

ALBERIC ANGERS (DEFENDANT) . . . . . APPELLANT;  
 AND  
 J. C. GAUTHIER AND OTHERS (PLAIN-  
 TIFFS) . . . . . } RESPONDENTS.

1924  
 \*June 2.  
 \*June 18.

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

*Contract—Licensed pilots—Public officers—Agreement—Pooling of fees—  
 Validity—Public order.*

In 1918, the appellant and the respondents, being all the licensed pilots for the pilotage district of Montreal, entered into an agreement whereby for a period of twenty-five years they agreed to form an association with the view to further their common welfare and to divide all their earnings equally among themselves. In May, 1921, the appellant having refused to pay over to the association the fees then earned by him as pilotage dues, the respondents sued him to recover the sum of \$2,400.

*Held* that such an agreement was not illegal nor contrary to public order.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec, affirming the judgment of the Superior Court and maintaining the respondent's action.

The plaintiffs, respondents, and the defendant, appellant, are licensed pilots for the pilotage district of Montreal. They are also members of an association of a civil character called "United Montreal Pilots."

The appellant is sued as a member of this association for the recovery of the sum of \$2,400, which, according to respondents, he owes them pursuant to the terms of a contract passed before a notary in 1918. They allege that on the 27th of December, 1918, they entered into an agreement whereby for a period of twenty-five years they agreed to form an association with the view to further their common welfare and to divide their earnings equally among themselves after certain expenses and charges, which are also defined, have been paid.

They state that since the first of May, 1921, the appellant has neglected to pay over to the directors of the association, or its treasurer, the fees earned by him as pilotage due, contrary to the terms of the agreement. They also allege that, notwithstanding his default, respondents have offered to the appellant his share of the moneys distributed according to the contract.

\*PRESENT:—Idington, Duff, Anglin, Mignault and Malouin JJ.

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 Idington J.

Appellant does not deny these facts but contends that the contract entered into by respondents and himself is null and void inasmuch as it is contrary to law and to public order and moreover that it is inconsistent with the by-laws of the Department of Marine.

*Bond K.C.* and *L. Beauregard* for the appellant. A pilot is a public official; and a contract between the pilots, agreeing to pool their fees to be received as such public officials, is illegal and contrary to public order. *La Corporation des Pilots de Québec v. Paquet* (1); *Rémillard v. Trudelle* (2); *Powell v. The King* (3).

*Geoffrion K.C.* and *L. Guérin* for the respondents. The agreement rests on the principle of liberty of covenants. The pilots had the right to bind themselves and they are bound by the conditions of the contract.

IDINGTON J.—I cannot see that the parties hereto, because of being licensed as pilots, can be held to be such public officers as to bar their right to pool their receipts from fees got for service.

I should be glad if I could see otherwise for the appellant seems to have been rather improvident in joining.

It can easily be rectified if the Government is satisfied, as appellant's counsel contends is the fact, that pooling receipts tends to impair efficiency of the service, and sees fit to shape its regulations so as to prevent its continuance. Meantime I cannot say as matter of law that the system so operates.

I conclude that in my opinion this appeal should be dismissed with costs.

DUFF J.—The question is a difficult one, but on the whole I think the agreement in question is not within the principle which withholds from assignments of the salaries of public officers recognition and the assistance of the law.

Here it is questionable, to say the least, whether the assignors are public officers within the scope of the principle; and, moreover, the object of the agreement is to provide for the whole body of pilots greater pecuniary security.

(1) [1917] Q.R. 53 S.C. 220, at p. 222; 54 D.L.R. 323.

(2) [1889] 15 Q.L.R. 328.

(3) [1905] 9 Ex. C.R. 364.

That such an agreement would, in fact be detrimental to the public service seems to me very debatable, and I know of no established legal doctrine which requires me to say that it is.

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The appeal should be dismissed with costs.

ANGLIN J.—I would affirm the judgment of the Court of King's Bench for the reasons assigned by the learned Chief Justice and Mr. Justice Dorion.

MIGNAULT J.—Je ne vois rien de contraire à l'ordre public dans la convention entre plusieurs personnes exerçant la même profession ou la même industrie de s'associer et de mettre dans un fonds commun tous leurs gains, lequel fonds sera divisé entre tous les membres de la société dans la proportion convenue entre eux. L'association "United Montreal Pilots," dans laquelle l'appelant a consenti à s'enrôler, est une association de ce genre qui a été librement formée pour l'avantage mutuel des associés. Cette association doit durer vingt-cinq ans, et l'appelant, avant l'expiration de ce terme, refuse d'apporter ses gains à la mise commune, sous prétexte que l'association est illégale et contraire à l'ordre public.

Les sociétés universelles de tous gains ne sont pas inconcues dans le droit civil, ainsi qu'en fait foi l'article 1858 du code civil. Celui qui y entre librement doit en observer les conditions tant que la société dure. Les pilotes qui ont formé cette association sont tous des pilotes licenciés pour le district de pilotage de Montréal, et l'ordre public, mot dont on abuse parfois, n'est nullement troublé par la convention qu'ils ont faite de mettre leurs gains en commun pour leur bénéfice mutuel.

L'appelant trouve qu'il gagnerait plus d'argent s'il pouvait conserver ses gains, au lieu de se contenter de la part qui lui est attribuée par le pacte social. C'est bien possible, mais alors il n'aurait pas dû s'enrôler dans cette association. Tant qu'elle existera et qu'il n'aura pas de raison valable de s'en retirer, il devra respecter la convention qu'il a faite avec ses co-associés. Sa prétention qu'il est une sorte d'officier public et que pour ce motif il ne peut s'associer avec ses confrères, est dénuée de fondement.

L'appel doit être renvoyé avec dépens.

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MALOUIN J.—Je suis d'opinion que les pilotes ne sont pas des officiers publics. Je renverrais le présent appel avec dépens pour les raisons données par la cour du Banc du Roi, juridiction d'appel.

*Appeal dismissed with costs.*

Solicitors for the appellant: *Atwater, Bond & Beauregard.*  
Solicitors for the respondents: *St. Germain, Guérin & Raymond.*

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