hold the object of the legislature to have been to effect prohibition of the trade of dealing in the sale of liquors under colour of an act establishing municipal regulations affecting that trade. So neither can we hold that the certificate of approval of the fitness of the applicant to obtain a license, or of the place in which he proposes to carry on the trade required by the act, however stringent the provision upon that subject is, has been enacted for the purpose of effecting a prohibition of the sale of liquors in any part of a municipality. The act may be defective, also, in some particulars, as in the absence of a provision (which was much relied upon) for supplying throughout the year the places of licensed persons dying, or being deprived of their licenses. So, likewise, it may to some seem to be reasonable, to others it may seem to be unreasonable,that a licensed tavern keeper should not be eligible to serve as a trustee of schools or hold a place in the commission of the peace, or to be a member of a municipal council, &c., but defects or imperfections in the act or provisions therein which may be, or may appear to some to be, unreasonable will not justify us in pronouncing the true object of the act to have been prohibition, total or partial, of the trade of dealing in the sale of liquors, under pretence of establishing municipal regulations upon that subject.

As to sec. 73, and the argument founded thereon as affecting brewers and distillers, we have no concern in my opinion in the present case with any consideration of that section or its effect upon brewers and distillers. The appeals must in both cases be dismissed with costs.

PATTERSON J.—I agree that these appeals must be

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

Patterson J.

dismissed, and I do not propose to discuss at much length the questions that have been debated before us.

The power of the local legislatures to provide for the issuing of licenses for the sale of spirituous liquors, either in large or small quantities, to limit the number of licenses, and to prohibit, under penalties, the sale of such liquors without license, cannot now be treated as an open question.

The contention for the present appellants is that the New Brunswick Liquor License Act, 1887, while professing merely to deal with the subject of licenses, contains provisions which, either from their inherent tendency or from the way in which they may be acted on, give the measure the effect of a prohibitory law, either as to the whole province and for all time, or as to particular localities and particular calendar years.

The larger question of the power of the province to prohibit the sale of intoxicating liquors within its own borders is not presented for discussion, and we have to deal only with questions which concede that total prohibition can be decreed only by the Dominion Parliament.

Three points have been made before us, but two of them may be dismissed with a few observations. They were, if I am not mistaken, raised for the first time in this court.

One relates to the requirement of a certificate signed by one-third of the rate-payers of the locality as a qualification for obtaining a license, and the other to the disqualification, under sec. 76, of licensed persons for holding commissions of the peace or municipal offices. These provisions, it is urged, interfere with the freedom of individuals in the matter of engaging in the liquor trade by making their right to a license depend on the action of their neighbors, and by attaching a stigma to the business. The stigma may or may not

be implied. There may be other motives for desiring that under a system of popular government the liquor seller shall control public affairs to as small an extent as possible, without any more imputation against him or his calling than is implied by the exclusion of judges from the electoral franchise.

But the objections are too fanciful and far-fetched to be seriously discussed without denying to the local legislature the right to prescribe the conditions on which licenses can be obtained. They assume a right in every man to demand a license, ignoring the right of the legislature to limit the number.

The main point, and that with which the judgments delivered in the court below are almost altogether occupied, is the effect of section 27, which declares that—

All applications for license other than in cities and incorporated towns shall be presented at the annual meeting of the council of the municipality and shall then be taken into consideration, and in cities and incorporated towns at a meeting to be held not later than the first day of April in each and every year.

With this section are to be read section 2, sub-section 4, where it is enacted that in the City of St. John the expression "Council" shall mean the mayor of the city who shall have and exercise all the powers and duties imposed by the act upon the council, and also section 23 which declares that—

Whenever by this act anything is required to be done at a meeting, or on or before a meeting of Council, and *no other day is fixed therefor in this act*, *such act* or thing may be done *in the City of Saint John* on or before a date to be named and fixed by the mayor of *the said city*, of which date he shall give seven days previous public notice by advertisement in one or more of the daily newspapers published in the said city.

The mayor of St. John sat for the purpose of receiving and disposing of applications for licenses on the 26th of April, 1888, and not on the first day of that

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

Patterson J.

month. He had given seven days previous public notice of his intention to attend on the 26th by advertisement in a daily newspaper published in the city, and applicants for licenses, the appellants being among them, also attended. Licenses were granted to others, but not to the appellants who protested against the right of the mayor to act in the matter after the first of April.

The appellants afterwards sold spirituous liquors without license in violation of the 71st section of the act, and were fined therefor by the respondent Peters.

The point made is that there was no power to issue licenses except at a meeting held not later than the first of April; that therefore no licenses for St. John could be legally issued for the year that began on the first of May, 1888; and therefore it was lawful to sell without license, or rather that the act which prohibited selling without license during a period when under the terms of the act no valid license could be obtained, or which left it open to an officer, by neglecting to do an act at the proper time, to suspend for a year the power of vendors of liquors to obtain a license, was a prohibitory act, and therefore beyond the legislative jurisdiction of the province.

On the other side it is denied that the conclusion follows from the premises, and the premises are also disputed.

The judgments delivered in the court below deal chiefly with the question of the validity of what was done by the mayor, notwithstanding that it was done later than the first of April; and the court held, with one dissentient opinion, that the licenses were valid which were issued on the 26th. If that decision is correct it will not be necessary now, as it was not found necessary in the court below, to consider whether or not the conclusion against the statute

would follow from the different premises on which the appellant bases his syllogism.

I agree with the views expressed by the majority of the court. The judgments of the learned Chief Justice and of Justices King, Wetmore and Fraser deal with the matter so fully, and to my mind so satisfactorily, both on reason and on the authorities, that to attempt to discuss the matter would be but to repeat what they have said.

I am satisfied that the reference to the time in section 27 cannot be properly treated as otherwise than directory, so that even if the provisions of that section apply to the mayor of St. John in the same way as to a municipal council the adjudication on the applications for license on the 26th of April was good and valid.

I am a good deal struck by the view, to which I understand Mr. Justice Wetmore to have been inclined, that there was no irregularity, but that the proceeding on the 26th was within the letter of the statute. It may be suggested that as the existing licenses expired on the 30th of April an earlier day than the 26th ought to have been adopted. That is a speculation on which I cannot enter.

The mayor of St. John may be credited with knowing better than I can be expected to know what the general convenience required. The question is: What does the statute say?

It says that licenses shall be issued by municipal councils or city or town councils, except in St. John where the mayor is to do what the council does elsewhere. Section 27 is framed with special reference to meetings of council. The phraseology of the section does not enable us to read the word "mayor" in place of the word "council" as directed by section two, because the word "council" does not happen to be ex-

1889

DANAHER v. PETERS.

O'REGAN v. PETERS.

Patterson J.

pressed along with the word "meeting" in relation to cities and towns. The meeting means, of course, a meeting of council, but the absence of the word renders gratuitous some ingenious discussion which we heard concerning the practicability of the mayor holding a meeting by himself.

The draftsman of the statute very likely supposed that he had named the first of April as the latest day for the mayor as well as for meetings of city and town councils to deal with applications for licenses. Section 13, which directs the posting up of notices with the names of applicants fourteen days before the meeting of council and, in the City of St. John, fourteen days before the first of April, shows that that date was thought of in connection with the functions that were to be discharged by the mayor, but it was evidently thought of as the *earliest* day on which he was to act.

It may be that section 23, which Mr. Justice Wetmore refers to as possibly leaving the time for the mayor's action very much to his own discretion, is not precise enough to be relied on for that purpose, but that reading of it would scarcely be a strained one.

The fact is that these several sections will not bear the close scrutiny which the appellants ask us to apply to them; and the close and critical reading which they urge would not lead to the conclusion on which they insist. The matter is not of much consequence, and is noticeable chiefly as a feather in the directory scale as against the application of section 27 according to its literal interpretation.

In my opinion we should dismiss the appeals with costs.

Appeals dismissed with costs.

Solicitor for appellants: *R. F. Quigley.*

Solicitor for respondents: *J. Allen Jack.*