

1894 W. R. WEBSTER *et al.*.....APPELLANTS;  
 \*Oct. 2. AND  
 \*Oct. 4. THE CITY OF SHERBROOKE.....RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR  
 LOWER CANADA (APPEAL SIDE).

*Appeal—Right of—Petition to quash by-law under sec. 4,389 R.S.P.Q.—  
 R.S.C. ch. 135, sec. 24 (g).*

Proceedings were commenced in the Superior Court by petition to quash a by-law passed by the corporation of the city of Sherbrooke under sec. 4,389 R.S.P.Q. which gives the right to petition the Superior Court to annul a municipal by-law. The judgment appealed from, reversing the judgment of the Superior Court, held that the by-law was *intra vires*. On motion to quash an appeal to the Supreme Court of Canada :

*Held*, that the proceedings, being in the interest of the public, are equivalent to the motion or rule to quash of the English practice, and therefore the court had jurisdiction to entertain the appeal, under subsec.(g), of sec. 24, ch. 135 R.S.C. *Sherbrooke v. McManamy* (18 Can. S.C.R. 594) and *Verchères v. Varennes* (19 Can. S.C.R. 356) distinguished.

**MOTION** to quash appeal for want of jurisdiction.

The proceedings in this case were commenced in the Superior Court by a petition to annul a municipal by-law taken under section 4,389 of the Revised Statutes of Quebec.

By the judgment of the first court one section only of the by-law, viz., section 3, which imposes a special tax of \$200 a year on hotel-keepers, &c., was declared *ultra vires* and illegal, and was set aside and annulled.

The judgment of the Queen's Bench reversed this judgment and declared the said section and the tax thereby imposed to be *intra vires* of the municipal council.

\*PRESENT :—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.

*Brown* Q.C. for the motion, cited and relied on *The Corporation of the City of Sherbrooke v. McManamy* (1); *County of Verchères v. Varennes* (2); *Bell Telephone Co. v. City of Quebec* (3); *Bourdon v. Benard* (4); *Molson v. Mayor of Montreal* (5). Art. 13 C.C.P.

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*Panneton* Q.C. for appellant cited and relied on art. 4,389 R.S.P.Q.; R.S.C. ch. 135, sec. 24 (g).

THE CHIEF JUSTICE (Oral).—In this case the jurisdiction of the court depends upon sec. 24 subsec. (g) of the Supreme and Exchequer Courts Act, which is as follows :

24. An appeal shall lie to the Supreme Court (g) from the judgment in any case in which a by-law of a municipal corporation has been quashed by rule or order of court, or the rule or order to quash it has been refused after argument.

This was an application to quash a by-law and not a case like the cases referred to and decided, of *Verchères v. Varennes* (2); *Sherbrooke v. McManamy* (1); and others decided in this court, as in all those cases it was in a private action that the by-laws were impugned, and the proceedings were not to quash or annul the by-laws.

This case comes clearly within the statute. The motion to quash must be refused with costs.

TASCHEREAU J.—I concur fully in the opinion that we have jurisdiction in this case. The different views expressed by this court in the cases relied on by the respondent are not at all in point. It has been expressly said in those cases that where such proceedings are taken in the interest of the public, so that the proceedings would be equivalent to the motion or rule

(1) 18 Can. S.C.R. 594.

(3) 20 Can. S.C.R. 230.

(2) 19 Can. S.C.R. 365.

(4) 15 L.C. Jur. 60.

(5) 23 L.C. Jur. 169.

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to quash of the English practice, this court would have jurisdiction in cases from the province of Quebec as it has in similar cases from the other provinces, under subsec. (g) of sec. 24, of the Supreme Court Act. Here it is an application to quash a by-law under sec. 4,389 of R.S.P.Q. applicable to municipal councils of cities and town, which gives the right to petition the Superior Court to annul a municipal by-law.

The application in this case was made to a judge of the Superior Court under that article and I am clear that we have jurisdiction. It is the first time that an appeal on a similar petition comes before this court, and none of the cases which have been cited are therefore applicable. Our present decision will guide us in the future.

GWYNNE, SEDGEWICK and KING JJ. concurred.

*Motion refused with costs.*

Solicitors for appellant: *Panneton, Mulvena & Leblanc.*

Solicitors for respondents: *Brown & Macdonald.*

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