

1899 NATHAN ALLAN BEACH (PLAINTIFF)..APPELLANT;
 *Oct. 12, 13.

AND

THE TOWNSHIP OF STANSTEAD } RESPONDENT.
 (DEFENDANT)..... }

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

*Liquor laws—Municipal corporation—Action—Discretion of members of
 council—Refusal to confirm certificate—Liability of corporation.*

In an action against a municipal corporation for damages claimed on
 account of the council of the municipality having, as alleged,
 illegally refused to confirm a certificate to enable the plaintiff to
 obtain a license for the sale of liquors in his hotel ;

Held, affirming the judgment appealed from (Q. R. 8 Q. B. 276), that
 the municipal council had a discretion under the provisions of
 the "Quebec License Law," R. S. Q. Art. 839, to be exercised
 in the matter of the confirmation of such certificates, for the exer-
 cise of which no action could lie, and, further, that even if the
 members of the council had acted maliciously in refusing to con-
 firm the certificate there could not on that account be any right
 of action for damages against the corporation.

APPEAL from a judgment of the Court of Queen's
 Bench for Lower Canada (1), reversing with costs the
 judgment of the Superior Court, District of Saint
 Francis, maintaining the plaintiff's action.

The plaintiff was proprietor of a hotel at George-
 ville, in the Township of Stanstead, where no by-law
 prohibiting the sale of intoxicating liquors existed,
 and being desirous of obtaining a license to sell liquors
 at his bar, made the necessary deposits of money and
 filed a certificate, as required under the "Quebec

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

(1) Q. R. 8 Q. B. 276.

License Law," with the secretary-treasurer of the municipality. It did not appear that there existed any cause such as set forth in the statute for the refusal of the confirmation of the certificate, but the municipal council, (having received a guarantee from the Quebec Provincial Branch of the Dominion Alliance against damages, etc., which might result from their action in the matter), passed a resolution refusing to confirm the certificate without assigning any cause except that the majority of the members of the council were opposed to the sale of intoxicating liquors under any circumstances whatever. The plaintiff thereupon took an action for mandamus to compel the corporation to confirm the certificate, and by a judgment of the Superior Court, sitting in review, at Montreal (1), it was ordered that a peremptory writ of mandamus should issue enjoining the council to confirm the certificate, which was accordingly done. The plaintiff afterwards brought the present action for damages against the municipal corporation for the loss of business profits, expenses, etc., caused by the wrongful act, as alleged, of the council, as above set forth. The Superior Court of Sherbrooke decided in favour of the plaintiff, but on appeal this judgment was reversed by the judgment of the Court of Queen's Bench from which the present appeal is taken.

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 v.
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 TOWNSHIP
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 STANSTEAD.

H. B. Brown Q.C. for the appellant.

Trenholme Q.C. and *S. P. Leet Q.C.* for the respondent.

The judgment of the court was delivered by :

THE CHIEF JUSTICE, (Oral.)—As we are all of opinion that this appeal must be dismissed, we do not call upon the learned counsel for the respondent.

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The Chief
Justice.

I am very clear that in deciding this appeal we are not bound by the judgment of the Superior Court in the matter of the mandamus; but, even if we were, there are other grounds, in which we all concur, in holding the action not maintainable.

In order to uphold the judgment of the Superior Court in the present action we should have to determine three points in the appellant's favour: First, that the municipal council could exercise no discretion in the matter of confirming the certificate; secondly, that the council in refusing to confirm acted not in good faith but with the malicious intention of injuring the appellant; and thirdly, that such an action as this is maintainable against the municipal corporation for the alleged acts and conduct of the members of the council. We think the appellant must fail in all these essential points.

The council clearly had a discretion for the exercise of which no action will lie; further, there is no evidence of malice (even if that would have sufficed), and such an action as this would not lie against the municipality, even if the two former essential grounds were established in the appellant's favour.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Brown & Macdonald.*

Solicitor for the respondent: *A. P. Leet.*
