

That such power exists in the court irrespective of the Injunction Act would seem to be established by the jurisprudence of the country. It was so held in *Bourgoin v. M. N. C. Railway Co.*, 19 Jurist, p. 57, by the Court of Appeal, and by the Superior Court in *Carter v. Breaker*, 2 Q. L. R., p. 232.

But it is perhaps premature to decide whether or not such an injunction or suspensory order can issue at all, until it be first ascertained whether or not the party applying for it is in a position to ask for it, assuming the court to have the power to issue it, whether under the Injunction Act or at common law.

It is not pretended here that the works complained of are being done upon the property or lands of the petitioner, neither is it claimed that they are being so done in violation of any contract made with him, nor that from them results or will result any special damage to him. The defendant, the Royal Company, is sought to be restrained from doing work upon the property of the municipality, alleged to be in violation of a contract of said municipality with an outside party, and which, it is said, will result in damages to the said municipality.

Now, if we take these pretensions as being proven, and assume that they constitute a case where, at the instance of the party having a right to ask for it, the court has a right to issue an injunction or suspensory order, who is it that has a right to restrain such works, or to ask for the writ or order restraining them? Clearly the municipality has that right, should it choose to exercise it. Here it does not do so. Has the rate-payer or elector of the municipality the right to do so in his own name, merely as a rate-payer, and without showing any interest personal to himself, *i.e.*, that the works are injurious to him in any sense other than that in which what is injurious to the municipality may be said to injure every one of its rate-payers?

This is the question which must first of all be decided, for if it should appear that even assuming plaintiff to be entitled to the other conclusions of his action on the merits, *i.e.*, to have annulled the resolution of the 15th October last, and the contract based upon it, or assuming such resolution and contract to be absolutely null and non-existent, he has not the right to restrain the doing of the works complained of, then clearly he cannot have a right to suspend *pendente lite*, works which he would not have a right to permanently enjoin, or cause to be demolished had he succeeded in his action on the merits.