

consequently the proceedings were null, and asking to have it so declared.

To this respondents plead, first, by exception *à la forme*, alleging several reasons, but in substance two grounds only which were relied upon at the argument:—

1st. That the petition was not sufficiently *libellée* (art. 700 M. C.)

2nd. That no substantial injustice had been alleged.

As to the first the facts are simply stated; the establishment by *procès-verbal* of a road in which Petitioners say they are interested, "its closing" by resolution, it is alleged without notice and without any of the formalities required by law. The question as far as this objection goes becomes simply a legal one. Do the grounds sustain the conclusion? If true, I think they do. What I am under this called upon to declare is, under the statement of the petition (and this cannot be extended or other grounds urged): Was the action of the Council illegal or not?

As to the second ground it is not in my opinion necessary, even under the omnibus saving clause of M. C. 16, which requires the allegation of substantial injustice if it appears that an illegal action had been taken by the Council; as, for instance, if in this very case it was necessary to give notice and amend or annul with the same formalities as had been taken to establish the road a mere resolution would come under the latter part of art. 16. I therefore dismiss the exception *à la forme*.

The respondents have pleaded to the merits:—"You are not municipal electors and all our proceedings are regular and legal, the resolution was legally passed," &c.

Now in this case I have nothing to do at present with the legality or illegality of the first proceedings. I am not called upon to examine them in any way. I have simply to say, 1st. Have the petitioners a standing in this court as municipal electors which enables them to prosecute it? Respondents say not, because they have not proved directly that they are British subjects or have paid their taxes. The Secretary-Treasurer of the Municipality has been examined and swears that they are municipal electors. I think though this evidence is general that in the present case, where the objection is raised by re-

spondents only at the hearing and under the general issue, and they do not cross-examine or in any way attempt to show want of status, it is sufficient under the pleadings.

Then we come to the second ground; Was the proceeding legal? Can the Municipal Council by resolution annul a *procès-verbal* establishing a road?

Article 460 M. C. declares what powers they may exercise by resolution; 526 and 527 the only sections referring to roads and it is there stated that every Local Council may by by-laws order the opening, construction and maintenance of public roads or bridges, widening, altering, or change of position of roads or bridges. Query—Does this apply to County Councils?

In this case it is immaterial, as in no event does it give power to close roads established by *procès-verbal*, by resolution; while on the other hand Art. 810 says, every *procès-verbal* may at any time be amended or repealed by another *procès-verbal* drawn up in the same manner, on petition by the parties interested, or under order of the Council. 810 a. Every *procès-verbal* may be amended by the Council by by-law. Is power given anywhere under the Code to rescind or amend a *procès-verbal* by resolution without notice? If so, I have been unable to find it, and many years ago, for example, in the case of the Wellington Street extension in Sherbrooke, I advised the closing of the road by the same formalities by which it had been homologated as the only means of doing it, and so it was done.

The Council cannot, *ex mero motu*, by a simple resolution close the highways of the county or rescind their own former acts.

The Petition is therefore granted and the resolution annulled with costs against respondents.

Since preparing the above my attention (in the course of an argument relating to the same matter in another Court) has been directed to a decision of the Court of Queen's Bench, which fully sustains the position I have taken with regard to the nullity of the resolution attacked. (*Holton & Aikins*) 3 Q. L. R. 289.

Maclaren & Leet, for Petitioner.
H. B. Brown, for Respondents.