

the corporation the most ample powers to contract, and sue and be sued, which the Civil Code gives them also. It is not a law they have passed to give a monopoly, it is a bargain they have made with another; and by law (see art. 1023 C. C.) contracts affect only the parties to them: they cannot affect the rights of others. The corporation have agreed with this company that for 8 years no one else shall put down pipes in the streets. Does any one imagine that another company would be stopped by that, if they had a right by their charter to do it? The only effect of violating the stipulation made between the city and the company in that case would be that the former would be liable in damages to the latter; and to resort to the argument, if it can be called argument, that the corporation would probably refuse the permission which the statute requires in such cases, is to ignore the power of the law to compel them.

I decline to notice the effect of the present contract which it is here sought to defeat. It is said to be far better for the city than the former one, and it is, as far as I can see, far better in many respects—for both contracts are before me, and I cannot fail to see the difference, and the improvement—but all this has really nothing to do with the legal question, which is, not whether the city has made a good bargain or a bad bargain—but whether it has made an illegal bargain. I think it will be conceded, upon reflection, by the learned gentlemen who so ably put the plaintiff's case before the Court, that in the eye of the law there is no illegality in this transaction. That even if there is, an interim order would be useless. That there is no monopoly in the legal sense of the word, and no excess of power.

Occupied up to late yesterday afternoon in the Court of Review, I could only look at this case very late last night, and I thought that the above considerations would be sufficient to dispose of it. This morning, however, I have found time to look further into it, and I would draw the attention of the parties to the nature of this proceeding. Does not the Art. 997, as modified by Art. 1016 of the C. of P. apply to this case? Can a private individual take this proceeding at all? In the

case of *Molson v. The Mayor*, etc., decided by me in June, 1873, it was held that the action, which was analogous to this, must be brought by the Attorney-General, and that decision was confirmed in appeal. However, I only throw out this for the consideration of the parties, as the point not having been raised, has, of course, not been discussed, and therefore cannot be decided now.

Again, as regards the point of "monopoly" which is a taking word, and might easily frighten the uninformed, I find on looking at English gas company statutes that they often exclude other companies from competition; the object being well understood to be the prevention of coalitions, and arbitrary prices, or what would be quite as bad, the deterioration of quality in the gas supplied.

I have given this case all the attention in my power, and I am of opinion that the signing the writing evidencing this contract would not change the position of the parties; that if there is illegality, it is illegality which will be as effectual against the contract when it is put on paper and has a seal or a signature attached, as it would be without the ink or the sealing wax. I have serious doubts whether the only recourse, if the thing is illegal, would not be by action in the name of the Attorney-General; and on the main points of such illegality as have been suggested—on the point of monopoly, and the point of invasion of the right of private contract, I am against the petitioner's facts and conclusions of fact.

Therefore the order asked for is refused, and the petition dismissed with costs.

*Greenshields & Co.*, for the plaintiff.

*R. Roy, Q.C.*, for the city.

*Lacoste & Co.*, for the *mis en cause*.

#### COURT OF REVIEW.

MONTREAL, Jan. 31, 1884.

Before JOHNSON, DOHERTY & JETTE, JJ.

STÉ. MARIE V. AITKIN et vir, and McDUGALL et vir, opposant.

*Judicial sale—Possession.*

*Effects purchased bona fide at a judicial sale, and left in the possession of the defendant by the purchaser or his transferee, may be claimed by the owner and the sale thereof prevented, if such effects are seized at the suit of another creditor of the defendant.*