

A somewhat similar motion was made in *Lake Superior Co. v. Hussey*, 2 O. W. R. 506. For the reasons given there, I think a similar order (if any) is all that can be made here.

Had the council adhered to their determination to lay Pitt street with asphalt blocks, the present difficulty would not have arisen. They seem to have become alarmed by the commencement of Fulmer's action on 11th March. This led them into the doubtful step of assuming to rescind their resolution of 27th February by the resolution of 27th March. On this being done it is not surprising that the Baugham action was commenced. The council by their resolutions of 13th and 27th March would almost seem to have invited it.

. . . When the first action was commenced, making a claim for an injunction to restrain the use of asphalt, the council might well have waited. They could not have been compelled to do anything while that action was pending. The decision there would necessarily have settled the question as to the sufficiency of the petition of 15th August, 1904, and the completion of all necessary formalities so as to make it the duty of the council to use asphalt instead of macadam.

It is their own doing that they now have two actions on hand instead of only one. They cannot ask to have either stayed under the provisions of R. S. O. 1897 ch. 51, sec. 57 (9). No other remedy suggests itself as being possible. The actions should properly be set down together at the June non-jury sitting, if both are then at issue.

At present the motion must be dismissed with costs to plaintiffs in any event.

(This order was reversed by FALCONBRIDGE, C.J., on 14th April, 1905, and an order made adding Bangham as a party defendant in Fulmer's action, and staying Bangham's action. Costs to defendants here and below in any event.)

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MACMAHON, J.

APRIL 11TH, 1905.

CHAMBERS.

RE BENSON AND IMPERIAL STARCH CO.

*Company—Transfer of Shares—Refusal to Register—By-law—Ultra Vires—Ontario Joint Stock Companies Act—Mandamus.*

Motion by George F. Benson for a mandamus to compel the Trusts and Guarantee Company, Limited, as transfer