" tomber sous la règle troisième de l'article 34 " du Code de Procédure Civile."

He cites also the unreported case of *Tremblay* v. *White*. See also the case of *Barthe* v. *Rouillard et al.*, 17 Q. L. R., pp. 26 *et seq.*

If this be so can a limitation of action or *retraxit* filed after the return create a jurisdiction necessary in this Court which it had not before? I think there can be no question about that. If the Court were not properly seized on the 26th, nothing which the plaintiff could do could give it jurisdiction on the 27th. This is just what Mr. Justice Tessier says in the case of *Blumhart & Larue*, and it is logical. The jurisdiction either existed, or it did not exist when the action was served or when it was entered in Court. If it did not exist then, the plaintiff could not by any action of his create a jurisdiction.

At the argument plaintiff said that he could bring as many actions as there were districts where the libel was circulated. Chief Justice Dorion says in *Archambault & Bolduc* that this cannot be done. See page 111, where he says it would be a contravention of Art. 15, C. C. P., which forbids the division of actions. Again as Mr. Justice Jetté says in *Sénécal* v. *La Cie. d'Imprimerie de Québec*, 4 Leg. News p. 414, " Considérant que la motion faite " par le demandeur demandant la permission " d'amender sa déclaration aurait pour effet " d'attribuer à ce tribunal, malgré le refus de " la défenderesse d'y consentir, la jurisdic- " tion qu'elle ne possède pas maintenant." You cannot amend so as to give jurisdiction where it does not exist. If the Court cannot permit this, undoubtedly the plaintiff cannot do it. The writ was served on the defendant and returned; the Court then had no jurisdiction; a notice given to the attorney could not avail to give jurisdiction where it did not exist.

Declinatory exception maintained, and action dismissed with costs.

H. B. Brown, Q.C., for plaintiff.
Jno. P. Noyes, Q.C., for defendant.

SUPREME COURT OF CANADA.

OTTAWA, November 11th, 1891.

Coram Sir W. J. RITCHIE, C.J., STRONG, FOURNIER, TASCHEREAU and PATTERSON, JJ.

JAMES MOIR, Appellant, v. THE CORPORATION OF THE VILLAGE OF HUNTINGDON, and THE HON. J. C. ROBIDOUX, es qual., Respondents.

Appeal to Supreme Court—Question of Costs.

HELD: *That if an action be taken against a municipal corporation, to set aside one of its by-laws, and the by-law in question be repealed by the council of the defendant corporation, by means of a by-law which comes into force after a judgment of the Court of Queen's Bench, affirming the validity of the original by-law but before an appeal has been taken from such judgment, the repeal of the original by-law so effected, will reduce the matter in controversy to an abstract question and a claim for costs, and the Supreme Court cannot, under such circumstances entertain an appeal from the judgment of the Court of Queen's Bench.*

On April 8th, 1890, the council of Huntingdon Village passed a by-law, under 561 M. C., whereby it was assumed to prohibit the retail sale of intoxicants. On May 8th, 1890, the appellant petitioned the Circuit Court of the County of Huntingdon, to annul said by-law, on the ground that 561 M.C. is *ultra vires* of the legislature (698 *et seq.* M.C.)

On May 26th 1890, judgment was rendered by the Circuit Court (BELANGER, J.) quashing the by-law.

An appeal was taken from this judgment, which was argued and taken *en délibéré* January 23rd, 1891. On March 2nd, 1891, passage of a by-law by the Huntingdon council, repealing the by-law under dispute. By the law of the province, the repealing by-law could not come into force till May 1st, 1891.

On March 21st, judgment was rendered by the Court of Queen's Bench, reversing the judgment of the Circuit Court, and declaring the prohibitory by-law legal. On May 19th, appeal from this judgment to the Supreme Court; appellant being within the legal delays, and having done nothing by acquiescence or otherwise to bar his appeal.

No motion was made to dismiss the appeal, and nothing was said about the repeal of the by-law in the respondent's factum. On November 11th and 12th, 1891, the parties were fully heard, as to whether an appeal could be