Kocotis v. D'Angelo

[1958] O.R. 104-127

ONTARIO
[COURT OF APPEAL]

LAIDLAW, GIBSON and SCHROEDER JJ.A.

12th and 13th SEPTEMBER 1957.

Contracts -- Prohibition by By-law -- Illegality -- Refusal by Court to enforce.

The plaintiff sued for work done as an electrician and for materials supplied. The defendant alleged that the plaintiff was not licensed to act as an electrical contractor, relying inter alia on By-law 134 of the Board of Police Commissioners. The defendant also contended that the contract sought to be enforced was forbidden by law. By-law 134 was passed pursuant to The Municipal Act, R.S.O. 1950, c. 243, s. 413 (as amended by The Municipal Amendment Act, 1955 (Ont.), c. 48, s. 43.) The plaintiff held a maintenance electrician's licence under By-law 134, but was not licensed under the By-law as an electrical contractor (for which a master electrician or "A" certificate would have been required.)

Held, (SCHROEDER J.A. dissenting) that the appeal should be allowed. The object of the By-law was to protect the public against mistakes and loss that might arise from work done by unqualified persons, and its plain intention was to prohibit a maintenance electrician from undertaking the work of a master electrician. Consequently the contract was unlawful and the Court would not assist the plaintiff: Commercial Life Assurance Company of Canada v. Drever, [1948] S.C.R. 306, [1948] 1 D.L.R. 241 followed.

Per SCHROEDER J.A. A prohibition in a statute is distinguishable from a prohibition against carrying on a trade without a municipal license contrary to a municipal by-law regulating the trade. The only sanction for enforcement of such a by-law is the monetary penalty therein provided -- it has not the power to import invalidity into any contract made in violation of its terms: Cope v. Rowlands (1836), 2 M. & W. 149 at pp.158 and 159 per Baron Parke; Toronto v. Virgo, [1896] A.C. 88 at p. 93, etc. Where an enactment prohibits something under a penalty, the Court should consider its object, the evil it was enacted to remedy, and the effect of holding contracts void in relation to it, to ascertain whether such contracts were intended to be made void.

AN APPEAL by the defendant from a judgment of a County Court Judge.

12th and 13th September 1957. The appeal was heard by LAIDLAW, GIBSON and SCHROEDER JJ.A.

R. Scott, for the appellant: Both the form and effect of By-law 134 of the City of Ottawa prohibit this contract, therefore the plaintiff's claim is unenforceable or is void. The trial Judge characterized this as a case in tort, but should have said it was a case of contract. If there is a prohibition under a by-law, it has the same force as if it were a prohibition in a statute: Commercial Life Assurance Co. of Canada v.

Drever, [1948] S.C.R. 306, at 312, [1948] 1 D.L.R. 241. If work is done in contravention of an Act, one cannot sue, even on a quantum meruit. The contract being illegal, the assistance of the court should not be given to enforce it. [LAIDLAW J.A.: But suppose a penalty has been provided for the breach of a by-law and there is nothing said about the effect on civil rights? That puzzles me.] Every contract which is made about a thing which is prohibited or made unlawful is a void contract, although the statute itself does not mention that it shall be so: Bartlett v. Vinor (1693), Carth. 252, cited in the Commercial Life Assurance case, supra. A City Council has the power to enact with the same force and power as if the enactment were by the Legislature: City of Toronto v. Presswood Brothers, [1944] O.R. 145 at 155, [1944] 1 D.L.R. 569.

M.E. Fram, for the respondent: Where one relies on a by-law, the question must be, did the Legislature intend to affect the private citizen. This contract is not unlawful. The by-law provides its own penalty and where there is such a penalty provided, that is the end of it. The Municipal Act contains many powers to make by-laws, with penalties attached, but it was not necessarily the intention of the Legislature thereby to affect civil rights: Wynant v. Welch, [1942] O.R. 671 at 672, [1943] 1 D.L.R. 13. If a by-law could be equated to an Ontario or Dominion Statute, perhaps the appellant should succeed, but prohibition in a by-law has nothing to do with preventing enforcement on a contract. [LAIDLAW J.A.: Can the plaintiff say he has violated the law but still wants his Common Law rights?] He has a Common Law right to collect for work done. A regulation does not affect Common Law rights except where expressed clearly or impliedly, as part of an enactment. Why should this appellant be allowed to unjustly enrich himself, because the City of Ottawa sees fit to regulate electricians: Hawkes v. Yeomans, [1954] O.W.N. 769 at 771; Gillies v. Bortoluzzi and Benjamin Bros Ltd., [1953] 3 D.L.R. 335, 6 W.W.R. (N.S.) 633.

R. Scott, in reply: There is no difference between things forbidden by direct Act of the Legislature and those prohibited by a by-law passed under such an Act: Tompkins v. The Brockville Rink Co. (1899), 31 O.R. 124 at 133. As to Common Law rights, it is said in Halsbury, that where a contract is illegal in nature, no action can be brought and a party to such a contract cannot recover even on a quantum meruit: Halsbury, Laws of England, 3rd ed., vol. 8, p. 148, para. 257. It is also said that a contract prohibited by a statute, whether express or implied is unenforceable ... and where it is in contravention of a regulation, a contract cannot be enforced: Halsbury, Laws of England, supra, p. 140, para. 243. Where the object of the legislation is merely protection of the revenue, the statute will not be construed as prohibitory, but where it is for the protection of the public, then it will be construed as prohibitory and the contract cannot be enforced: Halsbury, Laws of England, supra, p. 141, para. 245; Victorian Daylesford Syndicate Ltd. v. Dott, [1905] 2 Ch. 624 at 630; Taylor v. The Crowland Gas & Coke Co. (1855), 10 Exch. 293 at 297. In the by-law here in question, the penalties for a breach were so heavy as to indicate an intention to protect the public.

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LAIDLAW J.A.:-- This is an appeal by the defendant from a judgment pronounced by His Honour Judge Marion, in the County Court of the County of Carleton, on 25th January 1957, whereby he awarded the plaintiff the sum of $206 together with the costs of the action.

In or about the month of December 1955, the plaintiff was an employee in the Department of Public Works of the Dominion of Canada, at the City of Ottawa, Ontario. He entered into an oral agreement with the defendant to do the electrical work and supply the materials necessary for electric wiring of a house owned by the defendant in the City of Ottawa. The plaintiff ...

electrician's license issued to him pursuant to the provisions of By-law No. 134 of the Board of Commissioners of Police for the City of Ottawa. The license certificate issued to him shows on the face thereof "License 'B'" which appears to be an error. It should be License 'C'.

The plaintiff proceeded to perform the contract entered into by him and on 29th February 1956 the electrical installation was inspected by an electrical inspector of the Hydro-Electric Power Commission. It showed many defects and the inspector recommended that the services of a qualified person to install the wiring be obtained. Such services were obtained by the plaintiff and the installation was completed to the satisfaction of the inspector. The defendant made certain payments to the plaintiff on account under the contract between the parties, but subsequently refused to pay the balance alleged to be owing to the plaintiff. The respondent claimed the unpaid balance and the defence thereto is that the contract made by the parties was illegal and is not enforceable in law because the respondent was not a qualified "electrical contractor" holding a Class 'A' license as provided in By-law No. 134, supra, and the making of the contract was prohibited by that by-law.

No question has been raised as to the jurisdiction of the Board of Police Commissioners of the City of Ottawa to enact By-law No.134 or as to the validity of it, and, in my opinion, it is well settled that the provisions thereof have the same force and effect as if they were a law enacted by the Legislature. I repeat the opinion expressed by Meredith C.J., in Tompkins v. The Brockville Rink Company (1899), 31 O.R. 124, at 133, quoted also by the learned trial Judge as follows:--

> ... I can see no difference, as far as the questions involved are concerned, between that which is prohibited by direct enactment of the Legislature and that which is forbidden by a municipal by-law passed under the authority of an Act of the Legislature.

I refer, also, to Toronto v. Presswood Bros., [1944] O.R. 145, [1944] 1 D.L.R. 569, and the opinion expressed therein by Robertson C.J.O., at 155, also quoted by the learned trial Judge.

The primary question to be considered is whether or not the contract made by the parties was prohibited, either expressly or impliedly, by By-law No.134. The purpose of that by-law was:-- " ... to provide for examining, licensing, regulating and governing electricians." The scheme of the by-law divided electricians into various classes, including "electrical contractors", "journeyman electricians", "maintenance electricians", and "apprentice electricians." A Board of Examiners was constituted to examine applicants as to their ability to perform "electrical work" as defined by the by-law. After the examination of an applicant for one classification, the applicant may not transfer to another classification without making a new application to the Board of Examiners. Applicants successful in the examination receive from the Board of Examiners a certificate of qualification in the classification for which application has been made. The Board of Examiners issues the following classes of certificates:--

'A' A master electrician Certificate (unincorporated electrical contractor).

'B' A certificate to an incorporated electrical contractor (equivalent to a master electrician certificate).

'C' A temporary electrical contractor's Certificate for specific work.

'D' A journeyman electrician's Certificate.

There are numerous forms of licenses which may be granted by the Board of Commissioners of Police for the City of Ottawa including:--

(a) Electrical Contractor's License -- designated as license 'A';

electrician:-- ... and will permit the holder to do electrical work, repairs and maintenance on premises or equipment owned and occupied or operated by his employer, and not otherwise.

It is provided by s. 2(d) of the by-law that:--

> ... upon issuance of License 'C', the applicant shall surrender any License 'A' or License 'B' held by him, but may at any time during the current license year recover such license upon surrender of the License 'C'.

There is no provision that any holder of a License 'B' or a License 'C' and who has not been the holder of a class 'A' license, may surrender any such license and obtain a License 'A'. The only way in which a holder of a License 'B' or License 'C' can obtain a License 'A', or transfer from one class to another class, is by making a new application to the Board of Examiners, and it is expressly provided in the by-law that no person may hold more than one license at any one time.

It is plain to me that the object of the by-law was to protect the public against mistakes and loss that might arise from work done by unqualified electricians. It was not to secure the revenue from certificates or from licenses, because only certain qualified persons could obtain such certificates or licenses. It was plainly intended by the by-law to prohibit a maintenance electrician from undertaking the work of a master electrician or electrical contractor, and no maintenance electrician could lawfully contract for any electrical work in the City of Ottawa. It matters not whether the prohibition in the by-law was express or implied. In either case, if a maintenance electrician contracted to do the work of an electrical contractor, the contract would be contrary to the intent and purpose of By-law No. 134. Such a contract would be illegal and could not be enforced in the Courts.

I shall refer to a number of cases from many in support of my opinion: In Bensley and Another v. Bignold (1822), 5 B. & Ald. 335, it was held that a printer could not recover for labour or materials used in printing any work unless he affixed his name to it, pursuant to a statute in force at the time. Bayley J. stated that the statute established regulations for public purposes. He said:--

> Where a provision is enacted for public purposes, I think that it makes no difference whether the thing be prohibited absolutely or only under a penalty. The public have an interest that the thing shall not be done, and the objection in this case must prevail, not for the sake of the defendant, but for that of the public. In Forster v. Taylor (1834), 5 B. & Ad. 887, Littledale J. at 895 referred to Bartlett v. Vinor, reported in Carth. 252, and the opinion of Lord Holt, that:--
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> 'every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a void contract, though the statute itself doth not mention that it shall be so, but only inflicts a penalty on the offender; because a penalty implies a prohibition, though there are no prohibitory words in the statute.'

He referred, further, to the opinion of the Court in that case:--

> 'in every case where a penalty is annexed to the doing of such an act, thought it be not prohibited, yet if such a thing appears upon the record to be the consideration, the agreement is void.'

Further:--

> 'in every case, where the statute inflicts

unqualified person, or does it merely require that every person who does it shall pay for a certificate.

Martin B. said:--

Upon carefully reading the enactment, it is obvious that it was intended to secure to a particular class the sole employment and practice in conveyancing.

Buckley J. decided, in Victorian Daylesford Syndicate, Limited v. Dott, [1905] 2 Ch. 624, that a money-lender who had not registered his name under The Money-Lenders Act (1900) could not make a valid "agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money-lender." At p. 629 it was stated:--

There is no question that a contract which is prohibited, whether expressly or by implication, by a statute is illegal and cannot be enforced.

After referring to Cope v. Rowlands, supra, the learned Justice at 630 said:--

If I arrive at the conclusion that one of the objects is the protection of the public, then the act is impliedly prohibited by the statute, and is illegal.

The purpose is a public purpose, and therefore upon all the authorities the act for the doing of which a penalty is imposed is an act which is impliedly prohibited by the statute, and is consequently illegal.

The argument that the making of the contract entered into by the respondent was not prohibited, expressly or impliedly, by statute, but only by the provisions in a by-law enacted by the Board of Commissioners of Police for the City of Ottawa and, therefore, is not illegal, cannot be given effect. In either case, any person who is within the scope of the statute or of the by-law, and acts in disobedience to it by entering into a forbidden contract, cannot have the aid of the Court to enforce such a contract.

In Brightman & Co. Ltd. v. Tate and Another, [1919] 1 K.B. 463, a regulation of the Defence of the Realm (Consolidation) Regulations (1914) provided that:--

'It shall be lawful for the Minister of Munitions by order to regulate or restrict the carrying on of building and construction work ... and by such order to prohibit, subject to such exceptions as may be contained in the order, the carrying on of such work without a licence from the Minister.

In pursuance of that regulation, the Minister of Munitions made an order prohibiting the commencing or carrying on of any building work without a license except where the total cost of the whole completed work in contemplation did not exceed (STERLING)500. The plaintiffs, who were builders, contracted to do certain building work for the defendants at a contemplated cost of about (STERLING)1500. A license for the work was granted under the order mentioned, subject to the condition that the total cost should be (STERLING)1350. Work was carried on to completion and the total cost amounted to (STERLING)2671. The plaintiffs brought an action to recover (STERLING)1171, the balance due under the contract. It was held that the regulation and the order made thereunder were not ultra vires; that the order had the effect of an absolute statutory prohibition, making the performance of the contract in excess of the cost of (STERLING)1500 illegal; and that the plaintiffs could not recover the balance due under the contract. McCardie J. at 467, said:--

authorized by a license. It was held that work done in excess of the cost prescribed by a building license issued under that regulation was work done without a license in contravention of the regulation and, accordingly, prima facie, unlawful. It was held that the plaintiff was not entitled to recover the cost of the work from the person for whom it was done. The Supreme Court of Canada had under consideration the case of a real estate agent who accepted employment as such in the face of a statutory prohibition. He relied upon a contract to render services which he was prohibited by law from undertaking. It was held that the contract was therefore illegal and the assistance of the Court would not be given to enforce it: Commercial Life Assurance Co. of Canada v. Randolph H. Drever, [1948] S.C.R. 306, [1948] 1 D.L.R. 241. The issue in the appeal was whether the real estate agent was entitled to recover by reason of the fact that at the time when the contract of employment is alleged to have been made by him he was not the holder of a license as a real estate agent, as required by the provisions of The Real Estate Agents' Licensing Act, R.S.A. 1942, c. 318. Locke J. referred to Bartlett v. Vinor and Cope v. Rowlands, supra.

I shall refer very briefly, in conclusion, to the evidence showing that the respondent had full knowledge that the license held by him as a maintenance electrician would not permit him to make a contract and do work for the appellant of the kind for which he now seeks payment. He admits that he was licensed only as a maintenance electrician and that when he obtained his license it was explained to him that under the by-law a maintenance electrician could only do electrical work in his own establishment. He admitted that he did not have an electrical contractor's license at any time. He was asked if he knew that he was not permitted to do "outside work", and I quote the following passage from his cross-examination:--

Q. Why did you not go and get the permit?

A. I didn't see my way clear to do that.

Q. No, because you knew you couldn't get one?

A. Sure, I could not get one.

Q. Well, the reason you did not get the permit to do the work is because you knew the license you had would not permit you?

A. Sure, I knew I couldn't do that.

Q. And the reason you did not get the permit is because you did not have a proper license granted by the City of Ottawa.

A. No, because I am not a contractor.

Q. Because you are not a contractor, and the reason they wouldn't give you a permit is because you were not a contractor and you were breaking the by-law if you did.

A. The permits are just given to the contractor as far as I know. Well I never try to make a job as contractor I work just as an electrician.

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My opinion is that the contract upon which the respondent bases his claim was illegal and that the Courts will not give its aid to enforce it.

The purpose and scope of the legislation is to be seen in an amendment to s. 413, para. 3 of The Municipal Act, enacted by The Municipal Amendment Act, 1955, c. 48, s. 43. The effect of the amendment is to give the municipality or the Board of Commissioners of Police, as the case may be, the power alternatively to pass a by-law for permitting electrical contractors, electricians, master electricians and journeyman electricians, to carry on their trade without examination or license or both by reason of registration with the Electrical Contractors' Association of Ontario or other qualifications. By By-law No. 134 it is provided for the issuance of the following forms of license:--

(a) Electrical Contractor's License -- designated as license 'A'. (issued to holders of a master electrician's certificate)

(b) Non-Resident Electrical Contractor's License -- designated as License 'A1'.

(c) Journeyman Electrician's License -- designated as licence 'B'.

(d) Maintenance Electrician's License -- designated as licence 'C'.

(e) Apprentice Electrician's License -- designated as license 'D'.

(f) Probationary Apprentice Electrician's License -- designated as license 'D1'.

(g) Elevator Construction Electrician's License -- designated as license 'E'.

The by-law contains a definition of "electrical contractor", "electrical work", "journeyman electrician", "maintenance electrician" and "master electrician".

A "master electrician" is defined as meaning a person who is skilled in the planning, superintending and installing of wires, conduits, apparatus, fixtures or other appliances for the carrying or using of electricity for light, heat or power purposes, who is familiar with the laws, rules and regulations governing the same, who has a regular place of business in the City of Ottawa and who, himself, or by journeyman electricians in his employ, performs electrical work. "Electrical contractor" in the case of an individual person shall mean a corporation having a regular place of business in the City of Ottawa, whose business, or a separate and distinct branch of whose business, is entirely confined to supplying electrical appliances and equipment and doing electrical work by journeymen electricians in its employ.

Reference should also be made to the definition of a maintenance electrician and journeyman electrician contained in the By-law, which provides:--

> 'MAINTENANCE ELECTRICIAN' shall mean a person skilled in electrical work who may be employed by any person, partnership or corporation as a regular staff employee to do electrical work, repairs and maintenance on premises or equipment owned and occupied or operated by his employer.
>
> 'JOURNEYMAN ELECTRICIAN' shall mean a person other than a master electrician, who has been employed in electrical installation and has acquired sufficient skill and knowledge of the trade to be considered a safe and responsible mechanic.

The By-law provides that license 'A' may be issued to any incorporated electrical contractor which has obtained a certificate equivalent to the certificate issued to a master electrician and which has furnished proof satisfactory to the Chief Constable that it is insured as required by another section of the by-law, or to any unincorporated electrical contractor who is at least twenty-one years of age, has

in the terms of s. 409 of The Municipal Act . ...

He also relies upon a passage in the judgment of Meredith C.J., in Tompkins v. The Brockville Rink Company, supra, at 133:-- I have dealt with the case as if the prohibition of the erection of wooden buildings had been contained in The Municipal Act itself, for I can see no difference, so far as the questions involved are concerned, between that which is prohibited by direct enactment of the Legislature and that which is forbidden by a municipal by-law passed under the authority of an Act of the Legislature.

Our attention was not directed to an important judgment of Middleton J.A. in Taylor v. People's Loan and Savings Corporation, 63 O.L.R. 202, [1929] 1 D.L.R. 160, affirmed [1930] S.C.R. 190, [1930] 2 D.L.R. 891. In that case it was held that certain provisions of The Municipal Act disclosed no legislative intent to give a right of action to an individual aggrieved by failure to observe the requirements of a by-law passed pursuant to such sections. At pp. 208 and 209, Middleton J.A. stated:--

> But on a far wider principle I think the entire argument is misconceived. Where a supreme legislative authority by its enactment imposes a duty upon an individual to do something for the benefit and protection of a particular class, an action will lie at the instance of any member of the class for an injury which has resulted from the neglect of that duty. Where a particular penalty is by the statute provided to secure the observance of the statute and as a punishment for the breach of its requirements, this may or may not indicate an intention on the part of the Legislature that this liability for a penalty is to be the sole result of a breach of the requirements of the Act. In each case the task confronting the Court is to discover the intention of the Legislature. It is true that it has been held that regulations made under the authority of the statute may be treated as being part of the statute for the purpose of this enquiry: Ross v. Rugge-Price (1876), 1 Ex. D. 269; but I know of no authority indicating that the same principle is applicable to municipal by-laws passed under the general authority of the Municipal Act, or under any specific provision of that Act. [The italics are mine].

The learned County Court Judge discussed the judgment of Meredith C.J. in Tompkins v. The Brockville Rink Company, supra, and the judgments of the Supreme Court of Canada in Orpen v. Roberts, [1925] S.C.R. 365, [1925] 1 D.L.R. 1101, in both of which it was held that there had been no legislative intent shown to give a right of action to an individual who claimed that he had been aggrieved by the defendant's failure to observe the requirements of the by-laws which were there in question. He concluded that the power conferred on municipalities to examine, license, regulate and govern electricians was a power given in the interest of the public generally and that the sole penalty for any infraction of the by-law was to enforce the penalties therein provided. He held that as the defendant was not given a right of action if there was non-compliance on the part of the plaintiff with the provisions of the by-law in question, neither did a breach of the by-law afford him any defence to the claim of the plaintiff which he was entitled to maintain at common law.

The appellant now relies strongly upon the judgment of the Supreme Court of Canada in Commercial Life Assurance Co. of Canada v. Drever, supra. This case was evidently not cited to the learned trial Judge as he makes no reference to it in his reasons for judgment. The plaintiff in that case, a real estate agent, had brought an action to recover commission on the sale of real estate effected by him on behalf of the defendant. At the time of the making of the contract for his services, he was not licensed under the provisions of The Real Estate Agents Licensing Act of Alberta. He had been so licensed for the previous year but had omitted to renew his license until a much later date. Section 4(1) of the Statute there in question provided that:--

> ... and the question for us now to determine is whether the enactment of the statute 6 Ann. Ch. 16, is meant merely to secure a revenue to the city, and for that purpose to render the person acting as a broker liable to a penalty if he does not pay it? ... or whether one of its objects be the protection of the public, and the prevention of improper persons acting as brokers? On the former supposition, the contract with a broker for his brokerage is not prohibited by the statute; on the latter it is: for it cannot be permitted to a person to recover a compensation for an act which the law interdicts him from doing. In order to decide this point, it is only necessary to look at the statute itself. If its object had been simply the pecuniary advantage of the Mayor and Corporation, it would have been wholly unnecessary to have made any provision for securing the good conduct of the persons admitted. The more that should be allowed to practice, the larger the revenue of the city; but the enactment, that all persons who should act as brokers should be admitted by the Court of Mayor and Alderman under such restrictions and limitations for their honest and good behaviour as the Court should think fit and reasonable, shews clearly that the legislature had in view, as one object, the benefit and security of the public in those important transactions which are negotiated by brokers. The clause, therefore, which imposes a penalty, must be taken (in the language of Lord Holt, above referred to) to imply a prohibition of all unadmitted persons to act as brokers, and consequently to prohibit, by necessary inference, all contracts which such persons make for compensation to themselves for so acting; and this is the contract on which this action (so far as it relates to brokerage) is brought.

Baron Parke then draws a distinction between a prohibition which is statutory and one which is based on a municipal ordinance. This particular portion of his reasoning has, in my view, a very important bearing on the specific question with which the Court is confronted in the present case. I quote from p. 159 as follows:--

> The distinction between this and the case of Ex parte Dyster, 2 Rose's Bankrupt Cases, 349, which was cited on behalf of the plaintiff, is very clearly explained by Lord Eldon in his judgment. The prohibition to act without admission, is statutory; the regulations adopted by the Mayor and Court of Aldermen in the case of admitted brokers are not; they are purely municipal, and have not the force of a general law: the only consequences of their violation are those which the regulations prescribe.

The distinction is recognized by Locke J., in his judgment in Commercial Life Assurance Company v. Drever, supra, for, after pointing out that by s. 15 of The Real Estate Agents' Licensing Act of Alberta, R.S.A. 1942, c. 318, monetary penalties may be imposed upon summary convictions for violations of the Act, he continues:--

> It is manifest that the object of this legislation is the protection of members of the public in their dealings with real estate agents. While fees are charged for the licences issued and monetary penalties may be imposed for breaches of the statute, its object is not merely to protect the revenue, the imposition of these fees and penalties being merely collateral to the main purpose of the Act.

The same distinction was made by Buckley J., in Victorian Daylesford Syndicate Limited v. Dott, supra, at 629, from which I quote:--

> The next question is whether the Act is so expressed that the contract is prohibited so as to be rendered illegal. There is no question that a contract which is prohibited, whether expressly or by implication, by a statute is illegal and cannot be enforced. I have to see whether the contract is in this case prohibited expressly or by implication. For this purpose

to be accomplished and the effect of holding void a violation of its terms, convinces me that it was not the legislative intent to bestow on Municipal Councils or Boards of Police Commissioners the power to prohibit the doing of the things for which a person was required to be licensed under appropriate by-laws under any other sanction than the imposition of a prescribed penalty for a breach thereof. Under the authority of the empowering statute the effect of a contravention of the by-law was not to render void the act done in breach thereof so as to prevent the person who rendered services or sold goods without holding a license or a proper license from recovering his proper charges therefor. He is subject to the penalties which may be imposed under the by-law but his right to recover compensation for goods sold or services rendered, if such goods or services were otherwise satisfactory, has not been taken away.

The statute from which the by-law in question derives its authority or potency empowers the municipal authorities to pass by-laws "for examining, licensing, regulating and governing electrical contractors, electricians, master electricians and journeyman electricians" and of course the power to license includes the power to prohibit carrying on such activities without a license for it is provided by s. 263(1) of the Municipal Act that,--

> The power to license any trade, calling, business or occupation or the person carrying on or engaged in it includes the power to prohibit the carrying on of or the engaging in it without a license.

Authority need not be cited for the proposition that any Act which confers upon municipalities the power to restrict or take away the common law right of a subject to employ himself in a lawful manner in any lawful trade or calling is to be strictly construed. This principle was emphasized by the Privy Council in Toronto v. Virgo, [1896] A.C. 88, in which Lord Davey expressed the following opinion at 93:--

> No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order. But their Lordships think there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed. An examination of other sections of the Act confirms their Lordships' view, for it shews that when the Legislature intended to give power to prevent or prohibit it did so by express words. [The italics are mine.]

Adverting now to the by-law in question, it is to be noted that it does not provide that no person, not licensed as an electrical contractor shall contract for or do any electrical work in the City of Ottawa, but it provides that no person not licensed under the by-law shall contract for or do such work. The other prohibition is directed to maintenance electricians and it is provided that they shall not do any electrical work in the City of Ottawa except on premises or equipment owned and occupied or operated by their employer. There is a corresponding prohibition against the hiring or employing of any such persons. It is not contended that the plaintiff is not licensed under the by-law. It is clear that he holds a 'B' license issuable to journeyman electricians which is expressed to be issued to him as a "maintenance electrician". Evidently this should have been designated as a 'C' license. It should be noted that s. 413(3) (a) of the Municipal Act, R.S.O. 1950, c. 243, defines "journeyman electrician" as:--

> ... a person other than a master electrician, who has been employed in electrical installation and has acquired sufficient skill and knowledge of the trade to be considered a safe and responsible mechanic,