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*Mar. 15
*May 24

JACK ROSS ..... APPELLANT;

AND

HER MAJESTY THE QUEEN, ON THE INFORMATION OF A. GRAY } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Municipal Corporations—Power to pass by-laws for licensing, regulating and governing taxicabs—Taxicab licensed in one municipality parking on private property in other municipality—Applicability and validity of by-law purporting to prohibit same—The Municipal Act, R.S.O. 1950, c. 243, s. 406(1).

The appellant, a taxicab owner and driver, was convicted of having violated s. 42(*b*) of By-Law No. 12899 of the Township of York, by parking his cab on private property in the municipality for the purpose of obtaining a fare. The appellant held a taxicab licence from a different municipality. The by-law was passed under the authority of s. 406(1) of the *Municipal Act*, R.S.O. 1950, c. 243, which provides for the licensing, regulating and governing of owners and drivers of cabs

etc. The appellant contends that s. 42(*b*) of the by-law applies only to the owners or drivers licensed by the municipality or using cabs in operations which could not lawfully be carried on without such a licence and alternatively, that if it applies to the appellant it is *ultra vires* of the municipality.

Held (Kerwin C.J. dissenting): that the appeal should be allowed and the conviction quashed, the costs of the appellant throughout to be paid by the informant.

Per Estey, Locke, Cartwright and Fauteux JJ.: The judgments in *The Commodore Grill* v. *The Town of Dundas* [1943] O.W.N. 408 and *Rex ex rel Stanley* v. *De Luxe Cab Ltd.* [1951] 4 D.L.R. 683, do not support the conclusion of the Court of Appeal that although the municipality had no power to require the appellant to obtain a licence it could validly regulate his conduct in regard to his cab so long as the cab was physically situate within the limits of the municipality.

On its proper construction, s. 42(*b*) is intended to apply to owners of cabs although neither licensed nor required to be licensed by the municipality. However, to the extent that it prohibits the owner of a cab, who does not require a license, from permitting the cab to stand on private lands within the municipality, s. 42(*b*) is *ultra vires* of the municipality. It would require clear and explicit words to confer power on the municipality to prohibit the owner of such a cab from allowing it to stand on private property in the municipality whether owned by him or by some other person. The general words of s. 406(1) of the *Municipal Act* are not apt to confer so unusual a power.

Per Kerwin C.J. (dissenting): S. 42(*b*) applies to owners of motor vehicles used for hire although neither licensed nor required to be licensed by the municipality, and is *intra vires* the municipality. The terms of s. 406(1) of the *Municipal Act* are wide enough to authorize the municipality to provide that no owner or driver of any cab, when not actually in use for hire, shall permit the same to stand on any public highway or on any private lands owned either by the owner or driver or by anyone else. The municipality is not attempting to restrict the use of private lands as such.

APPEAL from the judgment of the Court of Appeal for Ontario (1), dismissing an appeal from the judgment of Macdonell Co. Ct. J., of the County Court of the County of York, which had dismissed the appellant's appeal from his conviction of having violated s. 42(*b*) of the By-Law No. 12899 of the Township of York.

J. R. Robinson, Q.C. for the appellant.

C. Foreht for the respondent.

THE CHIEF JUSTICE (dissenting):—I have had the advantage of reading the reasons of Mr. Justice Cartwright wherein are set out the facts and the contentions advanced by the parties. I agree that clause 42 (*b*) of the by-law

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applies to owners of motor vehicles used for hire although neither licensed nor required to be licensed by the municipality and the only point remaining, therefore, is whether, as so construed, the clause is *intra vires* the municipal council. In my opinion, that question should be answered in the affirmative.

The relevant provision of *The Municipal Act* is s-s. 406 (1) as found in R.S.O. 1952, c. 243:

> 406. By-laws may be passed by the councils of towns, villages and townships and by boards of commissioners of police of cities:—
>
> 1. For licensing, regulating and governing teamsters, carters, draymen, owners and drivers of cabs, buses, motor or other vehicles used for hire; for establishing the rates or fares to be charged by the owners or drivers of such vehicles for the conveyance of goods or passengers either wholly within the municipality or to any point not more than three miles beyond its limits, and for providing for the collection of such rates or fares; and for revoking any such licence.

Under this sub-section a by-law may be enacted providing for licensing, for regulating, and for governing, owners and drivers of cabs, etc., used for hire; and it may do any one of these things. The terms of s-s. (1) of s. 406 of *The Municipal Act* are wide enough to authorize the municipality to provide that no owner or driver of any cab, etc., when not actually in use for hire, shall permit the same to stand on any public highway or on any private lands owned either by the owner or driver or by anyone else. The council is exercising its authority within the boundaries of the municipality and is not attempting to restrict the use of private lands as such. The prohibition is not directed to a cab, etc., but to the owner and driver thereof used for hire found within the municipality. The Information in the present case was laid against the owner who was also the driver.

The appeal should be dismissed with costs.

ESTEY J.:—I agree the appeal should be allowed and the conviction quashed with costs throughout.

The judgment of Locke, Cartwright and Fauteux JJ. was delivered by:—

CARTWRIGHT J.:—This is an appeal, brought by special leave granted by this Court, from a judgment of the Court of Appeal for Ontario (1), affirming a judgment of His

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Honour Judge Macdonell whereby the conviction of the appellant by a Justice of the Peace for the Province of Ontario was affirmed.

The charge on which the appellant was convicted was that he on the 22nd day of April A.D. 1953, at the Township of York, in the County of York, being the registered owner of motor vehicle Licence No. 3L608, did unlawfully permit said vehicle to stand on the property known as Crosstown Car Wash, located at 1467 Bathurst Street, for the purpose of obtaining a fare contrary to Section 42(*b*) of By-law No. 12899 of the Township of York as amended by By-law No. 14512 of the said Township of York.

The facts are undisputed. The appellant was on April 22, 1953, the owner of the motor vehicle referred to in the charge which he used as a taxi-cab, that is for the conveyance of persons for hire. It was standing on the property mentioned. It was equipped with a radio by which the appellant received communications from his headquarters. The appellant was sitting in his cab waiting for a fare or for a call over the radio to tell him where to go to pick up a passenger. The appellant held a taxi-cab licence from the Township of East York. Earlier in the year he had applied to the Township of York for a taxi-cab licence but his application had been refused. There was no evidence that he had ever picked up or set down a passenger in the Township of York.

The property on which the appellant's cab was standing was private property belonging to a firm known as Crosstown Car Wash. It is a corner lot having a frontage of 192 feet on the east side of Bathurst Street and 139 feet 9 inches on the north side of St. Clair Avenue. The southerly portion of the lot measuring 75 feet from north to south is in the City of Toronto. The northerly portion measuring 117 feet from north to south is in the Township of York. The whole width of Bathurst Street for a distance of 185 feet measured northerly from the north limit of St. Clair Avenue is in the City of Toronto, so that for 110 feet the east limit of Bathurst Street is the boundary between the Township of York and the City of Toronto. The appellant's cab was standing facing westerly about four feet from this boundary

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and could have driven westerly on to Bathurst Street or southerly on to St. Clair Avenue without using any highway in the Township of York.

The appellant submits (i) that s. 42 (*b*) of By-law 12899, as amended, on its proper construction does not apply to the appellant but applies only to the owners or drivers of taxi-cabs licensed by the Township of York or used in operations which could not lawfully be carried on without such a licence and (ii) alternatively, that if on its proper construction it does apply to the appellant it is *ultra vires* of the Council of the Township.

The respondent does not seek to support the By-law under any provision of the *Municipal Act* other than s. 406 (1) which reads as follows:—

> 406. By-laws may be passed by the councils of towns, villages and townships and by boards of commissioners of police of cities:—
>
> 1. For licensing, regulating and governing teamsters, carters, draymen, owners and drivers of cabs, buses, motor or other vehicles used for hire; for establishing the rates or fares to be charged by the owners or drivers of such vehicles for the conveyance of goods or passengers either wholly within the municipality or to any point not more than three miles beyond its limits, and for providing for the collection of such rates or fares; and for revoking any such licence.

In view of the operations carried on by the appellant, set out in the above statement of facts, it follows from the judgment of Wright J. in *Re Ottawa Electric Railway Co. Ltd. and Town of Eastview* (1), that the Township of York had no power to require him to take a licence for his cab. At page 56 Wright J. said:—

> I think the conclusion is irresistible that, if the Legislature intended to confer upon the councils of towns and villages the power to require licenses for vehicles that operate between one municipality and another or other municipalities, it would use express words to that effect; and that, in the absence of such express legislation, the powers of municipal councils are confined to licensing the owners of vehicles kept for hire entirely within the limits of their municipalities. This construction would give full effect to the section of the Consolidated Municipal Act already cited which declares that the jurisdiction of a municipal council to enact by-laws is confined to that municipality.

This judgment was followed by Greene J. in *Rex ex rel Taylor* v. *Kemp* (2), by Rose C.J.H.C. in *Rex ex rel St. Jean* v. *Knott* (3), and by His Honour Judge Macdonell in *Rex* v. *Olive* (4), affirmed by the Court of Appeal (5).

(1) (1924) 56 O.L.R. 52.
(2) [1943] O.W.N. 54.
(3) [1944] O.W.N. 432.
(4) [1951] O.W.N. 637.
(5) [1953] O.W.N. 197.

F. G. MacKay J.A. who delivered the unanimous judgment of the Court of Appeal in the case at bar follows these cases and sums up the law in the following passage with which I respectfully agree:—

> It is settled law that municipal corporations in the exercise of the statutory powers conferred upon them to make by-laws should be confined strictly within the limits of their authority. The municipality under what is now Section 406 of R.S.O. 1950, Chapter 243, may require that a cab engaged in carrying passengers from and to places within the municipality obtain a licence but cannot compel a cab licensed in another municipality and carrying passengers from one municipality to another to obtain a license. *Rex* v. *Olive,* (1951) O.W.N. 635, affirmed on appeal (1953) O.W.N. 197 and cases therein referred to.

The learned Justice of Appeal then goes on to hold, on the authority of *The Commodore Grill* v. *The Town of Dundas* (1) and *Rex ex rel Stanley* v. *De Luxe Cab Ltd.* (2), that although the Township had no power to require the appellant to obtain a licence it could validly regulate his conduct in regard to his cab so long as the cab was physically situate within the limits of the Township.

In my view neither of these cases supports the conclusion drawn from them in the case at bar. In *The Commodore Grill Case* the Town had passed a by-law requiring the owners of restaurants operated within the Town to obtain a licence but the by-law neither limited the number of such restaurants nor provided for their regulation. The by-law was passed under the authority of s. 436 (2) of R.S.O. 1937 C. 266 which empowered the Town to pass by-laws:—

> For limiting the number of and licensing and regulating victualling houses, ordinaries, and houses where fruit, fish, oysters, clams or victuals are sold to be eaten therein, and places for the lodging, reception, refreshment or entertainment of the public, and for revoking the license.
>
> (*a*) The sum to be paid for the license shall not exceed $20.

No question arose as to whether the powers given to the Town could be exercised in regard to the plaintiff's restaurant. The only question raised was whether, as Plaxton J. had thought himself bound by authority to hold, the municipality if it acted at all under the sub-section quoted must exercise all of the three powers given to it, i.e., (i) the power to limit the number of restaurants, (ii) the power to license them, and (iii) the power to regulate them. The Court of Appeal decided that although these

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three powers were stated conjunctively in the enabling subsection they constituted separate powers which could be separately exercised. At page 432 Robertson C.J.O. said:—

> Unless there is something to be found in the provision of the statute that indicates that its operation should be so restricted, I know of no rule of interpretation that would require that a municipality should exercise to the full the power given it, or not exercise it at all. Doubtless the powers of a municipality are limited to what are given by statute, but to exercise a power to less than its full extent is not to exceed it. To do one thing when two or more are authorized is not to do something unauthorized, unless all that is authorized is to be deemed unseverable, in the intention of the Legislature expressly declared or properly to be inferred.

In the *De Luxe Cab* case, the defendant was charged with a breach of s. 32 of by-law 214 of the Board of Commissioners of Police of the City of Toronto, reading as follows:—

> No person licensed under this by-law shall employ or allow any runner or other person to assist or act in concert with him in obtaining any passenger or baggage, at any of the stands, railway stations, steamboat landings or elsewhere in the said City.

This by-law was passed under the authority given by s. 441 (1) of the *Municipal Act*, R.S.O. 1937, c. 266. Section 441 provides that certain by-laws may be passed by Boards of Commissioners of Police of cities. Subsection (1) of s. 441 is as follows:—

> For licensing, regulating and governing teamsters, carters, draymen, owners and drivers of cabs, buses, motor or other vehicles regularly used for hire within the city and for establishing the rates or fares to be charged by the owners or drivers of such vehicles for the conveyance of goods or passengers either wholly within the city or to any other point not more than three miles beyond its limits and for providing for enforcing payment of such rates or fares and for revoking and cancelling the license.

Robertson C.J.O., who gave the judgment of the Court of Appeal upholding the validity of the section of the by-law quoted above, said in part at page 685:—

> In the first place, it is to be noted that the Police Commissioners' By-law 214 in s. 32 deals only with persons licensed under that by-law. It is the conduct of persons licensed under the by-law that is regulated and governed by the Police Commissioners' by-law passed under the authority of s. 441 (1) of the Municipal Act.

and at page 686:—

> A number of other defects were suggested by counsel for the respondent in his ingenious argument. Counsel pressed upon the Court the lack of any authority in the Board of Commissioners of Police to pass a by-law forbidding the use of private property by runners. It is plain, however, that the Police Commissioners' by-law does nothing of the kind. It deals

with the employment and use by licensed persons of runners to assist them in soliciting business. It is the conduct of the employer, not that of the employee, that the by-law deals with.

By implication the reasons of the learned Chief Justice appear to negative any power in the Board of Commissioners of Police under s. 441 (1) to have passed a by-law prohibiting the activities of the runners.

In considering the first submission of the appellant, that s. 42 (*b*) of the by-law does not apply to him, it is to be observed that ss. 42 (*a*) and 42 (*b*) read as follows:—

> 42 (*a*) That when not engaged in driving his cab for hire the owner or driver thereof shall keep the same at the cab stand or other premises specified in his application for license, or at such other place as may be authorized or approved in writing by the License Inspector.
>
> 42 (*b*) Subject to the provisions of Paragraph 42 (*a*) no owner or driver of any cab when not actually in use for hire, shall permit the same to stand on any public highway or on any private lands within the municipality.

It is, I think reasonably plain that s. 42 (*a*) applies only to the owner or driver of a cab licensed under the by-law. Its wording contemplates that an application for a licence will have been made in which will have been specified the place at which the cab shall be kept when not being driven for hire. The forms of licence are prescribed by ss. 4 and 5 of the by-law and do not provide that such place shall be specified therein, and presumably it is for this reason that the section refers not to the licence but to the application therefor. Section 42 (*b*) is made subject to s. 42 (*a*) but if its application is limited to the owners and drivers of cabs licensed by the township it would appear to be unnecessary. Since such cabs are imperatively required by s. 42 (*a*) to be kept in specified places it would be otiose to say that they may not be kept elsewhere. I conclude therefore that on its proper construction s. 42 (*b*) is intended to apply to owners of cabs although neither licensed nor required to be licensed by the Township.

It remains to consider whether s. 42 (*b*) so construed is *intra vires* of the Council. In my opinion, in so far as it prohibits the owner of a cab, who does not require a licence, from permitting the cab to stand on private lands within the municipality, it is not. It is unnecessary to consider whether, and if so to what extent, the Council may by by-law regulate the owner of a cab used for hire, lawfully

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operated by him in such manner that the Council has no power to require that he obtain a licence, merely by reason of the fact that the cab is physically present in the municipality. It would I think require clear and explicit words to confer power on the Council to prohibit the owner of such a cab from allowing it to stand on private property in the municipality whether owned by him or by some other person. The general words of s. 406 (1) are not apt to confer so unusual a power.

I wish to emphasize that I am deciding only that s. 42 (*b*) is *ultra vires* of the Council to the extent stated above. For the purpose of deciding the case before us that is all that it is necessary to determine and I think it undesirable to express any further opinion in regard to the construction or validity of the By-law.

For the above reasons I would allow the appeal and quash the conviction of the appellant with costs throughout.

Appeal allowed and conviction quashed.

Solicitors for the appellant: *Robinson & Haines.*

Solicitor for the respondent: *Cecil Foreht.*

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*PRESENT: Kerwin C.J., Taschereau, Rand, Kellock, Estey, Locke, Cartwright, Fauteux and Abbott JJ.