[Feb. 26.

CORPORATION OF THE CITY OF SHERBROOKE *v.* MCMANAMY.

Appeal—Validity of by-law—Supreme and Exchequer Courts Act—Ss. 30, 24 (g)—S. 29 (a) and (b)—Constitutional question—When not matter in controversy.

The plaintiff sued the defendants to recover the sum of $150, being the amount of two business taxes, one of $100 as compounders, and the other of $50 as a wholesale dealer under the authority of a municipal by-law. The defendants pleaded that the by-law was illegal and *ultra vires* of the municipal council, and also that the statute 47 Vict., c. 84 (P.Q.), was *ultra vires* of the Legislature of the Province of Quebec. The Superior Court held that both the statute and the by-law were *intra vires*, and condemned the defendant to pay the amount claimed. On an appeal to the Court of Queen's Bench by the defendant (present respondent), the court confirmed the judgment of the Superior Court as regards the validity of the statute, but set aside the tax of $100 as not being authorized. The plaintiff thereupon appealed to the Supreme Court, complaining of that part of the judgment which declares the business tax of $100 invalid. There was no cross appeal. On motion to quash for want of jurisdiction,

Held, that s. 24 (*g*) of the Supreme and Exchequer Courts Act was not applicable, and that as neither parties on the present appeal attacked the constitutionality of the statute 47 Vict., c. 84 (P.Q.), the case was not appealable under s. 29 (*a*) of the Supreme and Exchequer Courts Act. STRONG, J., dissenting.

Appeal quashed with costs.

Brown, Q.C., for the appellant.

Belanger for respondent.

MOLSON *v.* BARNARD.

Appeal—Judgment ordering a petition to quash seizure before judgment to be dealt with at the same time as the merits of the main action not final—Not appealable.

A judgment of the Court of Queen's Bench for Lower Canada (appeal side), reversing a judgment of the Superior Court, quashing on petition a seizure before judgment and ordering that the hearing of the petition contesting the seizure should be proceeded with in the Superior Court at the same time as the hearing of the main action, is not a final judgment appealable to the Supreme Court. STRONG, J., dissenting.

Appeal quashed with costs.

Laflamme, Q.C., for appellant.

Doherty, Q.C., for respondent.

THE ACCIDENT INSURANCE CO. *v.* MCLACHLAN.

Appeal—New trial ordered by Court of Queen's Bench suo motu—Not final judgment—Not appealable—Supreme and Exchequer Courts Act.

In an action tried by a Judge and jury, the judgment of the Superior Court in review dismissed the plaintiff's motion for judgment and granted the defendant's motion to dismiss the action. On appeal to the Court of Queen's Bench, the judgment of the Superior Court was reversed, and the Court set aside the assignment of facts to the jury, and all subsequent proceedings and ordered, *suo motu*, a *venire de novo*, on the ground that the assignment of facts was defective and insufficient, and the answers of the jury were insufficient and contradictory.

On appeal to the Supreme Court,

Held, that the order of the Court of Queen's Bench was not a final judgment, and that the judgment does not come within the exceptions allowing an appeal in certain cases of new trials, and therefore the case is not appealable.

Appeal quashed with costs.

Hatton, Q.C., and *McCarthy*, Q.C., for appellants.

Greenshields, Q.C., and *Abbott*, Q.C., for respondents.

BACHFORD *v.* MCBEAN.

Appeal—Title to land in controversy—Supreme and Exchequer Courts Act, s. 29 (b).

In an action brought before the Superior Court with seizure in recaption under Arts. 857 and 887, C.C.P., and Art. 1624, C.C., the defendant pleaded that he had held the property (valued at over $2000) since the expiration of his lease under some verbal agreement of sale. The judgment appealed from, reversing the judgment of the Court of Review,