CITY COUNCIL CANNOT DISMISS BOUILLON WITHOUT FAIR TRIAL

Mr. Justice Stuart on Saturday Handed Out His Decision in Much Discussed Case—Costs to Be Taxed Against the Mayor and Aldermen Individually—Aldermen Are Not Disqualified in Voting Upon a Motion for Commissioner's Dismissal—His Lordship Delivers an Exhaustive Judgment Throwing Much Light on Many Provisions of the Edmonton Charter.

(From Monday's Daily.)

That Commissioner Bouillon must be given a fair trial before he can be dismissed by the council, that definite charges must be laid against him and an opportunity given him in open council to answer those charges, is the effect of the judgment in the city case handed down by Mr. Justice Stuart in the Supreme Court on Saturday. The plaintiff is given costs against the defendants, Mayor Armstrong and the aldermen other than McKinley and Hyndman. The aldermen must pay their own costs personally and not out of the city funds "for the reason that the whole trouble was due to their personal mistakes in the conduct of their duty as aldermen." These costs will probably amount to $250 for each individual member of the council.

The request for a declaration that certain of the aldermen are disqualified from voting upon a motion for the dismissal of the commissioner on the ground of their interest in companies dealing with the city, fails by reason of a clause in the charter which specifically gives to such persons the right to sit on the council. Mr. Justice Stuart, however, remarks on this clause, that "one would not expect that so wide a door would be left open to political corruption."

The request for a declaration that several of the aldermen are disqualified from voting upon the question by reason of bias was also refused.

An Interesting Document.

The judgment is a voluminous document, comprising some fifty or more typewritten pages, and containing matter of exceptional interest by reason of the light which it throws upon the system of government established by the Edmonton charter. His Lordship holds that under the charter the commissioners are in a position considerably above that of mere employees. The purpose of the statute, he states, is quite apparently to separate the legislative from the administrative and executive functions and to place the former in the hands of the council and the latter in the hands of the commissioners. He suggests that no small part of the present trouble is due to the difficulty experienced in breaking away from the old and discarded system of government by committees. He denies that his judgment will have the effect of detracting from the dignity of the council, suggesting that "it will thrust dignity upon the council in spite of its evident attempts to avoid it." Dealing with the statement that the statement that the judgment will involve government by injunction he declares that "on the contrary, it will involve government according to the law and the statute, obtainable in this case unfortunately only by injunction."

The first fourteen pages of the judgment deals with the application of the defendants for dismissal of the action on the ground that "public fight" was involved and that the Attorney-General of the province should therefore have been a party to the action. Numerous cases are cited and the question viewed from all its aspects. In brief, Mr. Justice Stuart held that the public for whom the Attorney-General would be required to act would be the public of the whole province. "The people of Edmonton," he says, "are but a section of the public, with special rights in virtue of which they can sue in the courts." On this ground, therefore, the application was refused.

Seven pages follow devoted to quotations from the charter dealing with the powers of the council and commissioners and the conditions governing the hire and discharge of civic officials. Then follows a review of the circumstances which led to the action.

Exceeded Its Powers.

Dealing with the conversion of the defendants, that Bouillon was given notice of complaint and a hearing in effect at the secret meeting of the committee of the council held on February 21st, Mr. Justice Stuart says: "In my view there is one simple answer to this, that the resolution of January 30th, providing for the committee set forth certain definite things which the committee was authorized to do, and these were 'to investigate the works that have been done during the last few months and also visit the works that have been done during the last few months and also visit the various departments and then hold their meeting in the council chamber and come to an understanding.'

"Commissioner Bouillon was not mentioned in judgment at all. No authority whatever was conferred on the committee to hear any complaint against him or to deal with him in any way whatever.

"They were clearly given no authority to deal with charges against the commissioner and therefore it is impossible to say that he was given notice of any charges, or an opportunity to answer them through anything that occurred at the committee meeting.

The System of Government.

On the main question whether notice and opportunity to answer were necessary under the provisions of the Edmonton charter Mr. Justice Stuart has the following to say: "The system of government of municipalities by means of an elected council and by committees thereof, whereby the council and its committees exercise all the functions, whether executive, administrative or legislative, has existed in English-speaking countries and I think elsewhere as well, for a long period of time. The fact that it has been in existence so long, has, I think, led to the result that the principles of that system have become to some extent embedded in the consciousness of the people. The system is even yet considered appropriate to small communities. It is not therefore surprising that when a small town has advanced suddenly and rapidly to the condition of an important city, with rapidly growing population and enormous financial expenditure, and when a modification of the old system has been attempted, that the old system should still have a deep hold on the minds of many, that in the endeavor to work the new system the ideas of the old one should struggle for existence, and that there should be great difficulty in breaking away from the past, and in working out the principles which underlie the intended reform. These circumstances are, I think, largely responsible for the present difficulty. The court, however, has to construe the statute as it finds it. It can, of course, have no predilection in favor of one system or of the other, but must give effect to what is in its opinion the true meaning and intention of the existing statute, as revealed by the words actually used by the legislature.

Not Ordinary Employee.

"There can be no doubt that the effect of the statute is to place the commissioners in a position considerably above that of ordinary employees. The purpose of the statute is quite apparently to separate legislative from executive and administrative functions, to place the former in the hands of the council and the latter in the hands of the commissioners. All employees and officials may be suspended by the mayor, but he cannot suspend a commissioner. Great care is to be exercised by the council in the selection of a commissioner, inasmuch as a three-fourths vote is required for his appointment by the council. The real question is whether or not any real restraint has been placed upon the council in the exercise of the power of dismissing a commissioner over and above the requirement of a two-thirds vote.

Section 3 of Title XII. of the charter gives the power to the council to dismiss at will and without cause any official. In the case of a commissioner, however, it is stated that he shall not be dismissed "except for cause satisfactory to the council."

Two Distinct Authorities.

"The cause in effect deals with commissioners only, who are in effect constituted the separate administrative board of the city, and there is therefore every reason in the world for expecting that greater deliberation and care should be shown in the removal of one of that board than in the case of mere subordinates. In my view the statute intended to create, and did create, two distinct authorities, the one legislative and the other executive. The ratepayers are to choose the legislative authority, but instead of putting into the hands of the ratepayers the selection of the executive authority, this power and duty was placed in the hands of the council. Very evident restrictions are imposed upon the act of selection because a three-fourth vote is required. It is impossible to say the members of all executive boards so chosen and with such wide authority as iTtle XVII, Sec. 1, gives to them are to be considered as occupying as weak a position as that of other employes. True a two-third vote upon dismissal is required, but when that restriction is imposed, and in the same breath, the legislature says that there must be cause satisfactory to the council, it is impossible to say that the statute must necessarily be construed in the same way as a statute given power to all subordinates, even to the lowest grade, making no requirement as to a two-third vote, and adding also that the cause must be specified in the order of removal."

In this connection a decision of the House of Lords in Ogoode vs. Nelson, a case arising from the dismissal by the mayor, aldermen and commons of the City of London of a clerk in a small debt court, is cited. The appointee to this position was subject to dismissal "for any cause which may appear reasonable to the mayor."

Must Have Fair Trial.

"An interpretation which the House of Lords placed upon this expression, says Mr. Justice Stuart, "I feel bound to place upon the expression 'for cause satisfactory to the council.' In this case it was held, 'That the person it was proposed to remove should have every opportunity of cross-examining the witnesses brought forward against him or of otherwise opposing the case set up against him, that he should have the power of calling witnesses to prove his own case; and that he should have every possible opportunity which a person can have according to the law and constitution of this country of defending himself and of establishing that he is not liable to amotion.'"

"It seems to me," Mr. Justice Stuart continues, "that these opinions are applicable to the present case and must control it. I am unable to see why a person merely appointed as a clerk of a small debt court should be supposed to enjoy any greater privileges than a municipal commissioner under the legislation I have above described. There are manifold evidences of the purpose of the statute to give the commissioners a fairly independent and almost co-ordinate position. To allow the council to dismiss a commissioner at will would be in effect to make the council the supreme administrative board as well as the legislative board, and that is quite obviously not the general spirit of the statute.

Thrust Dignity on Council.

Something was said by one of the aldermen that would indicate an opinion that any such restriction upon the council's part as my judgment will impose would detract from the dignity and importance of the council. On the contrary, I think that the effect of this judgment will be to thrust dignity upon the council in spite of its evident attempts to avoid it. The true power and authority of the council will not be impaired. It has authority a wide and serious authority, to remove from office one of the members of the supreme executive board of the city government, a man whose services a previous council considered to be worth $10,000 a year. It will be only consonant with the true dignity of both council and commissioners when this grave step is proposed to be taken, that the council should act as a council, with the mayor in the chair and in public, that the commissioner should be informed of the grounds upon which the council proposes to act, and should be given fair and reasonable opportunity to answer the charge which is made against him. The humblest navvy in the city sewers would feel a sense of injury if he were dismissed without some hint from the dismissing power as to the cause of his removal.

Should Consult Solicitor.

"The power of removal of a commissioner lies in the council as such, and it is by or in the council as such, not by or in secret committee, however large, that the cause of complaint should be stated. The council cannot of course be expected to know the law, but they have a solicitor to advise them, and it does not appear that they even sought his advice as to procedure before taking the grave step which they attempted to take. In any event the council may be expected to have some consciousness of the general spirit of the statute under which they are acting, and to endeavor to conform to that rather than to the spirit of a system which has been discarded.

"It is said by counsel for the defendants that this judgment will involve government by injunction. On the contrary it will involve government according to the law and the statute, obtainable in this case unfortunately only by injunction."

The request of the plaintiffs for a declaration that certain of the aldermen who are shareholders in certain limited joint stock companies having contractual relations with the city are disqualified from voting upon a motion for the dismissal of Bouillon, is dealt with as follows:

"In view of the terms of section 6 Title III. I find myself unable to consent to this contention.'

Permitted by Charter.

In this section it is specifically laid down that "No person shall be disqualified from being elected a member of any council by reason of his being a shareholder in any incorporated company having dealings or contracts with the city, or by his having the lease of any property from the city; but no such leaseholder shall vote in council on any question affecting any lease from the city, and no such shareholder shall vote on any question affecting the company."

"The contention, as I understand it, is that owing to the fact that the commissioner has largely to do with the granting of contracts for public works and material to be tendered for and supplied to the city, and that the companies in question are largely interested in contracts of this nature, a vote upon the dismissal of the commissioner would be a vote on a question "affecting the companies" within the meaning of the concluding words of the section quoted.

"The trouble with this argument is that if effect were given to it the result would be quite obviously inconsistent and irreconcilable with the direct denial of disqualification which is made in the first part of the section."

The legislature has said, in effect, that even though a person may be a shareholder in a company having dealings with the city he may yet be elected to the council, and this council is to appoint the commissioners. If it had been intended to disqualify an alderman who is such a shareholder from voting upon so exceedingly important a question as the appointment or dismissal of a commissioner—surely some more specific language would have been used than that which is to be found in section 6.

Door Open to Corruption.

"Would the aldermen in question" asks Mr. Justice Stuart, "be disqualified in a vote for the appointment of a city solicitor because that official may have to advise on the terms of certain contracts with companies in which they are shareholders, or upon the appointment of an auditor who may have to pass upon payments to such companies? To adopt the principle suggested by the plaintiff would lead to such a general disqualification as in my opinion to be inconsistent with the direct assertion of qualification as in my opinion to be inconsistent with the direct assertion of qualification contained in the first part of the section. It is true that where an attempt has been made in drawing the statute to make the municipal machinery present some analogy to parliament and cabinet government by the creation of separate legislative and administrative bodies, the latter depending for its existence upon retaining the confidence of the former, one would not have expected so wide a door to be left open to political corruption as is presented by section 6, but that was a matter for the legislature, not for the court, to deal with. Possibly the legislature may have intended to rely upon a delicate sense of honor in candidates for municipal offices.

"My view is therefore that there is no positive statutory disqualification, but that, on the contrary, whatever general disqualification there might have existed apart from the statute is in effect declared by the statute not to exist at all."

No Proof of Bias.

The remainder of the document deals with the application to restrain certain of the aldermen from voting upon the dismissal of the commissioner on the ground of the bias which is alleged to exist in their minds," and which, upon the evidence, quite clearly does to some extent exist in their minds." His lordship remarks that the absence of precedents here makes this the most difficult branch of the case, and is also to his mind significant. "As the matter appears to me," he says, "it is in a very especial way one of the principal duties of the aldermen under the Edmonton charter to have opinions upon the efficiency of the administration of the municipal affairs by the commissioners. Under the scheme as laid down they are not permitted to have much more to do with it in so far as details are concerned. They pass the bylaws, they supply the money, they appoint the commissioners to carry things out and then they must stand back to watch operations. When the power and the duty of dismissing the commissioners are the only other power and duty which are placed in their hands, it cannot be surprising that, as they sit back and watch, they should form opinions, and as they form them also express them.

"It surely cannot be the purpose of the statute that the aldermen should carefully remain ignorant of affairs, should eschew all knowledge of them, because, knowledge might (and it necessarily must) induce the formation of opinions, should wait like a court of law till some outsider induces a complaint against a commissioner, and then, and then only, proceed to enquire into facts and to form opinions.

Lacked Courage and Fairness.

"It is true that no alderman did have the courage, the sense of fairness or the sense of proper business methods and procedure to stand up in open council and do what I have suggested (and under my judgment it must be done before Bouillon can be dismissed), but that is beside the present point. Most of the open expressions of opinion, as distinguished from the mental and secret entertainment of opinions, have in effect been squeezed out of the aldermen by the plaintiffs' counsel during the course of the case, either in examination for discovery or at trial and in the midst of such hostilities as these proceedings necessarily involve."

Again, later, his lordship says, "The sure of condemnation, must lie in the appointing and removing body, and that being so I cannot see how the expression of every decided opinions by the members of that body can be avoided."

"It was admitted on the argument that the aldermen had what they considered to be satisfactory cause for what they did. Had they adopted the procedure which I have imposed they would perhaps have arrived at the same result as they in effect did arrive at. But I doubt very much whether the court would have listened to a complaint even by Bouillon personally, if, after he had been given proper notice and a full hearing, the aldermen had dismissed him, if his complaint to the court had been based upon the strenuous expressions of opinion by the aldermen before the hearing came on.

Effect of Judgment.

"It may be said that the judgment I am now giving is futile because it prescribed a course of procedure which must necessarily be a farce and with a conclusion already decided upon. I do not look at it that way. The defects of Bouillon's administration, if there are any, will be published, the aldermen will have to justify themselves to the ratepayers by evidence adduced, and in any case a proper precedent will have been established for guidance in future cases. Besides, notwithstanding what some of the aldermen were driven by Mr. Biggar into saying, and notwithstanding the criticism I have made of their mode of proceeding, it is still in my view not entirely impossible that that latent sense of fairness which exists in most men will rise to the surface even in their case and lead them to give Bouillon even yet a fair chance to defend himself, and to acknowledge his efficiency if the evidence shows him to possess it.

"I think it proper to add that this judgment must not be taken as a decision that in no case will the court upon the ground of bias disqualify aldermen under the Edmonton charter from voting upon the dismissal of the commissioner. Possibly the court might do so in any extreme case where outward evidence of bias existed before the proceedings began."

Effect of Judgment.

The judgment concludes with the following statement: "There will therefore be merely a judgment restraining the individual defendants as members from the council as voting upon any motion for the dismissal of Bouillon without there having been first a statement of the charge or charges made against him communicated to Bouillon and an opportunity being given to him to be heard before the council in answer to the charges so made. In case the charges are of inefficiency only specific instances of inefficiency must be given. This judgment will not preclude the council from referring the charges, if made, to a committee to take and report evidence upon them, but the final hearing must of course be before the council itself. When this is done the members of the council must be left to face the ratepayers and account to them for whatever vote they give."

Aldermen to Pay Costs.

The plaintiff is given his costs against the defendants other than the defendants McKinley and Hyndman. "These latter two defendants," says His Lordship, "are entitled to get their costs either from the plaintiffs or from the city. No wrong-doing was alleged against them and their presence was perhaps unnecessary for the purposes of the relief asked for, according to the evidence they are both desirous of doing just what the plaintiff claimed should be done. I think the fairest thing in the circumstances will be to make the city pay these costs."

The City of Edmonton was not a necessary party to the action and therefore no costs are given either for or against the city.

The remaining individual defendants must pay their own and the plaintiff's costs personally and not out of the city funds "for the reason that the whole trouble was due to their personal mistakes in the conduct of their business as aldermen."

A SUMMARY OF THE JUDGMENT

Before dismissing Commissioner Bouillon council must lay definite charges in open meeting and give him an opportunity to make a reply.

Aldermen who are shareholders in companies dealing with the city cannot be disqualified from voting on dismissal by reason of clause in charter.

Request for declaration disqualifying certain of the aldermen from voting on the dismissal because of bias is refused.

Mayor Armstrong and the Aldermen other than McKinley and Hyndman must pay their own and the plaintiff's cost personally and not out of the city funds.

RICH GOLD FIND

Excitement is Running High in Kenora Over the Result of Developments in the Ophir Mine—Quartz Runs in Value High as $500 Per Ton.

Kenora, Ont., April 21—Excitement is running high here over the results of development work in the Ophir mine. At one hundred feet deep the vein is twelve feet wide with an enormously rich streak three feet wide.

Visible gold is found in all parts of the vein and rich strike is producing specimens showing nuggets leaves and wires of solid gold in quartz which gives values of $500 and upwards per ton. Some of the specimens are richest in visible gold ever seen in this or any other district. The opinion of conservative mining capitalists who have seen the mine and its present rich showing that it will be the richest gold mine on the continent.

Gas at Bow Island.

Lethbridge, April 21—A gas well was struck at Bow Island yesterday by the Alberta Natural Gas and Fuel Company, which has a franchise to supply gas to Lethbridge and Calgary. It is half a mile from Old Glory and the pressure is said to be equal to this famous well. The company are boring three other wells and are confident of getting gas at all. The new well is named Lethbridge Number One.

CAMROSE ENDORSES WATERWORKS BYLAW

System to be Installed at Once. Ratepayers Approve Several Bylaws Submitted. C. N. R. Line Camrose to Strathcona to be Built This Year According to Report.

Bulletin Special.

Camrose, April 21—That the town of Camrose will see the installation of waterworks and sewerage system by fall was assured today when the taxpayers went to the polls and with only one exception voted in favor of the bylaw. The 1910 voters list had to be used and a property qualification was required, otherwise the vote of the citizens would have been much larger. A great deal of the work preparatory to actual construction has been provisionally done, and now that the bylaw has carried, a large force of men will be required to commence at once on the installation of the system and push it to completion.

A plebiscite of the ratepayers was also taken on the question of having the legislature grant permission at the next session for extending the debenture issue from twenty to forty years. The grant of $25,000 to the board of trade was also before the ratepayers. Both questions were approved by an almost unanimous vote.

Word reached here this week that the C. N. R. line from Camrose to Strathcona will be built and that a gang of men will begin work at Camrose on Monday along the line surveyed last year.

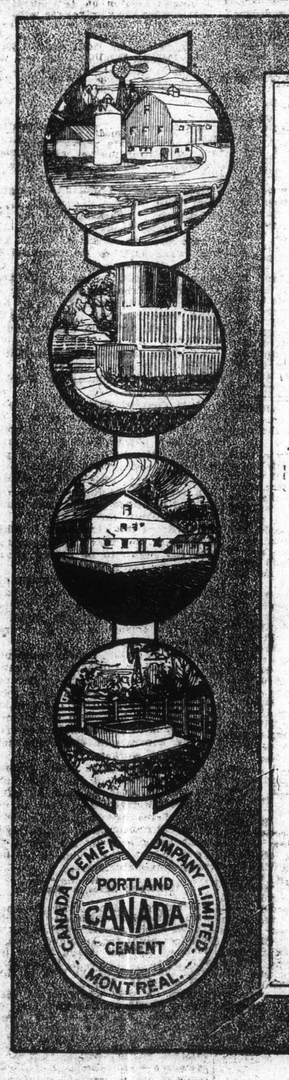
The board of directors of the Scandinavian College met at Camrose on Friday and completed the plan for the college building. Tenders are called for and work will commence as soon as possible. The college will require accommodation for 200 students by fall and will open with teaching staff of five.

Unable to Discuss Church Union.

Goderich, Ont., April 23—Because the matter of union with the Methodist church had not been properly presented, the evangelical church conference in session here was unable to discuss the topic.

NEW $50,000 BLOCK FOR SECOND STREET.

Tenders have been called for a block to be erected on Second street at a cost of about $50,000 by J. A. Lockerbie. The building will be situated on the west side of Second street, between La Courier de l'Ouest and the First Baptist church, on the corner of Second and Athabasca avenue. It will be 100x50 feet, three storeys high. The ground floor will be used for a warehouse for the J. A. Lockerbie & Son, and the King Edward sample rooms and the first and second floors as offices. The framework will be of steel and the walls of brick. The tenders will be opened and the contracts awarded on April 29th.



$3,600 in Cash Prizes for Farmers

ARE you one of the thousands of Canadian farmers who have used or intend using Canada Cement for the construction of some farm utility? If you contemplate building anything whatsoever of concrete, make up your mind right now to build it with a view to winning one of the prizes we are offering. Read the rest of this announcement and you will learn how you may try for a share in the $3,600 we are giving away, to encourage the use of cement upon the farm. Throughout Canada the farmers have taken such a keen interest in our campaign that it has inspired us to go further along these educational lines. We have decided, therefore, to offer a series of four $100.00 prizes to each of the nine Provinces, to be awarded as follows:

PRIZE "A"—$100.00 to be given to the farmer in each Province who will use during 1911 the greatest number of bags of "CANADA" Cement for actual work done on his farm.

PRIZE "B"—$100.00 to be given to the farmer in each Province who uses "CANADA" Cement on his farm in 1911 for the greatest number of purposes.

PRIZE "C"—$100.00 to be given to the farmer in each Province who furnishes us with a photograph showing best of any particular kind of work done on his farm during 1911 with "CANADA" Cement.

PRIZE "D"—$100.00 to be given to the farmer in each Province who furnishes the best and most complete description of how any particular piece of work shown by photograph sent in, was done.

In this contest no farmer should refrain from competing, because of any feeling that he may have little chance against his neighbor who he thinks might use more cement than he does.

For it will be noted that Prizes "C" and "D" have no bearing whatever on quantity of cement used. The man who sends us the best photograph of so small a thing as a watering trough or a hitching post, has as much chance for Prize "C" as a man who sends a photograph of a house built of cement—and the same with Prize "D" as to best description.

Canada Cement is handled by dealers in almost every town in Canada. Should there not happen to be a dealer in your locality, let us know and we will try to appoint one.

Contest will close on November 15th, 1911, and all photos and descriptions must be in our office by that date. Awards will be made as soon as possible thereafter. The jury of award will consist of: Prof. Peter Gillespie, Lecturer in Theory of Construction, University of Toronto; W. H. Day, Professor of Physics, Ontario Agricultural College, Guelph; and Ivan S. Macdonald, Editor of "Construction."

Now, you cannot hope to do concrete work to the best advantage unless you have a copy of our free book, entitled, "*What the Farmer Can Do With Concrete.*" This book tells how to construct well-nigh anything on the farm, from hitching post to silo. Whether you enter the contest or not, you'll find this book most helpful. A postcard asking for the book will bring it to you promptly. Send for your copy tonight. From your cement dealer or from us, you can obtain a folder containing full particulars of contest. If you send to us for it, use the coupon provided in this announcement.

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MONTREAL, QUE.

Please send me full particulars of Prize Contest. Also a copy of "*What the Farmer Can Do With Concrete.*"

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