

*Public School Board v. Town of Barrie*, 19 P.R. 33, and *Brooks v. Mayor of Torquay* (1902) 1 K.B. 601, followed.

*Quære*, whether a defendant has any locus standi, under the present practice, to ask for the dismissal of an action on the ground that it has been brought without the authority of the plaintiff.

Plaintiff's appeal allowed and defendant's appeal dismissed. Costs of the motion down to the appeal to the full court to be costs to the defendant in any event, as the authority for bringing the suit was not furnished until after the motion was made. No costs of the appeals to the full court.

*Phippen* and *Minty*, for plaintiffs. *Munson*, K.C., and *Laird*, for defendant.

Full Court.]

STARK v. SCHUSTER.

[March 5.]

*Powers of Provincial Legislature—B.N.A. Act, 1867, ss. 91 and 92—Shops Regulation Act, R.S.M., 1902, c. 156—Municipal Act, R.S.M., 1902, c. 116, s. 527—Winnipeg Charter, 1902, c. 77, s. 931—Ultra vires—By-law requiring closing of shops at certain hours—Unreasonableness and uncertainty as grounds of objection to by-law.*

Rule nisi to quash the conviction of defendant for breach of a by-law of the City of Winnipeg requiring all shops with certain exceptions to be closed after six o'clock p.m. except on certain days. The by-law in question was passed in July, 1900, under the Shops Regulation Act, 1891, R.S.M. (1891) c. 140, which is now c. 156 of the R.S.M., 1902, which came into force March 6, 1903. In March, 1902, the Winnipeg charter, came into force and the new Municipal Act, c. 116 of the R.S.M., 1902, contains a clause (2a) providing that the City of Winnipeg is not included in the expression "municipality" where the same occurs in the Act. Section 15 of "The Shops Regulation Act," provides that any by-law passed by a municipal council under the Act shall be deemed to have been passed under and by authority of the Municipal Act and as if the preceding sections of the Act had formed part of the Municipal Act, and that the preceding sections of the Act and the Municipal Act should be read and construed together as if forming one Act. It was contended on behalf of the defendant that the present Shops Regulation Act does not apply to the City of Winnipeg by reason of its being incorporated as above mentioned in the Municipal Act, R.S.M., 1902, c. 116, which Act is expressly excluded from operation in Winnipeg.

*Held*, 1. Without deciding whether the present Shops Regulation Act applies to the city or not, that the joint effect of s. 931 of the Winnipeg Charter and s. 527 of the Municipal Act is to retain and keep in force all by-laws of the city theretofore lawfully passed, and that the by-law in question was in full force and effect.

2. As the by-law in question was in strict accordance with the powers conferred by the legislature in the Act under which it was passed, its pro-