1891
*Nov. 3.
1892
*April 4.

THE BELL TELEPHONE COMPANY OF CANADA (PLAINTIFF)..... } APPELLANT;

AND

THE CITY OF QUEBEC (DEFENDANT)...RESPONDENT.

THE QUEBEC GAS COMPANY (PLAINTIFF)..... } APPELLANT;

AND

THE CITY OF QUEBEC (DEFENDANT)...RESPONDENT.

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

Appeal—Action to set aside municipal by-law—Supreme and Exchequer Courts Act, sec. 24 (g).

In virtue of a by-law passed at a meeting of the council of the corporation of the city of Quebec in the absence of the mayor, but presided over by a councillor elected to the chair in the absence of the mayor, an annual tax of $800 was imposed on the Bell Telephone Company of Canada (appellant), and a tax of $1,000 on the Quebec Gas Company. In actions instituted by the appellants for the purpose of annulling the by-law the Court of Queen's Bench for Lower Canada (appeal side) reversed the judgment of the Superior Court and dismissed the actions holding the tax valid.

On appeal to the Supreme Court of Canada—

Held, that the cases were not appealable, the appellants not having taken out or been refused, after argument, a rule or order quashing the by-law in question within the terms of sec. 24 (*g*) of the Supreme and Exchequer Courts Act providing for appeals in cases of municipal by-laws. *Varennes* v. *Verchères* (19 Can. S.C.R. 365); *Sherbrooke* v. *McManamy* (18 Can. S.C.R. 594) followed.

APPEALS from the judgments of the Court of Queen's Bench for Lower Canada reversing the judgments of

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* PRESENT:—Sir W. J. Ritchie C.J., and Fournier, Taschereau, Gwynne and Patterson JJ.

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the Superior Court, which had set aside the by-law of the corporation of the city of Quebec. The question of the validity of the same by-law under which the appellants were taxed being raised in both appeals, they were argued together.

In March, 1889, in the absence of the mayor, and no pro-mayor having been elected, a by-law was passed at a meeting of the council presided over by a councillor, imposing a personal, fixed and annual tax of $800 on telephone companies operating in the city of Quebec, and a personal, fixed and annual tax of $1,000 on every gas light company operating in the city of Quebec.

The appellants in January, 1890, instituted actions in the Superior Court of Lower Canada, district of Quebec, praying that the by-law be declared null and void by judgment of the court. The Superior Court, following the decision rendered in the *Quebec Street Railway Co.* v. *The City of Quebec* (1) and not appealed from, declared that the mayor being an integral part of the council, and his presence, except in the cases provided for, being essential to the lawful exercise of the legislative powers of the council, by-laws passed in his absence, and in that of the pro-mayor if there be one, are invalid.

On appeal to the Court of Queen's Bench for Lower Canada the majority of the court held that the council was regularly constituted, a councillor having been elected to the chair in the absence of the mayor, and that the by-law was valid. Although the case was argued upon the merits the appeal was decided upon the question of jurisdiction which was raised during the argument by His Lordship Mr. Justice Taschereau.

Irvine Q.C. and *G. Stuart* Q.C. appeared for the appellants.

(1) 16 Q.L.R. 11.

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P. Pelletier Q.C. for the respondent.

Sir W. J. RITCHIE C. J. stated that he had written an opinion on the merits affirming the decision of the court below, but in view of the decision of this court in the case of *Sherbrooke* v. *McManamy* (1) it was clear the appeal must be quashed.

TASCHEREAU J. delivered the judgment of the court:

These two appeals must be quashed, as we intimated at the argument. The appellants had to concede that they could not base their right to appeal on sec. 29 of the Supreme Court Act, *Gilman* v. *Gilbert* (2), as the matter in controversy, though perhaps affecting future rights, does not relate to any fee of office, duty, rent, revenue, or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents or "such like matters or things, where the rights in future might be bound," but they contended that their cases were appealable under sec. 24 of the act, subsec. *g*, which gives to this court jurisdiction 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 contention, however, cannot prevail. We have already disposed of a smilar question in the two cases of *Sherbrooke* v. *McManamy* (1) and *Verchères* v. *Varennes* (3) wherein we quashed the appeals. *Sherbrooke* v. *McManamy* (1) is particularly in point. The corporation of Sherbrooke had there sued the defendant for a tax of $100 as compounders of liquors. The defendant pleaded to that action that the said tax had been illegally imposed, because no power to impose it had been

(1) 18 Can. S. C. R. 394. (2) 16 Can. S.C.R. 189.
(3) 19 Can. S.C.R. 365.

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conferred upon the said corporation by the legislature, and concluded that "the said by-law may be declared to have been and to be irregular, illegal, null and void, and to have been and to be *ultra vires* of the powers of the said municipal council, and that the same be set aside." The Court of Appeal granted the conclusions of the said plea. "Considering," said the court, "that the legislature hath not delegated by either of the said acts or otherwise to the corporation respondent, the power to impose the said tax of $100 upon appellants as compounders, and that in passing the said by-law in so far as relates to and concerns the said tax of $100, the respondent has acted *ultra vires*, and without right or authority so to do, and that the same is null and void in respect of and as regards the imposition of the tax of $100 upon appellants as compounders..... doth dismiss this action in so far as it claims the said tax of $100." From that judgment the corporation of Sherbrooke instituted an appeal to this court; but as I have said the appeal was quashed. Now here, the plaintiffs asked that "by the judgment of this honourable court the said by-law be adjudged and declared to be unjust, unreasonable and oppressive, that it be further declared that the said by-law was irregularly and illegally passed, and was and is null, void and of no effect, and that the said by-law be by the judgment of this honourable court annulled and set aside." And the judgment appealed from dismisses the action. We could clearly not entertain these appeals without overruling *Sherbrooke* v. *McManamy* (1). There is the greatest difference between an action like the present one, to have a by-law declared null and void, and the proceedings under the English system to have a by-law quashed by rule or order. On an action, as this one, the judgment declaring a by-law void is *res judi-*

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cata only between the parties, but under the English system, a by-law quashed by order of court is quashed to all intents and purposes whatever. The fact that there may be no such proceedings possible in the province of Quebec cannot have the effect to extend by interpretation the right of appeal to a case not clearly provided for by the act.

The case of *Les Ecclésiastiques* v. *The City of Montreal* (1), was a case of taxes on real property and was therefore held to have been appealable as coming within the words "any title to lands or tenements, annual rents or such like matters or things where the rights in future might be bound." I refer to the authorities cited in *Langevin* v. *Les Commissaires* (2), and *Verchères* v. *Varennes* (3).

Appeals quashed without costs.

Solicitors for appellants: *Caron, Pentland & Stuart.*

Solicitors for respondent: *Baillairgé & Pelletier.*

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(1) 16 Can. S.C.R. 399. (2) 18 Can. S.C.R. 599.
(3) 19 Can. S.C.R. 365.