

1909

*Oct. 5.
*Oct. 6.

ALPHONSE ST. HILAIRE (DEFEND- } APPELLANT;
ANT) }

AND

MATHIAS LAMBERT (PLAINTIFF) . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA.

Appeal—Jurisdiction—Alberta Liquor License Act—Cancellation of license — Persona designata — Curia nominatim — “Originating summons”—Court of superior jurisdiction.

On an application for the cancellation of a liquor license issued under the “Liquor License Act” of the Province of Alberta, a judge of the Supreme Court of Alberta, in chambers, granted an originating summons ordering all parties concerned to attend before him, in chambers, and, after hearing the parties who appeared in answer to the summons, refused the application. The full court reversed this order and cancelled the license. On an appeal by the licensee to the Supreme Court of Canada,

Held, that the case came within the principle decided in *The Canadian Pacific Railway Co. v. The Little Seminary of Ste. Thérèse* (16 Can. S.C.R. 606), and, consequently, the Supreme Court of Canada had no jurisdiction to entertain the appeal.

MOTION to quash an appeal from the judgment of the Supreme Court of Alberta reversing an order by Beck J., in chambers, and ordering that a liquor license issued to the appellant should be cancelled.

The circumstances material to the question raised upon the motion are stated in the head-note.

C. A. Grant, for the motion. The controversy involved on this appeal did not arise in a court of super-

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington, Duff and Anglin JJ.

ior jurisdiction. The "originating summons" was issued under section 57 of the "Liquor License Ordinance," by Beck J. merely as *persona designata* or *curia nominatim*, and, in hearing and deciding the appeal from his order, the full court was acting in a similar capacity. There was no "action" taken within the meaning of the definition contained in the second section of the Alberta statute, 7 Edw. VII. ch. 3. This court, consequently, has no jurisdiction to entertain the present appeal. The matter in controversy arose before the Board of License Commissioners, appointed under the "Liquor License Ordinance," and the subsequent proceedings, under section 57 of that ordinance, were merely the summary procedure provided thereby in reference to the license granted by them. We rely upon the decisions in *Angus v. The Calgary School Trustees*(1); *The Canadian Pacific Railway Co. v. The Little Seminary of Ste. Thérèse*(2); *The James Bay Railway Co. v. Armstrong*(3), and *The Montreal Street Railway Co. v. The City of Montreal*(4).

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Chrysler K.C. contra. The "originating summons" was taken in this case in the manner provided by Order 40, Rules 469 to 474, of the "Judicature Ordinance" (1898), and was an independent proceeding in the Supreme Court of Alberta, the court of superior jurisdiction in that province. Reference should be made also to the Acts amending that ordinance, 7 Edw. VII. ch. 3, sec. 9 (Alta.), and 8 Edw. VII. ch. 7. We rely upon the decision in *The North British Cana-*

(1) 16 Can. S.C.R. 716.

(3) 38 Can. S.C.R. 511.

(2) 16 Can. S.C.R. 606.

(4) 41 Can. S.C.R. 427.

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 ST. HILAIRE *dian Investment Co. v. The Trustees of St. John*
School District (1), and the 44th and 36th sections of
 v.
 LAMBERT. the "Supreme Court Act," R.S.C. 1906, ch. 139.

The judgment of the court was delivered, as follows, by

THE CHIEF JUSTICE.—The majority of the court are of opinion that this case comes within the principle decided in *The Canadian Pacific Railway Co. v. The Little Seminary of Ste. Thérèse* (2), and that we are without jurisdiction.

The motion to quash is granted, with costs which are taxed at fifty dollars.

Appeal quashed with costs.

Solicitor for the appellant: *Louis Madore.*

Solicitors for the respondent: *Bishop, Grant & Delavault.*

(1) 35 Can. S.C.R. 461.

(2) 16 Can. S.C.R. 606.