

In the Privy Council.

No. 20 of 1933.

*On Appeal from the Supreme Court of
Canada.*

BETWEEN

CLIFFORD B. REILLY

(Petitioner) Appellant,

AND

HIS MAJESTY THE KING

(Respondent) Respondent.

CASE FOR THE APPELLANT.

BLAKE & REDDEN,
17, Victoria Street, S.W.1.

declared that Appellant is entitled to be paid \$17,300 and interest, for the following among other

REASONS.

- 10 1. Because Appellant's relations with the Crown were different from those of the Claimants in the line of cases which establish that a personal service contract with the Crown may be terminated at pleasure and without compensation, in that, since Appellant's employment for a specified period of years was by statute declared to be terminable for cause, it was not to be during pleasure only; and Appellant in entering upon the duties of the office in question had completed a contract with the Crown on the terms of Section 50 and had acquired the usual contractual rights with the usual contractual remedies for breach thereof.
- 20 2. Because when Parliament abolished the office it was in the same position as any other employer who finds it necessary to abolish an office before the incumbent's contract has expired.
- 30 3. Because in the repealing legislation Parliament indicated no intention one way or the other as to the right of Pension Judges displaced by the legislation to receive compensation, and consequently must not be assumed to have intended to deprive them thereof; and that consequently under Section 19 of the Interpretation Act, Appellant's rights and remedies were preserved.
4. Because if in the repealing legislation Parliament is found to have indicated an intention to deprive Appellant of his rights and remedies, the legislation is *pro tanto* ultra vires as dealing with the purely private rights and property of Appellant, which are things as to which only the Province can legislate.
5. And because the case of *Young v. Waller* is not authority for the proposition that in all cases where the Crown or Parliament abolish an office, the incumbents thereof are not entitled to any remedies for any breach of contract consequent thereupon.

REDMOND QUAIN.

J. T. WILSON.

that "right be done," had declared that "right" could only be done by compensating Appellant, this would not have been an interference with the executive and legislative branches of the constitution, by the judicial branch; and in failing to attach proper significance, so far as this branch of the question is concerned, to the fact that since Appellant was a member of a judicial body, supreme within its own sphere, the Crown's own contention is that the legislative branch can validly and properly wipe out the rights of a member of the judicial branch, without compensation, and that the legislative branch need not say it is doing so, but may leave this to be inferred from the bare fact that by the legislation new bodies are created 10 to do the work which previously the other body had done.

21. In Canada, jurisdiction over "property and civil rights in the Province" is in the Province and consequently the power, which the British Parliament has, to take away the property and rights of persons with whom the Government has contracted (whether it be by cancelling the lease of a building or by re-asserting the previously abrogated implied power to dismiss at pleasure), was not given to the Dominion in the apportionment of sovereign powers contained in the British North America Act but instead was given to the Provinces.

22. As to *Young v. Waller*, [1898] A.C. 661, this was an appeal respecting 20 two demurrers. In the legislation in question there was provision covering the event of the abolition of the office of Plaintiff. Furthermore Waller was not appointed for a specific term of years nor was the possibility of his removal limited to removal for cause. In the legislation in question there the classes of officers who were entitled as of right to compensation for loss of office were specified and the legislation specifically provided further that those who were not of those classes or qualifications must rely on the discretionary power of the Governor for compensation. There the whole question of compensation was dealt with in the legislation itself and (by inference) to the exclusion of all other remedies. One accepting or 30 retaining office under that legislation knew full well what he must do, or be, in order to qualify for compensation if his contract was terminated through the abolition of his office. A contract of the same sort between private parties would probably have been interpreted in the same way, it is submitted.

23. Furthermore that was an action whereby Plaintiff sought to qualify under the very terms of the Act for the very compensation provided therein—he rested his claim entirely upon the failure of the Government to fulfil their statutory obligation by offering him employment in some other capacity within the civil service and the decision of the Privy Council went 40 no further than to say that there was no such statutory obligation and that whether or not such offer should be made was discretionary with the Government.

24. Appellant respectfully contends that the judgment of the Supreme Court of Canada is wrong and ought to be reversed, and that it should be

Canada by claimants for war pension under the provisions of the Pensions Act. Record.

13. By Section 14 of Chapter 35 of the Statutes of Canada, 1930 (First Session), the said Section 50 and other sections relating to the Federal Appeal Board were repealed ; and by other sections of Chapter 35 provision was made for the creation of new bodies which were to deal with the same matters as had the replaced body—namely, a set of Pensions Appeal Tribunals, and a Pensions Appeal Court. p. 33, l. 28.

14. Appellant was notified on the 10th October, 1930, that the said Federal Appeal Board was abolished and that Appellant would have no legal right to any salary from the 1st October, 1930, and since that date Appellant has received no salary. 10

15. It is common ground that Appellant's employment was not terminated for cause or pursuant to any express term of the conditions of employment and that the termination took place pursuant to the alleged right of the Crown to terminate at pleasure.

16. On the 7th January, 1931, Appellant filed a Petition of Right praying for the sum of \$25,000 damages for breach of contract which claim was subsequently reduced to \$17,300 representing the amount of salary due for the unexpired portion of the then current term, which is the quantum of damages. 20 pp. 3-5.

17. The action was heard in the Exchequer Court of Canada at Ottawa, before the President, the Honourable Mr. Justice MacLean, on the 28th October, 1931, and by judgment of the Court dated the 27th day of November, 1931, the Petition was dismissed. p. 16.

18. An appeal was taken to the Supreme Court of Canada and by judgment dated the 15th day of June, 1932, the appeal was dismissed. pp. 42-43.

19. What Appellant complains of is that the judgment appealed from is erroneous in that it holds that the Appellant did not acquire a contractual or other right in virtue of his acceptance of the position of pensions appeal judge on the terms set forth in said Section 50, and in that it holds that the right to dismiss at pleasure was not abrogated by said Section 50, and in that it treats the case of *Young v. Waller*, [1898] A.C. 661 as authority for the proposition that in all cases where the Crown or Parliament abolish an office, the incumbent thereof is thereby deprived of any remedy for breach of contract consequent upon such abolition, and this without Parliament having specifically indicated any intention one way or another with reference to the question of compensation. 30 p. 40 et seq. p. 40, l. 26. p. 41, l. 7.

20. So far as the separate reasons for judgment of Mr. Justice Cannon are concerned, it is respectfully submitted that he failed to recognise that if the Court, pursuant to the mandate of the Crown contained in the Fiat, 40

Record.

(D) Whether, if it was such legislation, it was not ultra vires upon the ground that the confiscation of Appellant's right to sue for and receive compensation was not "essential to the exercise of the Dominion legislative authority"—in this case its authority respecting pensions.

7 | 3. Appellant admits that the abolition of the office (as distinguished from the confiscation of his right to compensation) may have been necessarily incidental to the exercise by Parliament of its power to deal with pensions under item § of Section 91 of the British North America Act.

4. It is also admitted by Appellant that Parliament could have provided in the original legislation (or by private agreement with Appellant) that in the event of the abolition of the office, Appellant should have no remedy. It is not suggested that Parliament did so provide.

5. Appellant also admits that, but for the constitutional objection, Parliament could have provided even in the repealing legislation that Appellant should not be entitled to any further stipend or to damages. Parliament, however, did not so legislate.

6. By Section 10 of "An Act to Amend the Pensions Act" being Chapter 62 of the Statutes of Canada, 1923 (subsequently Section 50 above referred to), a tribunal called the Federal Appeal Board was constituted for the purpose of hearing and determining appeals of former members of His Majesty's forces and their dependents from decisions of the Board of Pensions Commissioners for Canada.

p. 32, l. 32. 7. The terms upon which the members of the Federal Appeal Board were to enter the service of the Crown were set forth in the said section which provided (inter alia) that the term of office should be during pleasure in the case of the Chairman, and specified terms of years in the case of the other members, subject, in the case of all members, to removal for cause.

p. 33, l. 4. 8. By Subsection 6 of Section 50 members of the Appeal Court were forbidden to engage in any other work.

p. 46, l. 25. 9. Appellant was a barrister in active practice at the time of his appointment to office.

p. 9, l. 1. 10. Pursuant to the said Statute, and on the conditions or terms set forth therein, Appellant accepted office as a member of the said Board and pursuant to the said Statute and amendments thereto Appellant's term of employment was extended from time to time on the same terms or conditions, the last extension being for five years from the 17th August, 1928.

p. 49, l. 20. 11. Appellant entered upon the duties of the said office or employment in August, 1923, and until some time in October, 1930, continuously carried out the duties prescribed.

12. The duties of a member of the said Board were to adjudicate upon appeals taken from decisions of the Board of Pensions Commissioners for

101, 1933

W. M. M. J. J. J.
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BETWEEN

CLIFFORD B. REILLY (Petitioner) Appellant,

AND

HIS MAJESTY THE KING (Respondent) Respondent.

CASE FOR THE APPELLANT.

1. This is an appeal from a judgment of the Supreme Court of Canada, ^{Record.} pp. 42-43. dated the 15th day of June, 1932, affirming a judgment of the Exchequer Court of Canada, dated the 27th day of November, 1931, which dismissed p. 16. Appellant's Petition of Right.

2. The main questions involved in the appeal are :—

(A) Whether the term implied in contracts with the Crown for personal services, that the duration of the contract is only "during pleasure," was restricted, abrogated or relinquished by Section 50 of Chapter 157 of the Revised Statutes of Canada, 1927 (The Pensions Act), p. 17, l. 29. upon the terms of which and pursuant to which Appellant entered into p. 32, l. 28. the service of the Crown in the office created by that section ;

(B) Whether in Chapter 35 of the Statutes of Canada, 1930 (First p. 33, l. 20. Session) which repealed said Section 50, and which is silent as to Appellant's rights or remedies, there appears an intention (within the meaning of Sections 19 and 20 of the Interpretation Act (R.S.C. 1927, p. 24, l. 38. ch. 1) on the part of Parliament to deprive Appellant of his salary for the unexpired period and of the civil rights and remedies which ordinarily one has in respect of breach of contract ;

(c) Whether, if it did so indicate, it was not legislation respecting p. 20 "property and civil rights within the Province," or "matters of a merely . . . private nature . . ." (items 13 and 16 of Section 92 of the British North America Act, 1867), namely, Appellant's right to sue for and receive compensation for breach of contract ;

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