

## Les Cahiers de droit

# Aliénation d'affection



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# Jugements inédits

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## Aliénation d'affection

H. v. S.,  
C.S. Montréal, 713252, 15 avril 1970  
Juge COLLINS

### SOMMAIRE \*

*Une action en aliénation d'affection doit être rejetée lorsque les circonstances démontrent que, lors de l'adultère de l'épouse du demandeur avec le défendeur, il n'existait plus d'affection entre les époux.*

*Il en est ainsi lorsque, comme dans l'espèce, l'adultère se place sept mois après la séparation de fait des époux, alors que leurs relations maritales ont cessé plusieurs mois auparavant et que des procédures ont été intentées par l'épouse du demandeur à la suite de cette séparation de fait. De plus, rien n'indique que le demandeur serait retourné vivre avec son épouse si l'adultère n'avait pas eu lieu, et, au contraire, les circonstances démontrent que l'adultère commis par son épouse a été pour le demandeur le prétexte qu'il cherchait pour faire dissoudre son mariage.*

*Etant donné la mauvaise conduite du défendeur, l'action est rejetée sans frais.*

### NOTES DU JUGE

The facts of the case are the following :

The plaintiff was married to Dame C. in Montreal, Quebec, on the 8<sup>th</sup> day of February 1961. He lived for five years with his wife in an apartment at 3510 M. Street in a building of which the defendant became part owner in 1963. He left his wife in September 1965 and moved to the Royal Embassy Hotel where he remained for some time after which he moved in February 1966 to an apartment at 1420 St. M. Street from which he moved in 1967 to where he is now living also on St. M. Street. He testified that his sales staff gave him a dinner in September. When he returned to his apartment that evening, his wife was in an argumentative mood although he claimed that she knew where he had been. In any event, he said that his wife smashed the decanter and the glasses on the floor and told him that she did not want him with the result that he moved out the next day and has not lived with her since. His marital relations with his wife ceased about four or five months before that time. In January 1966 his wife instituted separation proceedings against him which were contested by him but did not come to trial before the plaintiff obtained a divorce from his wife which is hereinafter referred to. Prior to September 1965, he began to suspect that his wife was guilty of misconduct. Sometime in February 1966 after the separation proceedings has been instituted, he engaged detectives to investigate her conduct.

\* Ce sommaire est l'œuvre de M<sup>e</sup> Philippe KIRSCH, étudiant en maîtrise à la faculté de Droit de l'Université de Montréal.

The defendant testified that he first met the plaintiff's wife on April 14<sup>th</sup>, 1966 at 9 p.m. in her apartment when he went to see her in connection with the renewal of the lease of her apartment. Previously on December 6<sup>th</sup>, 1965, the plaintiff has written a letter to the defendant (Exhibit D-2) stating that he did not intend to renew the lease which expired on April 30<sup>th</sup>, 1966. His wife continued to live in the apartment after he left her. The defendant said that the wife only wanted to remain in the same apartment for, at least, six months as she was waiting for the outcome of legal proceedings with her husband and also until her son graduated from College. She told the defendant that the plaintiff had left her and that divorce or separation proceedings (the defendant did not recall which) has been instituted. He admitted that he had had sexual relationship with her commencing ten days or two weeks after April 14<sup>th</sup>, 1966 and that these relations took place about once a week thereafter. He also admitted that he went to New York with her on May 7<sup>th</sup> or 8<sup>th</sup>, 1966 and had sexual relations with her. The plaintiff admitted that he was married previously and have been divorced in 1952 on account of his adultery. The evidence also established that the plaintiff's wife also committed adultery with another party after the plaintiff left her. The plaintiff obtained a divorce from his wife on the ground of her adultery with the defendant by Act of the Parliament of Canada enacted on the 1<sup>st</sup> day of October 1968.

#### REASONS FOR JUDGMENT

1. The defendant admitted that he had committed adultery with the plaintiff's wife on numerous occasions. It was proved also that the wife committed adultery with another party.

2. The evidence established that the plaintiff left his wife in September 1965 at which time he suspected her of misconduct but had no specific knowledge. The adulteries committed with the defendant only occurred after April 1966 some seven months after the plaintiff had left his wife.

3. There was no evidence that the plaintiff was willing to return to live with his wife even if the adulteries had not intervened.

4. The question therefore resolves itself into whether or not the defendant alienated the affections of the wife. On the evidence as made, the affection of the plaintiff for his wife and of her for him had ceased finally in September 1965. For four or five months previous to that time there was no marital relationship between them. However reprehensible the conduct of the defendant was, the Court cannot say on the evidence that there was any alienation of affection of the wife for the plaintiff by reason of the defendant's misconduct with her. If the evidence had established that the plaintiff was willing to return to his wife and had not done so because of her misconduct, then there would have been grounds for alienation of affection. Under the practical circumstances, the Court has come to the conclusion that the defendant did not alienate the affections of the said wife for the plaintiff because such affections had ceased permanently some seven months before the defendant met the said wife for the first time.

5. The plaintiff claimed a total of \$75,000 by way of damages made up as follows :

« Humiliation et angoisse morale causées au demandeur par les agissements du défendeur avec son épouse à la connaissance et aux yeux de ses amis et associés .....	\$25,000
Perte de l'amour de sa femme .....	\$40,000
Frais d'aménagement et loyer d'un nouvel appartement qu'a dû louer le demandeur .....	\$ 5,000
Frais d'avocat occasionnés au demandeur .....	\$ 2,000
Frais des détectives et investigateurs occasionnés au demandeur .....	\$ 3,000
	<u>          </u>
TOTAL:	\$75,000 »

Insofar as the claim for \$25,000 and \$40,000 above mentioned are concerned, the Court is satisfied that there was no humiliation or moral anguish caused to the plaintiff as a result of the defendant's misconduct. There was certainly no loss of love of his wife because of such misconduct. These two claims have therefore no merit.

With regard to the claim for \$5,000 the plaintiff moved out of the apartment in which he had been living with his wife in September 1965 and set up a separate apartment for himself which was not in any way caused by the defendant's misconduct.

With regard to the claim for \$2,000 and \$3,000 the plaintiff first engaged detectives to investigate the conduct of his wife in February 1966. They were not engaged to check upon the relationship of his wife with the defendant because such relationship did not exist at that time. It is obvious that he wanted to divorce his wife and was looking for evidence to justify divorce proceeding. As far as he was concerned, it did not matter with whom his wife committed adultery. He wanted to break his marriage ties by divorce and was satisfied to hire and pay detectives in an endeavour to accomplish that purpose. The misconduct of the defendant only gave him the opportunity which he wanted that is to have grounds to divorce his wife which he did. When the detectives obtained the necessary evidence, it was necessary to engage lawyers to pursue the proceedings before the Senate at Ottawa, Ontario. These lawyers were engaged by the plaintiff solely for the purpose of assisting him to carry out his intention to divorce his wife. Under such circumstances, the Court is of the opinion that he is not entitled to claim these amounts from the defendant because the misconduct of the defendant only gave rise to the opportunity to the plaintiff to accomplish what he desired, that is, to get rid of his wife by divorce.

6. The plaintiff's action must therefore be dismissed but in view of the admitted misconduct of the defendant, it should be dismissed without costs.

#### JUDGMENT

THE COURT therefore DISMISSES the action of the plaintiff without costs.

## **Droit du travail**

FRATERNITÉ INTERNATIONALE DES OUVRIERS EN  
ÉLECTRICITÉ, LOCAL 568 v. BÉDARD-GIRARD LTÉE,  
Cour d'Appel, Montréal, 11741, 14 mai 1969

Declinatory exception — Collective labour agreement — Illegal strike in violation of clause thereof — Action in damage instituted against the labour union — Cause of action not based on grievance to be settled by arbitration under the terms of the agreement — Jurisdiction of the Superior Court — Labour Code (S.R.Q. 1964 c. 141) art. 1g, 88, 89, 90 — C.P.C. art. 31.

#### OPINION OF MR. JUSTICE HYDE

This is an appeal from an interlocutory judgment of the Superior Court, District of Montreal, dated November 17<sup>th</sup>, 1968 dismissing Defendant's declinatory exception.

The Defendant union was sued for \$150,000 damages for organizing a strike against the Plaintiff company contrary to the provisions of a collective