

compte aux demandeurs des fruits et revenus qu'elle a perçus tant seule que avec le dit Pierre Grandmont, depuis leur mariage arrivé comme susdit, le 1 octobre 1874, et de l'administration qu'ils ont eue et de la disposition qu'ils ont faite des biens meubles de la dite communauté et de la continuation d'icelle, pour être sur le dit compte (dans lequel pourront entrer les droits matrimoniaux de la dite Marie-Anne Pepin, contre la succession du dit Emilien Courchaine, son premier mari, aujourd'hui représenté par les Demandeurs), et qui devra être débattu suivant la loi, etc."

*Germain*, for Appellants.

*Mathieu & Gagnon*, for Respondents.

MONTREAL, Sept. 20, 1879.

HUNTINGTON V. WHITE.

*Appeal from judgment maintaining demurrer to portion of plea.*

*Carter, Q. C.*, for the defendant, moved for leave to appeal from an interlocutory judgment, (*Rainville, J.*) rejecting part of the defendant's plea, on an answer in law. The judgment, he contended, was evidently wrong for the defendant, after setting out, in support of his plea of justification to an action for libel, various charges in the part of the plea objected to, concluded by averring: "which charges are the charges referred to and commented upon in the said articles complained of." Notwithstanding this allegation, the truth of which for the purposes of the demurrer, must be considered admitted, the Judge in the Court below, upon a simple demurrer, assumed that these charges were not the charges referred to in the articles, and had ordered a considerable portion of the plea to be struck out.

The Court was of opinion that the appeal must be allowed, unless the other side were able to show that the judgment was correct, and that the Court could say so on a motion.

*Laflamme, Q. C.*, was heard on the part of the plaintiff, after which,

The CHIEF JUSTICE said the Court was of opinion that leave to appeal must be granted.

*Laflamme & Co.* for plaintiff.

*Carter, Church & Chapleau* for defendant.

SUPERIOR COURT.

MONTREAL, NOV. 25, 1879.

MALLETTE et al. v. THE CITY OF MONTREAL.

*Injunction—Jurisdiction of Superior Court.*

The plaintiffs in the case referred to at p. 370, having been refused an injunction by Mr. Justice Monk in Chambers, renewed their application before a Judge of the Superior Court.

*Doutre, Q. C.*, for the petitioners, said that the application had been made first before two of the Judges of the Court of Queen's Bench, who did not consider that they could exercise jurisdiction in the matter, but expressed the opinion that perhaps the Superior Court might.

*Roy, Q. C.*, opposed the application, urging that the constitutionality of the law, which was attacked by the petitioners, had been affirmed by several decisions, and that it would be dangerous to municipal administration to interfere under such circumstances with the collection of fees due the city.

*PAPINEAU, J.*, rejected the application. The petition, he remarked, was not presented as an incident of any case now pending before the Court. It was a new and independent demand, to avert from the petitioners an injury which they regarded as irreparable, until the Court of Queen's Bench should have disposed of the appeal now pending before that Court. If the by-law in question was illegal, the Superior Court, undoubtedly, had power under 41 Vict. c. 14, to issue an injunction to restrain the City from proceeding before the Recorder's Court under the by-law. Such injunction would not be addressed to the Recorder's Court, but to the City of Montreal, forbidding it to ask the Recorder to exercise the authority conferred on him;—*Kerr on Injunctions* (Ed. of 1867), pp. 14, 15, 21. Nor would this Court be interfering with the case now before the Court Appeal.

It remained to be considered whether the petitioners were in a position to ask for the exercise of the extraordinary and discretionary power possessed by this Court. It was a remedy only granted in cases where there is no other, and where the injury is irreparable. The party seeking it should be able to show a clear right, or at least a strong presumption in favor of the pretensions which he wishes to protect by in-