

Present: Drieberg J.

WEERASURIYA *v.* SENEVIRATNE.

310—P. C. Matara, 45,262.

Local Government—Member of Urban District Council—Auction of leases—Bid on behalf of another—Concern in contract—Ordinance No. 11 of 1920, s. 237 (1).

Where, at a public auction, at which an Urban District Council put up for competition the lease of certain blocks of land, a member of the Council, with the permission of the Chairman, bid for and obtained a lease on behalf of another person, whose name was given as that of the purchaser,—

Held, that under the circumstances the member was not “concerned in a contract with the Council” within the meaning of section 237 (1) of the Local Government Ordinance.

THE appellant, a member of the Urban District Council of Matara, was convicted of an offence under section 237 of the Local Government Ordinance, No. 11 of 1920, and sentenced to pay a fine of Rs. 20. The section penalizes any member, officer, or servant of the Council “who shall be either directly or indirectly concerned in any contract or work made with or executed for the Council.” It appears that the Urban District Council, having resolved to lease certain blocks of land which it owned, put them up for public auction. The sale was carried out by a Sub-Committee consisting of the Chairman, the Vice-Chairman, Mr. W. Gooneratne, and the appellant. For a certain lot, the appellant, with the permission of the Chairman, bid Rs. 10 on behalf of one D. A. Ranaweera. As there was no advance on the bid, it was accepted and the name of Ranaweera was entered as the purchaser. The learned Police Magistrate convicted the appellant.

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Hayley, K.C. (with Weerasooriya), for accused, appellant.—There is no completed contract, only an auction to sell a right. The offender must be “concerned” or “interested in” the contract. An interest in the contractor is no interest in the contract. A thing may be interesting to a person, and yet he may not be “interested in.”

This is a penal provision and must be strictly construed. The benefit of any doubts must be given to the accused. (See *Everett v. Griffiths*¹ and *Ford v. Newth*.²)

H. V. Perera (with Basnayake), for respondent.—A completed contract is not necessary. Here is a contract. A valid offer and an acceptance. Ratification of the contract does not enter into the question. What the provision seeks to prevent is that conflict of interest and duty. The “interest in the contract” and the duty to the Council. A member cannot appear in two roles. His primary duty is to look after the affairs of the Council. This should not be allowed to clash with his interest in contracts with the Council. Local Government should be pure, and even the semblance of suspicion should be avoided.

Counsel cited the following authorities:—*Barnack v. Clark*,³ *Todd v. Robinson*,⁴ *England v. Inglis*,⁵ *Hyde v. Hosford*,⁶ *Nutton v. Wilson*.⁷

July 12, 1928. DRIEBERG J.—

The appellant, a member of the Urban District Council of Matara, was convicted of an offence under section 237 of the Local Government Ordinance, No. 11 of 1920, and sentenced to pay a fine of Rs. 50. By this section any member, officer, or servant of any District Council who “shall be either directly or indirectly concerned in any contract or work made with or executed for the Council” is liable to a fine not exceeding Rs. 500 and becomes incapable of sitting as a member of the Council or holding any office or employment under the Ordinance.

The Urban District Council of Matara resolved to lease certain blocks of land which it owned. Each lease was to be for a term of 33 years, and the lessee was obliged to erect a building approved by the Council to cost Rs. 3,000. The Council put up to auction the right to the leases, the amount so paid being in the nature of a premium. The sale was carried out by a Sub-Committee consisting of the Chairman, the Vice-Chairman, Mr. W. Gooneratne and the appellant. For the lot in question, No. 18, there was a bid of Rs. 5 by Charles Abeysooriya, the appellant bid Rs. 10, and as there was

¹ (1924) 1 K. B. 941.

² (1901) 1 K. B. 683.

³ (1900) 1 Q. B. 279.

⁴ 14 Q. B. D. 744.

⁵ (1920) 2 K. B. 636.

⁶ (1911) 46 Ir. L. J. 59.

⁷ (1889) 22 Q. B. D., p. 744.

no advance his bid was accepted, and the name of D. A. Ranaweera was entered as purchaser and a receipt in his favour granted to the appellant. The respondent says that the appellant bid and purchased the land for himself, and that he got the receipt drawn in Ranaweera's favour merely for deception.

The learned Police Magistrate, however, in a very full and carefully considered judgment has found that the conduct of the appellant was quite straightforward and honest.

The facts are these. The appellant, who is a notary, was much interested in this sale. Twenty-five copies of the sale notice were sent to him by the Secretary, and he thought it his duty to distribute these among his friends. A day before the sale, D. A. Ranaweera, a person of substantial wealth and a friend and client of the appellant, asked him to bid for him at the sale for one lot up to Rs. 100. Before the sale started he told the Chairman, Mr. G. P. Keuneman, of Ranaweera's request and inquired whether there was any objection to his bidding on behalf of Ranaweera, and Mr. Keuneman said that he saw no harm in his doing so. He appears to have done so quite openly; he spoke in Sinhalese, and in the presence of the other members of the Committee. This was heard by Mr. W. Gooneratne, but not by the Vice-Chairman, Mr. R. B. Gunaratne. The Secretary issued the receipt in favour of D. A. Ranaweera on the directions of the Chairman.

The sale was subject to the approval of the District Council and of the Local Government Board, and if allowed the purchaser would be entitled to the lease.

Now, the appellant was to have no share in the lease, he got no advantage pecuniary or otherwise by Ranaweera being declared the purchaser of it, and if his action brings him within this section, it must be for the reason only that he represented Ranaweera; personal concern in the contract he had none. Mr. Hayley contended that even if his concern or interest in the transaction was of the nature contemplated in this section, the transaction was not a "contract or work made with or executed for the Council." The conditions of sale and the purchase were not notarially attested, the whole transaction was dependent on the sanction of the Council and the Local Government Board, and it is true that there was no legally enforceable contract to lease.

I cannot agree with this contention. The acceptance of the final bid did create contractual rights, though the right to the lease depended on other conditions; the Chairman was bound to submit Ranaweera as the highest bidder, and it gave him the right, which he could enforce, to have his claim to the lease considered by the Council and the Local Government Board. If this contention is correct it would enable a Councillor to agree with the Council for

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the execution, e.g., of a lease in which he had a financial interest and evade the law by disposing of his interest before execution of the deed of lease.

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The question in this appeal is one of great importance, and though it has not expressly come up for decision in any of the numerous cases on similar enactments in England, the principles underlying recent decisions lead to the conclusion that the appellant's conduct is not within the section.

It was observed by McCardie J. in *Everett v. Griffiths*¹ that it was a matter for comment that Parliament in dealing with the same subject-matter should for no apparent purpose use different instead of similar words in the various enactments. He said this with reference to the wording of section 12 (1) (c) of the Municipal Corporations Act, 1882, where the words were "has directly or indirectly by himself or his partner any share or interest by himself or his partner in any contract with, by, or on behalf of the Council"; he held that in substance these words were similar to those in section 46 of the Local Government Act of 1894, and that the decisions on the former should not be overlooked in dealing with the latter, with which the case was concerned.

Section 46 of the Local Government Act of 1894 uses these words: " concerned in any bargain or contract entered into with the Council or Board or participate in the profits of any such bargain or of any work done under the authority of the Council or Board."

In *Everett v. Griffiths* (*supra*), the defendant, who was a member of a board of guardians was employed as manager of their wheelwright's shop by a dairy company which had a considerable contract with the board for the supply of milk. The defendant wielded a powerful influence on the board, and when several tenders were opened, including one from this company, which was not the lowest, he moved a resolution, which was carried, that amended tenders be called for, and the tender of this company was then accepted. He received no bonus from the company, or any sum in respect of the contract in question. The defendant's membership of the board stabilized his position with his employers (the company), and gave him indirectly many possible advantages, but it was held that he was not concerned in the contract. It was said that a man was "concerned" in a contract if he was in any way a party to it, whether as sole contractor or as a partner or as an undisclosed principal.

*Lapish v. Braithwaite*² was a case under the Municipal Corporations Act, 1882; I have quoted the material words of the section in question. The defendant was the managing director on a fixed

¹ (1924) 1 K. B. 941.² (1925) 1 K. B. 474 (A. C.); 131 L. T. 586; (1926) A. C. 275; (H. of L.); 134 L. T. 481.

salary of £2,400 a year of a company which had a large contract with the Corporation of Leeds, of which he was alderman. The only evidence in reference to his taking any part in the making of the contract consisted in the fact that he was one of the directors of the company who signed the document as witnesses to the affixing of the company's seal. The correspondence which led up to the contract was conducted by the secretary of the company. The Court of Appeal, following the principle in *Everett v. Griffiths (supra)*, held that the defendant had no interest in the contract.

What was said by McCardie J. to be the most striking extension of the meaning of the words "share or interest in any contract" was given in the case of *England v. Inglis*¹; it was an action under section 12 of the Municipal Corporations Act, 1892. The defendant councillor was a jeweller and optician, and had a son who was a paid assistant in his shop. The son took a contract for the supply of spectacles to the City Council's schools. The defendant had no share in the son's contract, but he allowed him to do the contract work in his shop, and when the son was on war service he had paid for an assistant to do the contract work. If the son had to pay establishment charges there would have been no profit in the contract. The spectacles were supplied in cases which bore the son's name and the address of the defendant's shop. Though the defendant had in some ways a pecuniary interest of an adverse kind in the contract the burden was not sustained for nothing, for there was the possibility, even the probability, of an actual benefit to the defendant from the useful advertisement of his business on the spectacle cases, and that this gave him a reasonable expectation of a pecuniary advantage in the contract.

These cases show clearly that the "concern or interest" must be in the contract itself, and not merely an interest in the contractor or his business such as an employee would have. Such an interest the appellant in this case did not have. It was contended that the action alone of the appellant in bidding on behalf of Ranaweera made him concerned or interested in the contract. I might deal with this by quoting the following passage from the judgment of Scrutton L.J. in *Lapish v. Braithwaite (supra)*:—

"A man may be interested in a thing without having an interest in it. But in any event I cannot think that the relation of an employee paid by fixed salary to his company involves an interest, even indirect, in the contracts made by his company within the meaning of a penal statute, even if he takes part in negotiating or performing those contracts."

Considering the facts of the case the concluding words of this passage cannot be taken as altogether *obiter*, but even so, they are in keeping with the principle underlying the cases referred to. If

¹ (1920) 2 K. B. 636; 123 L. T. 576.

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the appellant could have acted as he did if he was the paid servant of Ranaweera his case here is stronger, for he acted without fee or reward.

The Magistrate has dealt with another aspect of the case as a reason for his finding. He finds that the appellant's conversation with the Chairman was not heard by the people present—it was not heard by the Vice-Chairman and the Secretary—and that he could fairly assume that intending bidders believed that the appellant was bidding for himself and did not wish to bid against a councillor, Charles Abeysooriya said that he had the rent of a market from the Council and that he did not wish to bid against a councillor; his was the first bid, and he did not bid further for this reason. The appellant says this would not deter Abeysooriya, who has brought actions against the Council and is in no fear of him. It should, I think, have been made clear to those present that the appellant was not bidding for himself. This may be a matter for consideration when the sale has to be confirmed, but it has no bearing on the question of the appellant's liability.

I allow the appeal, and set aside the conviction and sentence.

Set aside.

