1934
*May 14
*Nov. 26

J. B. ARTHUR ANGRIGNON (DEFENDANT) ..... } APPELLANT;

AND

J. ARSENE BONNIER (PLAINTIFF).....RESPONDENT;

AND

THE CITY OF MONTREAL (MISE-EN-CAUSE).

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Municipal corporation—Quo warranto—Disqualification of alderman—Property owned by alderman, sold to his daughter and leased to the city—Whether alderman "directly or indirectly interested"—Paragraph (g) of s. 25 of the charter of the city of Montreal, 11 Geo. V, c. 112.

In the year 1931, the appellant held the office of alderman of the city of Montreal and was re-elected in 1932. Previous to his election he owned lots on Allard street, and, in 1931, he built a three-storey house thereon. Some time in the early part of 1931 the appellant suggested to the chief of police that this house would be suitable for a police substation, alleged to be needed; and, after examination of the premises and reports by officials of the city, on the 23rd of April,

*PRESENT:—Duff C.J. and Rinfret, Cannon, Crocket and Hughes JJ.

1931, the city's notary received instructions to prepare a lease of the property at $125 per month. On the 27th of April, the appellant transferred his property to his daughter for a sum of $9,500, payable in five years, nothing being paid on account, the appellant reserving his *privilège de bailleur de fonds* and an hypothec on the property for the full amount. On the 6th of June, 1931, a lease was signed between the city and the appellant's daughter for a term of ten years at $125 for the first five years and $150 for the other five years. The city of Montreal paid these rents by cheques to the order of the appellant's daughter; all the cheques down to the 15th of April, 1932, with only one exception, were endorsed and delivered by her to the appellant, and the latter deposited them in his banking account and gave credit for same amounts on the purchase price of the property. On the 15th of April, 1932, the respondent filed a petition for a writ of *quo warranto* asking the disqualification of the appellant as alderman, alleging that the deed of sale from the appellant to his daughter was simulated and that the property in reality still belonged to the appellant, or that, alternatively, the latter had an indirect pecuniary interest in the contract ostensibly between his daughter and the city of Montreal. Paragraph (*g*) of section 25 of the charter of the city of Montreal enacts that "No person may be nominated for the office of mayor or alderman nor be elected to nor fill such office: (*g*) If he is directly or indirectly a party to any contract or directly or indirectly interested in a contract with the city, whatever may be the object of such contract."

Held that the appellant was disqualified as alderman of the city of Montreal, as, according to the facts of the case, he was "directly or indirectly interested" in the lease to which, by its terms, his daughter and the city were the parties.

Per Duff C.J. and Rinfret, Crocket and Hughes JJ.—The existence of a common intention and expectation concerning the disposition of the rents, which was acted upon, by the transfer of cheques for rent to the father by the daughter shews that the appellant was interested in the lease within the purview of the statute.

Per Cannon J.—The appellant, before and after his election as alderman, had a pecuniary interest in the property leased to the city, and consequently in a contract with the city, contrary to the charter.

Per Duff C.J. and Rinfret, Crocket and Hughes JJ.—The language of the statute is not the language of lawyers; the phrase "interested in" has no technical signification; effect must be given to it according to the common usage of men.

Per Cannon J.—The nature and the extent of such "interest" must be established by the facts in each case; and whenever an alderman finds himself in such a position that he must choose between the interest of the city in a contract and his own, he is instantly disqualified.

Per Duff C.J. and Rinfret, Crocket and Hughes JJ.—In this case, there is "concert," within the meaning of the Lord Chancellor's judgment in *Norton* v. *Taylor,* [1906] A.C. 378, between the appellant, as alderman, and his daughter, as a contractor with the city, by which moneys paid by the city under the contract were to be, and in fact were, transferred to the alderman in payment of a debt owing to him by the contractor.

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APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, reversing the judgment of the trial judge, Surveyer J. and maintaining a petition for a writ of *quo warranto* issued against the appellant, asking for his disqualification as alderman of the city of Montreal.

The material facts of the case are fully stated in the head-note and in the judgments now reported.

L. E. Beaulieu K.C. for the appellant.

John Ahern K.C. for the respondent.

The judgment of Duff C.J. and Rinfret, Crocket and Hughes J.J. was delivered by

DUFF C.J.—This appeal arises out of a proceeding alleging the disqualification of the appellant to hold the office of an alderman for the city of Montreal.

In the year 1931 the appellant held the office of alderman and was re-elected in April, 1932. Previous to his election he owned lots on Allard street and, in 1931, he built a three-storey house thereon. Some time in the early part of the year 1931 he suggested to the chief of police that this house would be suitable for a police substation. The chief of police caused the property to be examined. The appellant, who was then an alderman, accompanied the inspector who conducted the examination. The inspector reported that the creation of such a substation would provide increased protection. The superintendent of police reported that the appellant had told him there was an understanding that the city would rent the property at $125 per month.

After inspector Kavanagh's visit to the property, the appellant again discussed the matter with the chief of police and was told by him that the place would be suitable for a substation. On the 21st of April, 1931, the chief of police recommended to the director of services of the city of Montreal the establishment of a substation there, citing in support of his recommendation the opinion of inspector Kavanagh and his approval of the proposal.

Later, the appellant saw Mr. Bray, the president of the executive committee of the city of Montreal, and provisionally arranged for a lease by the city at $125 per month.

On the 23rd of April the director of services wrote to the city's notary giving instructions to prepare a lease of the property, and, on the 27th of April, all arrangements for the lease having been completed, the appellant transferred the property to his daughter Mrs. April for the sum of $9,500, payable in five years, nothing being paid on account.

On the 27th of May, 1931, the executive committee submitted to the council a draft of a lease by Mrs. April to the city, and this report was adopted on motion by another alderman which was seconded by the appellant. On the 6th of June, 1931, the lease between the city and Mrs. April was signed; it was a lease for a term of ten years at a rental of $125 per month for the first five years, and $150 per month for the last five years. The city of Montreal paid the rent of $125 per month, by cheque to the order of Mrs. April; and all the cheques down to the 15th of April, 1932, when the present proceedings were instituted, were endorsed and delivered by Mrs. April to the appellant, with the exception of the cheque for December, 1931, which was used by the daughter for exceptional family expenses. All the cheques delivered to the appellant by Mrs. April were deposited in his banking account and credited on the purchase price of the property.

In July, 1931, the chief of police reported to the director of services that he had been induced by error to assent to the establishment of a substation and that no substation was required on Allard street, and that the lease ought to be cancelled. In October, 1931, the police inspector for the division where the property was situated reported that the property was not in a sanitary condition; that the heating system was insufficient; that the building was not finished; and that there was water at all times in the basement. Nevertheless, the city took possession of the property in January, 1932. Rent has been paid by the city at the contract rate from the 1st of May, 1931; and on the 4th of April, 1932, the date of the appellant's re-election as alderman, the lease was a subsisting lease.

The question for our determination is whether or not the appellant was disqualified, by force of paragraph (*g*) of section 25 of the charter of the city of Montreal, which enactment is in these terms:

No person may be nominated for the office of mayor or alderman or be elected to nor fill such office: (*g*) If he is directly or indirectly a

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party to any contract, or directly or indirectly interested in a contract with the city, whatever may be the object of such contract.

The precise question is whether, while holding the office of alderman, the appellant was "directly or indirectly interested" in the lease, to which, by its terms, his daughter and the city were the parties.

It was argued by the respondent that the whole transaction was simulated, and that the daughter was, in respect of the ownership of the property, as well as in respect of the lease, a mere *prête-nom* for her father, the appellant. The trial judge, on this issue, found against the respondent, as well as four judges of the Court of King's Bench. These learned judges held that the sale to the daughter was a real sale and that the daughter was the real party to the lease to the city. Their view was that the activities of the appellant, in respect of which he received no remuneration, in superintending the building of the house, were naturally explained by the parental relationship; and that this relationship accounted, at least in large measure, for his efforts in procuring the letting of the property to the city.

We perceive no satisfactory ground for doubting that this is substantially in accord with the actual facts. On the other hand, this view, that these transactions were real transactions, establishing legal relations between the father and the daughter, and between the city and the daughter, necessarily involve the proposition that the ostensible obligation on the part of the daughter to pay the purchase money was a legal obligation which the daughter was expected to fulfil.

The majority of the judges in Quebec have fully accepted the contention that the house was built for the daughter, but that she was to pay the purchase price of it, the amount which corresponded at least approximately to the aggregate of the sums expended by the appellant; as well as additional sums expended by him, for example, in connection with heating arrangements. But there seems to be no room for doubt, and, indeed, it is not disputed, that (since the daughter was without resources, and had no other means for providing for the payment of these obligations to her father) it was contemplated by all parties that the daughter would be enabled to discharge these obligations

out of the moneys received by her as rents, and that the rents would be devoted to that purpose.

One of the sisters who was called by the respondent gives this evidence:

Q. Quand il avait été question que M. Angrignon donnerait à madame April une propriété, qu'il lui ferait construire une propriété, madame April avait-elle de l'argent pour faire un payment en acompte? R. Du tout, aucun argent.

Q. Il était entendu que madame April n'avait pas d'argent pour acheter ou payer une propriété?—R. Non, du tout.

Q. Comment devait-elle payer cette propriété-là?—R. Quand la maison était finie, avec les loyers qu'elle recevait.

Q. Elle devait payer avec les loyers?—R. Oui.

Q. C'était cela qui été convenu?—R. C'était la décision.

This testimony must not be given an extreme construction. It ought not to be read as establishing that there was an explicit contract between the father and daughter as to the application of the rents; and we are not disposed to hold that there was a legally enforceable duty resting upon the daughter to apply the rents in pursuance of the expectation and intention of the family who seem to have been fully conversant with the arrangements. In this sense we think the finding of the trial judge, in which Mr. Justice Letourneau concurred, that the daughter was free to dispose of the rents, can be sustained.

Nevertheless, we do not think it can be seriously disputed that the appellant, his daughter, as well as the family generally, counted upon the disbursements made by the father in the construction of the building, that is to say, the amount of the purchase price, which constituted debt from the daughter to the father, being reimbursed and paid to the father by the application of the rents to that purpose.

At the conclusion of the argument I was disposed to think that, since the facts in evidence did not point to a legally enforceable arrangement between the father and the daughter touching the application of the rents, the case was not within the statute. On further reflection, I have reached the conclusion that the existence of a common intention and expectation concerning the disposition of the rents, which was acted upon by the transfer of cheques for rent to the father by the daughter, as already explained, down to the commencement of the proceedings in *quo warranto,* shews that the father was "interested in the lease" within the purview of the statute.

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It should be observed that the cheques were transferred by the daughter and received by the father as a matter of course. He says she was entitled to retain them. But she had, as already observed, no other means of paying him. The appellant, when asked to explain why, after commencement of the proceedings, he had left the rent in the hands of Madame April, gives this answer:

Q. Voulez-vous dire pourquoi après cela les chèques sont allés au compte de votre fille?—R. Parce que mon gendre a perdu sa position et que ma fille était malade, elle est gravement malade, elle est aux incurables, peut-être pour ne pas en sortir. Je voudrais bien qu'elle reviendrait, je prends tous les moyens. Je lui ai dit: "Prends tout ton argent et soigne-toi". Son mari, il faut qu'il mange, il n'a rien à faire.

His answer by the appellant who insists, throughout his evidence, that the rents were the property of Madame April, rather implies that the retention of the rents by her in the special circumstances was a concession by him.

Again, this passage in his evidence is not without significance:

R. C'était ma fille qui recevait cela pour moi, je les endossais après ma fille. Elle les endossait, ils étaient faits à son nom, les chèques n'étaient pas faits à mon nom.

Q. Vous les endossiez et vous les déposiez à votre compte?—R. Après qu'ils avaient été endossés par ma fille.

Q. Vous les déposiez à votre compte?—R. Oui.

Q. Alors, la ville payait votre propriété? (Me L. E. Beaulieu C.R., avocat de l'intimé, s'oppose à cette question comme illégale).

Q. C'est bien l'argent de la ville qui allait dans votre compte en paiement de votre propriété? (Me L. E. Beaulieu C.R., avocat de l'intimé, s'oppose à cette question comme illégale).

Turning now to the effect of the statute. The courts have had to consider similar provisions on various occasions during the past century. I refer to some of the judgments which have been delivered in cases involving the construction of similar words, not as authorities governing us in the construction of the Quebec statute, but as indicating, as I think they do, the point of view from which the consideration of the enactment before us is to be approached.

In *Towsey* v. *White* (1) Bayley J. said,

The great object of the Legislature was to prevent any bargaining between the trustees and the contractors, so as to give the former an interest adverse to their duty.

In *Nutton* v. *Wilson* (2) Lindley L.J. said,

To interpret words of this kind, which have no very definite meaning, and which perhaps were purposely employed for that very reason, we must look at the object to be attained. The object obviously was to

(1) (1826) 5 B. & C. 125 at 131. (2) (1889) 22 Q.B.D. at 744, 748.

prevent the conflict between interest and duty that might otherwise inevitably arise.

In *Norton* v. *Taylor* (1), Lord Loreburn, L.C., construing a statute of New South Wales, by which any person holding civic office was penalized, where he "becomes directly or indirectly * * * knowingly engaged or interested in any contract * * * with or on behalf of the council," said,

> There are many ways in which a person holding a civic office might be brought within the Act 2 Edw. 7, No. 35, as for instance if he had a share in the original contract, or if he were employed by way of sub-contract to execute the original contract or part of it; or it might be perceived by the Court that an arrangement had been made under which he was to be the person to supply the materials for the original contract. In those cases, whether it was done directly or indirectly, he might be liable, and no device to conceal the real nature of the transaction would prevail. But their Lordships do not think that he is liable merely for supplying materials to the contractor who chooses to buy them from him without any sort of understanding or arrangement that he should do so. Courts of justice in such cases would be vigilant to observe evidence of any concert to enable a civic officer to derive benefit from a contract.

We think the indicia adverted to in this passage, and in the observations of Lindley L.J., afford the most satisfactory tests in the circumstances of this case. The language of the statute is not the language of lawyers. The phrase "interested in" has no technical signification; effect must be given to it according to the common usage of men.

Sufficient has been said to support the conclusion that here we have "concert," within the meaning of the Lord Chancellor's judgment, between an alderman and a contractor with the municipality, by which moneys paid by the city under the contract were to be, and in fact were, transferred to the alderman in payment of a debt owing to him by the contractor. No doubt, as has already been said, the appellant, throughout, had his daughter's welfare at heart. In negotiating the lease, we may assume that he was actuated by his concern in seeing her comfortably provided for; but it is impossible to escape the conclusion that he had in view the employment of the moneys paid by the city to reimburse his expenditures in constructing and equipping the building. Nor is there any doubt that in all this his daughter's view and intentions, in this respect, coincided with his own.

(1) [1906] A.C. 378, at 380.

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The appellant was, we repeat, by "concert" between himself and the lessee "interested in the lease" in the pertinent sense.

The appeal will be dismissed. But, since the respondent can only succeed upon a construction of the statute not advanced by him at any stage, we think he should be subjected to the terms that there shall be no costs of this appeal or of the proceedings in the courts of Quebec.

CANNON J.—La Cour du Banc du Roi de la province de Québec a accordé permission spéciale de nous soumettre son jugement du 28 octobre 1933 renversant, avec le dissentiment de l'honorable juge-en-chef Tellier et de l'honorable juge Létourneau, le jugement de la Cour Supérieure (Surveyer, J.) et déclarant l'appelant dépossédé et exclu de son siège comme échevin. L'article 25, par. (*g*), de la charte de Montréal se lit comme suit:

Nul ne peut être mis en nomination pour la charge de maire ou d'échevin, ni être élu à cette charge, ni l'exercer:

(*g*) S'il est directement ou indirectement partie à un contrat, ou directement ou indirectement intéressé dans un contrat avec la cité, quelque soit l'objet de ce contrat.

Comme le dit le jugement permettant l'appel, cet article ne fait que confirmer un principe de droit public élémentaire, à savoir que personne occupant une position de confiance, comme celle d'échevin, ne doit continuer dans l'exercise de ses fonctions si son intérêt particulier vient en conflit avec son devoir officiel.

Pour résoudre la question posée, il est bon de faire l'historique de cette disposition de la charte de la cité de Montréal.

En 1890, dans la cause de *Stephens* v. *Hurteau* (1), il a été jugé qu'un échevin qui s'engage à fournir des matériaux requis par un entrepreneur pour l'exécution d'un contrat avec la cité de Montréal a un intérêt dans tel contrat qui tombe sous la prohibition du statut 37 Vict. (Q.) c. 51, s. 22, et le rend incapable d'occuper son siège comme échevin. A la page 157, le juge-en-chef Johnson nous dit:

First, what is the law? The Act of 1874 (37 V. c. 51, sec. 22) lays down at sec. 22, among other things, that any person holding the office of mayor or alderman, who shall directly or indirectly become a party to, or security for, any contract or agreement to which the corporation of the said city is a party, or shall derive any interest, profit or advan-

(1) (1890) M.L.R. 6 S.C. 148.

tage from such contract or agreement, shall immediately become disqualified and cease to hold his office.

Then came the Act of 1889 (52 Vic. c. 79), a consolidation of the Act constituting the charter of the city—which never repealed the Act of 1874; but on the contrary enacted by its 284th section, that only Acts inconsistent with the Act of 1889 were repealed; and even in that case the repeal was not to affect anything done under the Acts repealed. Well, this Act of 1889, by its 25th section, reproduced the provisions of sec. 22 of the Act of 1874, as far as disqualification resulting from directly or indirectly becoming a party to, or security for, any contract or agreement with the city; but when it came to disqualification as resulting from deriving any interest, profit or advantage from such contract or agreement, the later Act added the words, to the extent of $100.

Cette section 25, telle qu'interprétée dans cette cause de *Stephens* v. *Hurteau* (1), fut remplacée par 55-56 V. c. 49, s. 26, par la suivante:

25. If any person, holding the office of mayor or alderman * * * directly or indirectly becomes a party to, or security for, any contract or agreement with the city *for the performance of any work or duty,* or derives any interest, profit or advantage from such contract or agreement, to the extent of one hundred dollars, * * * then, and in every such case, such person shall thereupon immediately become disqualified, etc.

La charte fut revisée et consolidée en 1899, par 62 Vict. c. 58. La clause 37 déqualifie toute personne qui *directly or indirectly becomes a party to* or security for any contract or agreement with the city, *for the performance of any work or duty or for goods to be supplied to it, or directly or indirectly has any interest in, or derives any profit or advantage from, such contract or agreement, or is a party to or directly or indirectly interested in any claim or in any suit or legal process or in any expropriation or other case in which the city,* if condemned, will have to disburse any moneys, or is the attorney for the claimant or for the plaintiff in any *such process, suit or case, or is a member* of a firm acting as attorneys or one of the members whereof acts as attorney as aforesaid, etc.

Cet article 37 de 62 Vict. c. 58, fut, à son tour, amendé par 9 Ed. VII, c. 81, sec. 3, et remplacé par 4 Geo. V, c. 73, sec. 4, modifié par 8 Geo. V, c. 84, s. 16, et abrogé par 11 Geo. V, c. 112, s. 18 (1921).

Cette même loi de 1921 (cédule B, s. 10) art. 10, nous donna l'article 25 comme suit:

25. No person may be nominated for the office of mayor or alderman nor be elected to nor fill such office; * * *

g. if he is directly or indirectly a party to any contract, or directly or indirectly interested in a contract with the city, whatever may be the object of such contract;

h. if, as an advocate, he conducts or if the firm to which he belongs, or any of its members, conducts any case against the city before a court of justice, or in connection with an expropriation;

(1) (1890) M.L.R. 6 S.C. 148.

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i. if he is a party or interested directly or indirectly in any case, prosecution or claim against the city;

C'est là le texte qu'il s'agit d'interpréter.

Il serait assez difficile de donner une définition exacte et précise de l'intérêt en question. Il est évident qu'il ne s'agit pas seulement de l'intérêt requis pour avoir un droit d'action contre la cité; car, dans ce cas, la deuxième partie de la prohibition serait inutile. Il s'agit d'établir par les faits de chaque cause la nature et l'étendue de l'intérêt; et chaque fois qu'on arrive à la conclusion que l'échevin se trouve à avoir à choisir entre l'intérêt de la cité dans un contrat et le sien, il est immédiatement déqualifié.

Même si, en fait, l'acte de vente de la propriété louée à la cité de Montréal consenti par l'appelant à sa fille est réel et non simulé, cela aurait simplement pour effet d'éliminer la première prohibition du sous-paragraphe g, celle qui l'empêche d'être *partie* directement ou indirectement à un contrat avec la cité. Mais pourquoi avoir retardé jusqu'au 24 avril 1931 pour passer l'acte authentique de cette vente que l'on veut faire remonter jusqu'à l'été de 1930? Le rapport favorable de Kavanagh est du 8 avril 1931. Le rapport du directeur de police porte la date du 21 avril, celui du directeur des services fut signé le 23 avril demandant au notaire Beaudoin de préparer le bail. Dès lors, l'affaire pouvait être considérée comme bâclée par l'appelant; et il semble raisonnable de déduire de ces circonstances la conclusion que ce n'est qu'alors, le 27 avril 1931, qu'il s'est cru suffisamment garanti pour pouvoir vendre par acte authentique à sa fille qui était devenue, grâce à ses démarches comme échevin, capable de lui payer le prix de vente à même les loyers qu'elle retirerait chaque mois pendant dix ans de la cité de Montréal.

Je ne puis me convaincre que l'appelant, créancier hypothécaire pour la pleine valeur de cette propriété, n'était pas, dès lors, au moins indirectement, intéressé à ce que la ville de Montréal paie à sa fille cent vingt-cinq dollars ($125) par mois pendant cinq ans, et cent cinquante dollars ($150) par mois pendant les cinq années suivantes, si réellement sa fille, qui était absolument sans moyens, devait lui rembourser le prix de cet immeuble. La charte de Montréal est plus rigoureuse sous ce rapport que le code municipal ou la *Loi des cités et villes*. La législature avait

sans doute ses raisons pour mettre les échevins de Montréal à l'abri de toute tentation. Même s'il n'avait pas encore comme créancier hypothécaire un *jus in re* dans cet immeuble, il n'en aurait pas été moins intéressé, comme promettant vendeur, à obtenir, par ses démarches, du chef de police et des autres officiers les recommandations voulues pour l'établissement d'un nouveau poste de police dans la maison de rapport en question. Je suis fortement d'avis qu'il ne peut y avoir de doute que, lorsqu'il s'est agi d'autoriser l'adoption du rapport de l'exécutif par le conseil de ville, le 27 mai 1931, l'échevin Angrignon a fait preuve d'une ignorance de la loi, ou d'une indélicatesse peu ordinaire, en secondant audacieusement la motion de l'échevin Biggar adoptant le rapport qui assurait la location de cette propriété par la cité pour dix ans à un prix qui, pour le moins, était rémunérateur et lui fournissait un moyen presque certain de se faire payer les déboursés qu'il prétend avoir faits pour installer sa fille et que cette dernière, d'après l'acte de vente, devait lui rembourser—bien qu'elle fût sans moyens de le faire autrement,—que par ce que cet immeuble pouvait rapporter. Et, de fait, l'appelant a admis que chaque chèque de $125, depuis juin 1931, sauf celui de décembre, est allé, jusqu'à avril 1932, date des procédures, avec l'endossement de sa fille, au crédit de l'appelant à la banque, en déduction du prix de la propriété louée.

Comme je l'ai dit plus haut, la charte de la cité est plus sévère aujourd'hui qu'elle ne l'était en 1890, lors de l'affaire de *Stephens* v. *Hurteau* (1). Ce dernier a été déqualifié parce qu'il aurait vendu du bois pour le pavage de la rue Craig à un entrepreneur de la cité de Montréal, dont il était ainsi devenu le créancier. La loi, à cette époque, prohibait tout intérêt, profit ou avantage de l'échevin dans un contrat. Plus tard, on a spécifié qu'il s'agissait d'un contrat " for the performance of any work or duty." Puis on a ajouté " for goods to be supplied to the city." Et enfin, nous avons le texte actuel qui ne spécifie rien mais parle de n'importe quel contrat " quelque soit l'objet de ce contrat". La disposition actuelle, en retranchant les mots " profit " et " avantage ", qui, jusqu'à un certain point, délimitaient le sens du mot " intérêt ", me paraît plus compréhensive. *Avoir* un intérêt dans une affaire n'est pas *prendre l'intérêt* de quelqu'un par simple bienveillance,

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sentiment qui fait que l'on désire et poursuit le bien de quelqu'un, que l'on prend part à ce qui lui arrive d'agréable ou de fâcheux—mais sans désir égoiste d'un profit, d'un avantage personnel, sans considération pour son bien propre et exclusif. Pour moi, l'appelant, dans cette affaire de bail à la cité de Montréal, n'a pas agi par simple bienveillance pour sa fille, à laquelle il pouvait légitimement s'intéresser; mais il s'était auparavant assuré un droit éventuel à un bénéfice personnel à même les loyers provenant de la cité—dont il avait juré de protéger les intérêts. De plus, il s'était réservé par l'acte de vente une "hypothèque sur l'immeuble loué en outre du privilège de droit". Il avait donc, avant, lors et après son élection comme échevin, un intérêt pécuniaire dans la propriété louée à la cité—et, par conséquent, dans un contrat avec la cité; que cet intérêt soit direct ou indirect, peu importe, dit la charte de Montréal.

Cette disposition est de droit public et les autorités anglaises recueillies dans Biggar, Municipal Manual, édition de 1900, pp. 109 et 110, sont à consulter.

Dans *Stephens* v. *Hurteau* (1), le juge-en-chef Johnson réfère (p. 163) à *City of Toronto* v. *Bowes* (2). Je trouve dans le rapport de cette cause un citation tirée de *Governor and Company of York Building Society* v. *Mackenzie* (3), qui pose, je crois, le principe qui trouve son expression dans l'article de la charte de Montréal qui nous est soumis:

> The office imports a natural disability, which, *ex vi termini,* imports the highest quality of legal disability. A law which flows from nature, and is founded on the reason and nature of the thing, is paramount to all positive law. This is not an arbitrary or local regulation; it is the constitution of nature itself, and is as old as the formation of society, and of course it must be universal. It proceeds from nature, and is silently received, recognized, and made effectual, whereever any well regulated system of civil jurisprudence is known.
>
> The ground on which the disability or disqualification rests is no other than that principle which dictates that a person cannot be both judge and party. "No man can serve two masters." He that is entrusted with the interest of others cannot be allowed to make the business an object of interest to himself; because, from the frailty of human nature, one who has the power, will be too readily seized with the inclination, to use the opportunity for serving his own interest at the expense of those for whom he is entrusted. The danger of temptation, from the facility and advantages of doing wrong which a particular situation afford, does, out of the mere necessity of the case, create a disqualifi-

(1) (1890) M.L.R. 6 S.E. 148; M.L.R. 5 S.E. 1.

(2) (1854) 4 Grant's Ch. Rep. 489.

(3) 1795 8 Bro. P.C. 42.

cation; nothing less than incapacity being able to shut the door against temptation, when the danger is imminent and the security against discovery great, as it must be when the difficulty of prevention or remedy is inherent in the very situation which creates the danger. *The wise policy of the law has therefore put the sting of a disability into the temptation as a defensive weapon against the strength of the danger which lies in the situation. * * * This conflict of interest is the rock, for shunning which the disability under consideration has obtained its force, by making the person who has one post entrusted to him incapable of acting on the other side, that he may not be seduced by temptation and opportunity from the duty of his trust.*

Pour ces raisons, je crois que l'appel devrait être renvoyé et le dispositif du jugement *a quo* confirmé.

Appeal dismissed, no costs.

Solicitors for the appellant: *Beaulieu, Gouin, Mercier & Tellier.*

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