

WILLIAM HUSON (PLAINTIFF)... .. APPELLANT;	1892	
AND	*Nov. 7, 8.	
THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF SOUTH NOR- WICH (DEFENDANTS).....	1893	} RESPONDENTS.
	*Feb. 20.	

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Municipal Corporation—By-law—Submission to ratepayers—Compliance with statute—Imperative or directory provisions—Authority to quash.

The Ontario Municipal Act (R.S.O. [1887] c. 184) requires, by sec. 293, that before the final passing of a by-law requiring the assent of the ratepayers a copy thereof shall be published in a public newspaper either within the municipality or in the county town or published in an adjoining local municipality. A by-law of the township of South Norwich was published in the village of Norwich, in the county of Oxford, which does not touch the boundaries of South Norwich, but is completely surrounded by North Norwich which does touch said boundaries.

Held, affirming the decision of the Court of Appeal, that as the village of Norwich was geographically within the adjoining municipality the statute was sufficiently complied with by the said publication.

APPEAL from a decision of the Court of Appeal for Ontario (1) reversing the judgment of Galt C. J., who quashed a by-law of the township of South Norwich as being *ultra vires*.

The by-law in question was passed under the Ontario act 53 Vic. ch. 56 known as the Local Option Act, sec. 18 of which enacts that :

2. "The council of every township, city, town and incorporated village, may pass by-laws for prohibiting the sale by retail of spirituous, fermented or other manu-

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

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factured liquors, in any tavern, inn or other house or place of public entertainment, and for prohibiting altogether the sale thereof in shops and places other than houses of public entertainment: Provided that the by-law, before the final passing thereof, has been duly approved of by the electors of the municipality in the manner provided by the sections in that behalf of the municipal act; Provided, further, that nothing in this section contained shall be construed into an exercise of jurisdiction by the legislature of the province of Ontario beyond the revival of provisions of law which were in force at the date of the passing of the British North America Act, and which the subsequent legislation of this province purported to repeal."

The provision of the Municipal Act R.S.O. (1887) ch. 184, relating to the passing of by-laws by a municipality is sec. 293 which provides that:

"The council shall, before the final passing of the proposed by-law, publish a copy thereof in some public newspaper, published either within the municipality, or in the county town, or in a public newspaper published in an adjoining local municipality."

The by-law in question was published in the Norwich "Gazette," a newspaper published in the village of Norwich, an incorporated village which is not within the municipality of South Norwich but in the county of Oxford which does not adjoin South Norwich, there being another municipality intervening. The plaintiff Huson moved to quash the by-law on the grounds that it was really a prohibitory measure which only the Dominion Parliament could enact and that it was void for irregularity in not being published as the act requires. The motion was heard before Galt C. J. who quashed the by-law on the first ground, namely, that it was *ultra vires*. The Court of Appeal reversed that judgment holding the by-law *intra vires* and refusing

to give effect to the technical objection. The plaintiff appealed to the Supreme Court.

The court directed the question as to the validity of the by-law in view of the manner in which it was published to be first argued and the constitutional question to stand over until the other was decided.

Robinson Q.C. and *Du Vernet* for the appellant. The statute is imperative in requiring publication in a certain manner which must be strictly followed. *Simpson v. Corporation of Lincoln* (1); *Fenton v. Corporation of Simcoe* (2); *Gibson v. United Counties of Huron and Bruce* (3); *In re Armstrong and City of Toronto* (4); *Canada Atlantic Railway Co. v. City of Ottawa* (5).

McLaren Q.C. and *Titus* for the respondents. The non-publication under the act has not been affirmatively shown and cannot be urged. *In re Lake and Prince Edward* (6); *In re White and Corporation of Sandwich East* (7); *Lafferty v. Stock* (8).

It is in the discretion of the court to quash or not and they will not quash for irregularity if it appears that all the votes were polled and the object of publication secured. See *In re Revell and Corporation of Oxford* (9); *In re Gallerno and Township of Rochester* (10); *Boulton and Town Council of Peterboro'* (11).

The court only proceeds under the statutes and does not exercise a common law power. *Re Boulton and Peterboro'* (11); *Sutherland v. Municipal Council of East Nissouri* (12).

Robinson Q.C. in reply. That the common law power can still be exercised in quashing by-laws, see *Hill v. Walsingham* (13).

(1) 13 U. C. C. P. 48.

(7) 1 O. R. 530.

(2) 10 O. R. 27.

(8) 3 U. C. C. P. 9.

(3) 20 U. C. Q. B. 111.

(9) 42 U. C. Q. B. 337.

(4) 17 O. R. 766.

(10) 46 U. C. Q. B. 279.

(5) 12 Can. S. C. R. 365.

(11) 16 U. C. Q. B. 380.

(6) 26 U. C. C. P. 173.

(12) 10 U. C. Q. B. 626.

(13) 9 U. C. Q. B. 310.

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The judgment of the court was delivered by :

THE CHIEF JUSTICE.—Upon the point as to the validity of the by-law, which was fully argued and upon which judgment was reserved, I am of opinion that the respondents are entitled to our judgment. The publication of the advertisement in the Norwich “Gazette,” a newspaper published in the village of Norwich, was in my opinion, as the Court of Appeal have held, a sufficient compliance with the requirements of the statute. The enactment requiring publication is as follows (1) :—

The Council shall, before the final passing of the proposed by-law, publish a copy thereof in some public newspaper either within the municipality or in the county town, or in a public newspaper published in an adjoining local municipality.

I am of opinion that we may safely hold the village of Norwich to be in an adjoining local municipality. It is what may be called an *enclave* in the township municipality of North Norwich, which latter township is in the strictest sense within the municipality adjoining that of South Norwich. Now, what the legislature had in view in requiring publication in a newspaper published in an adjoining municipality was to ensure the insertion of the advertisement in a paper published in the near neighbourhood of the municipality whose ratepayers were to be called on to vote, a purpose with which the contiguity of municipal jurisdictions had nothing whatever to do, and inasmuch as in a geographical sense the Norwich “Gazette” was published within the limits of the adjoining township of North Norwich, I think the statute was sufficiently complied with.

The word “adjoining” although in some criminal cases it has been very strictly construed, has yet in

(1) R. S. O., cap. 184, s. 293.

other cases received a wider and more liberal construction.

I refer to the cases of *London & South Western Railway Co. v. Blackmore* (1); *Hobbs v. Midland Ry. Co.* (2); *Coventry v. London, Brighton and South Coast Railway Co.* (3); *Hooper v. Bourne* (4); *Harrison v. Good* (5), and *Stroud's Judicial Dict.* (6).

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The objection to the by-law must, therefore, be over-ruled, and the argument of the appeal must proceed upon the constitutional question which the appellants raised.

*Objections to validity of by-law
 over-ruled and argument or-
 dered to proceed upon the
 constitutional question.*

Solicitors for appellant: *Du Vernet & Jones.*

Solicitors for respondents: *O'Donohoe, Titus & Co.*

(1) L. R. 4 H. L. 610.

(2) 51 L. J. Ch. 324.

(3) L. R. 5 Eq. 104.

(4) 5 App. Cas. 1.

(5) L. R. 11 Eq. 338.

(6) Vo. "Adjoining."