

UPPER CANADA REPORTS.

QUEEN'S BENCH.

Reported by C. ROBINSON, Esq., Q. C., Reporter to the Court.

IN RE SCOTT AND THE CORPORATION OF THE TOWNSHIP OF HARVEY.

By-Law of United Townships—Separation—Application to quash—Practice—Survey.

A by-law was passed by the united townships of Smith and Harvey to levy a certain sum on lands in Harvey, to defray the expense of a re-survey of that township, the union having been dissolved. *Held*, that an application to quash was properly made by a rule calling on the corporation of Harvey, upon a certified copy obtained from the clerk of Smith, the senior township.

The certificate was under the corporate seal of Smith, but there was no seal to the copy of by-law, nor anything but the certificate to shew that it had been sealed. *Held*, sufficient.

The by-law directed the money to be levied "on all lands patented, leased, sold, agreed to be sold, and located as free grants" in the township of Harvey. *Held* bad, following *Scott and The Corporation of Peterborough*, 25 U. C. R. 463.

[Q. B., T. T., 1866.]

In Hilary term *Robert A Harrison* obtained a rule to quash a by-law of the corporation of the united townships of Smith and Harvey, entitled "A by-law to assess, levy and collect £635 5s. 8d. on all lands liable to taxation in the township of Harvey, to defray the expenses incurred in the re-survey of the same," on various grounds, of which it is only necessary to notice the 3rd, 5th and 6th. The third was that a direction to levy on all lands patented, leased, sold, agreed to be sold, and located as free grants within the township of Harvey, and not from the resident landholders, as mentioned in sec. 6, ch. 93, *Consol Stat. U. C.*, and sec. 58, ch. 77, *Consol. Stat. C.*, or the proprietors, as mentioned in sec. 9 of the first mentioned statute, and sec. 61 of the last mentioned statute, or both, is illegal.

The fifth and sixth objections were: 5. That it is not shewn on the face of the by-law that such a survey as the statute contemplates had been previously made as the statute directs; and, sixth, that the survey referred to in the by-law was not such a survey as the statute contemplates.

The by-law enacted "that the sum of three pence and forty-seven hundredths of a penny shall be assessed, levied and collected on all lands patented, leased, sold, agreed to be sold, and located as free grants, within the said township of Harvey, over and above, and in addition to all other sums levied on said lands, to defray the expenses incurred in the re-survey of the same."

This by-law was proved to have been received from and certified by the township clerk of the township of Smith, being the senior of the two townships, which had formerly been united, and had separated since the passing of the by-law. The affidavits were styled, "In the matter of William Adam Scott and the township of Harvey." The rule called upon the township of Harvey alone; but it had been served upon the clerk of each township. The clerk's certificate attached to the by-law was as follows:

"I hereby certify that the above is a true copy of a by-law passed by the Municipal Council

of the united townships of Smith and Harvey, on the 28th day of August, one thousand eight hundred and sixty-four.

CHRISTOPHER BURTON.

Township Clerk."

[Seal of the township]

There was no other evidence of any seal attached to the by-law.

In this term, *Kerr* shewed cause, objecting to the style of the rule and affidavits; that the by-law was not under the seal of the township of Harvey, but of Smith; that there was no evidence that it was sealed. He cited *Buchart and the Municipality of Brant and Carrick*, 6 C. P. 130; *Fletcher and the Municipality of Euphrasia*, 13 U. C. R. 129; *Fisher v. The Municipality of Vaughan*, 10 U. C. R. 492; *Hodgson and the Municipal Council of York and Peel*, 13 U. C. R. 268; *Gibson and the Corporation of Huron and Bruce*, 20 U. C. R. 121.

Harrison supported his rule, citing *Consol. Stat. U. C.*, ch. 54, secs. 28, 29, 54, 59, 63; *Baker v. The Municipal Council of Paris*, 10 U. C. R. 623.

HAGARTY, J., delivered the judgment of the court.

As to the preliminary objections, when the by-law was passed Smith and Harvey were united townships, Smith being the senior. This was on the 28th of August, 1865; the application to quash was made last February. The applicant's affidavit states that the union was dissolved prior to his application, and he received the copy from the clerk of Smith, as he swears. The copy is certified as being a true copy of a by-law of the council of the united townships, signed by the township clerk, and a seal marked with the words "Municipal Council of Smith," is attached.

No special provision for this particular case is made in the statute. We think the relator could not have taken any other course than he did, obtaining the copy from the clerk of the senior township, there being no other officer to whom he could apply, and no means apparently of getting it certified by the clerk or under the seal of the township of Harvey. Section 195 (providing for the application to quash), need not be so very narrowly construed as Mr. *Kerr* contends. If he be right, there would be no means of impeaching a by-law of a junior township separated, as Harvey was, after the passing of the by-law.

As to the township of Smith being called on to answer the rule, it may be answered that no direct interest appears in that township. The county by-law directs that the united council of Smith and Harvey shall levy the required rate from Harvey, and the operation of the by-law of that body accordingly is confined to Harvey.

Section 59 directs that the by-laws of the union shall continue in force in the several townships until altered or repealed by the respective councils. No affidavits are filed by the defendants to shew that it has been repealed, or to support any objection of alleged delay in the application to quash.

We think the case of *Baker v. The Municipal Council of Paris*, 10 U. C. R. 623 is an authority for holding that the by-law is sufficiently authenticated by the corporate seal. The clerk's certi-