

SUPERIOR COURT.

[IN CHAMBERS.]

SHERBROOKE, Aug. 15, 1890.

Coram WURTELE, J.

McMANAMY et al. v. CORPORATION OF THE CITY
OF SHERBROOKE.*Procedure — Injunction — Case before Supreme
Court.*

HELD:—*That when an appeal to the Supreme Court of Canada, from a judgment of the Court of Queen's Bench sitting in appeal, has been regularly allowed, and the case is before the Supreme Court, the Superior Court has no power by injunction, to suspend or interfere with the proceedings before the Supreme Court; the remedy being by application to the Supreme Court.*

The judgment was as follows:—

"We the honorable Jonathan S. C. Wurtele, one of the judges of the Superior Court for the Province of Quebec, after having heard the parties, by their counsel, upon the application of the petitioners for the issue of a Writ of Injunction against the respondent ordering and enjoining it to suspend all proceedings in connection with an appeal instituted by it to the Supreme Court of Canada in a certain cause wherein the respondent was plaintiff, and the petitioners were defendants, until the petition which has been served upon the respondent and by which the petitioners ask for the annulment for the cause of illegality of the resolution of the Council of the City of Sherbrooke, authorizing the appeal, has been adjudicated upon; having examined the petition for the Writ of Injunction and the exhibits produced in support thereof and having deliberated;

"Seeing that the petitioners allege that the resolution authorizing the institution of the appeal to the Supreme Court of Canada in the above mentioned case, adopted at a special meeting of the Council of the City of Sherbrooke on the 28th day of June last (1890), is null by reason of illegalities in the proceedings of the Council prior to and in connection with its passing, and that they are proceeding to obtain its annulment by a petition which was duly served on the respondent on the 26th day of July last (1890), and

which will be presented to the Circuit Court for the district of St. Francis on the 1st day of September next (1890), and that they ask for a Writ of Injunction to restrain the respondent from proceeding with its appeal until the petition asking for the annulment of the said resolution has been adjudicated upon;

"Considering that the appeal to the Supreme Court has been allowed by one of the honorable judges of the Court of Queen's Bench of the Province of Quebec, and that another of the judges of the said Court has settled the case for the appeal;

"Considering that the appeal in the said case is now regularly before the Supreme Court of Canada, and that the Superior Court for the Province of Quebec, which is a Court inferior to it, has no power to retard, or in any way to interfere in the proceedings therein;

"Considering that it is possible for the petitioners to obtain the suspension of proceedings, which they desire to get, by applying to the Supreme Court or to one of the judges thereof under rule 42 of the general rules and orders of the Court;

"Considering that the petitioners have an easy remedy without recourse to a Writ of Injunction against the respondent;

"Considering moreover that under and in conformity with Article 461 of the Municipal Code, the said resolution of the Council of the City of Sherbrooke is executory until its annulment has been decreed by either the Magistrate's Court or the Circuit Court, and that it should therefore be left to its effect;

"Considering that the effect, whatever it may be, will not be irremediable, and that the respondent is responsible under the provisions of Article 706 of the Municipal Code for all the damages which the petitioners may suffer by reason of its enforcement should it be subsequently annulled;

"Considering that under the circumstances a Writ of Injunction does not lie in the present instance;

"Do refuse to order the issue of the Writ of Injunction prayed for, and do reject the petitioner's application therefor, but without costs."

L. C. Bélanger, for petitioner.

H. B. Brown, Q. C., for respondent.