

In an action to recover an amount received by the defendant for the plaintiff, the defendant pleaded, *inter alia*, that the action was premature, inasmuch as he had got the money irregularly from the Treasurer of the Province of Quebec on a report of distribution of the prothonotary before all the contestations to the report of collocation had been decided.

*Held*, affirming the judgment of the court below, that this defence was not open to the defendant, as it would be giving him the benefit of his own improper and illegal proceeding.

Appeal dismissed with costs.

Bernard, Q.C., and Lafleur for the appellant.

Martin for the respondent.

Quebec.]

WEBSTER v. SHERBROOKE.

[Oct. 11, 1894.

*Appeal—Right of—Petition to quash by-law under s. 4389, R.S.P.Q.—R.S.C., c. 135, s. 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 s. 4389, 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,

*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 s-s. (g) of s. 24, c. 135, R.S.C. *Sherbrooke v. McManamy* (18 S.C.R. 594) and *Verchères v. Varennes* (19 S.C.R. 356) distinguished.

Motion refused with costs.

Brown, Q.C., for motion.

Panneton, Q.C., *contra*.

Quebec.]

MCKAY v. HINCHINBROOKE.

[Oct. 13.

*Appeal—Supreme and Exchequer Courts Act, R.S.C., c. 135, ss. 24 and 29—Costs.*

*Held*, that a judgment in an action by a ratepayer contesting the validity of an homologated valuation roll (a) is not a judgment appealable to the Supreme Court of Canada under s. 24 (g) of the Supreme and Exchequer Courts Act; (b) and does not relate to future rights coming under s-s. (b) of s. 2 of the Supreme and Exchequer Courts Act.

*Held*, also, that as the valuation roll sought to be set aside in this case having been only homologated and not appealed against within the delay provided in Article 1061 (M.C.), the only matter in dispute between the parties was a mere matter of costs, and therefore the court would not entertain the appeal, following *Moir v. Corporation of the Village of Huntingdon* (19 S.C.R. 363).

Appeal dismissed with costs.

Geoffrion, Q.C., and Brossiôt, Q.C., for the appellant.

McLaren, Q.C., and Laurendeau for the respondents.