Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lapointe v. *L'Association de Bienfaisance et de Retraite de la Police de Montréal, from the Court of King's Bench for the Province of Quebec; delivered the 27th July* 1906.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DUNEDIN.
LORD ATKINSON.
SIR ARTHUR WILSON.
SIR HENRI ELZÉAR TASCHEREAU.

[*Delivered by Lord Macnaghten.*]

The Appellant Lapointe, who was Plaintiff in the action, was a member of the Montreal Police Force for 20 years. He resigned on the 1st of March 1902. His resignation was accepted on the 8th of the same month. He was also a member of the Respondent Association, the Montreal Police Benevolent and Pension Society —a Society incorporated by Statute and governed by rules, published in both English and French, to which all members of the Society are bound to conform. On retiring from the force Lapointe became qualified for a pension and entitled, subject to the rules of the Society, to have his name placed on the pension roll.

The affairs of the Society are managed by a Board of Directors composed of nine members. The Superintendent of Police is *ex officio* a member and Chairman of the Board. The other members are elected in accordance with the rules.

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The material rules are the 23rd and the 45th. Rule 23 declares that

"Every application for a pension, gratuity, or aid must come "before the Board, when the whole circumstances of the case "will be fully gone into."

Rule 45 is in the following terms:—

"Any member entitled by length of service to a gratuity or "pension who is dismissed from the Force, or is obliged to "resign, shall have his case considered by the Board of "Directors, and his right to such gratuity or pension "determined by a majority of the Board."

The French version differs slightly in language and structure. It may be translated as follows:— "It shall be the duty of the Committee"— meaning evidently the Board—"to deliberate on "the case of a member who, having a right to "a gratuity or a pension, shall be dismissed from "the Police or obliged to give in his resignation. "The majority of the Committee shall decide "whether such pension or gratuity should be "accorded to him."

Two questions were debated at the Bar (1) whether Lapointe was "obliged to resign" within the meaning of Rule 45 and, (2) whether his case was duly considered and determined by the Board.

On the first question their Lordships have come to the conclusion that Lapointe must be treated as having been "obliged to resign."

In February 1902 he was suspended and an enquiry into the circumstances of his suspension was about to be held. Then he sent in his resignation. It was accepted by the authorities who thereupon withdrew all charges against him. It appears that at the time he felt himself much embarrassed by a pledge which he had given when he got into trouble on a former occasion to the effect that, if he should again incur the censure of his superiors, he would save all further trouble by resigning. There can be no doubt that he was under the apprehension that he might fare worse if an enquiry were held.

Then comes the question whether his case was fairly dealt with by the Board.

The conduct of the Board was most extraordinary. They first appointed a committee of four from their own body to investigate the reason of Lapointe's resignation. There would have been no objection to this course if the committee had been deputed to consider and report whether or not there was a *primâ facie* case for enquiry. But what the committee did was to listen to all sorts of stories about Lapointe's past history, and rake up everything that was against him during his connection with the force. Then, without telling Lapointe what the charges against him were, or giving him any opportunity of defending himself, they advised the Board that the pension should be refused. Thereupon, the Board abnegated their judicial duties altogether. They summoned a general meeting of the members, and submitted a question, which they were bound to determine themselves, to a popular vote. The meeting was held on the 26th of April 1892 when by a large majority of the members present it was resolved that Lapointe's name should not be entered on the pension roll of the Society.

The whole of these proceedings were irregular, contrary to the rules of the Society, and above all contrary to the elementary principles of justice. And the position of the Board was certainly not improved by a formal resolution stating solemnly, what was contrary to the truth, that after having inquired into the facts and circumstances which brought about Lapointe's resignation, and having deliberated upon his claim the Board "decides that "the pension on which he claims be refused, "seeing that he was obliged to tender his "resignation." The Respondents in their printed case actually rely on this resolution as concluding

the whole matter on the ground that, being certified by both the President and Secretary of the Society, its contents under the charter of the Society "have to be accepted as fully proven."

It is obvious that the so-called determination of the Board is void and of no effect.

It is hardly necessary to cite any authority on a point so plain. The learned Counsel for the Appellant referred to two well-known club cases before Sir George Jessel, M.R., *Fisher* v. *Keane*, 11 Ch. D. 353, and *Labouchere* v. *Earl of Wharncliffe*, 13 Ch. D. 346. It may be worth while to mention a later case before the same learned Judge in which he refers to the case of *Wood* v. *Woad* (L.R. 9 Ex. 190) in the Exchequer and expresses regret that he was not acquainted with that case when those club cases were decided; see *Russell* v. *Russell*, 14 Ch. D. 471.

"It contains," he says (p. 478), "a very valuable statement "by the Lord Chief Baron as to his view of the mode of adminis- "tering justice by persons other than judges who have judicial "functions to perform which I should have been very glad to "have had before me on both those club cases that I recently "heard, namely, the case of *Fisher* v. *Keane* and the case of "*Labouchere* v. *Earl of Wharncliffe*. The passage I mean "is this, referring to a committee: 'They are bound in the "'exercise of their functions by the rule expressed in the "'maxim *audi alteram partem*, that no man should be "'condemned to consequences resulting from alleged mis- "'conduct unheard, and without having the opportunity of "'making his defence. This rule is not confined to the "'conduct of strictly legal tribunals, but is applicable to every "'tribunal or body of persons invested with authority to "'adjudicate upon matters involving civil consequences to "'individuals.'"

Then the Master of the Rolls says,—

"I am very glad to find that that eminent Judge has arrived "at the same conclusion which I arrived at independently, but "I should have been still more glad had I been able to fortify "my conclusion by citing this, which I may call a most "admirably worded judgment."

Now what was the duty of the Board when Lapointe's claim was brought before them? What powers had they under the rules? If one

compares the two versions, the French and the English, it is clear on the one hand that in the case of a member dismissed or obliged to resign, the Board have to determine whether the pension to which he is *primâ facie* entitled should be accorded to him. But on the other hand it is equally clear that the appeal to the Board is allowed to a member in order to prevent his case being held concluded by the mere fact of dismissal or forced resignation. It is not enough to find that the member was obliged to resign. The Board of Directors thought that finding of itself conclusive; so did the Court of Appeal. But that is the very circumstance which gives the member the right of appeal to the Board. The Board have to enquire into the circumstances of the dismissal or forced resignation. It is not open to them to review the past career of a member who claims a pension, and forfeit rights acquired by length of service and regular contribution to the Fund, on the ground that faults which his employers have condoned or overlooked are, in their judgment, so grave as to justify them in punishing him by inflicting the extreme penalty of forfeiture. The Board of Directors must bear in mind that they are judges, not inquisitors.

So far the case seems to be simple enough. What remains is not so easy. Their Lordships have anxiously considered what order ought to be made now under the circumstances of the case. The action in substance, though not in form, is an action to administer the trusts of the pension fund and to compel the trustees, that is the Board of Directors, to administer those trusts in Lapointe's case in a proper and legal manner. The Board before whom Lapointe's case came have acted in a manner so grossly unfair and improper that their Lordships could not allow the case to go again before the same tribunal. Under-

standing, however, that the members of the tribunal will not be the same, as the Board is now composed of new members, their Lordships think that so extreme a measure is not required. At the same time, they think that the action ought to be retained in the Superior Court and that the Court ought to keep its hand over the future proceedings of the Board of Directors in Lapointe's case.

Their Lordships think that the purposes of justice will be met by an order to the following effect:—

Declare that in the events which happened the Appellant Lapointe ought to be considered as having been obliged to resign within the meaning of Rule 45.

Declare that the proceedings of the Board in Lapointe's case were not a due consideration and determination of the matter before them as required by Rule 45, and that the said proceedings were null and void.

Discharge the Order of the King's Bench and, except as to costs, the Order of the Superior Court.

Remit the action to the Superior Court.

Order the Respondents to pay the costs of the Appeal to the Court of King's Bench.

Declare that unless the Board of Directors forthwith or within such time as shall be allowed by the Superior Court proceed duly to consider and determine the claim of the Appellant to a pension, the Appellant will be entitled to have his name inscribed on the pension roll of the Society.

Liberty for the Appellant and the Respondents and the Board of Directors respectively to apply to the Superior Court as to the conduct of any proceedings which may be taken in reference to the consideration

and determination of the Appellant's claim to a pension, the composition of the Board of Directors summoned to consider and determine the question, and as to subsequent costs, and generally as to any matter incidental to or consequential upon this Order.

Their Lordships will humbly advise His Majesty that an Order ought to be made to the effect of the above minutes.

Their Lordships regret that the costs of the Appellant will fall upon the fund, and that they have no means of throwing these costs on the persons who are really to blame.

The Respondents will pay the costs of the Appeal.