101, 1933

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.*

RECORD OF PROCEEDINGS.

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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.*

RECORD OF PROCEEDINGS.

In the Exchequer Court of Canada.

No. 1. Petition of Right, 7th January 1931.

No. 1.

Petition of Right.

IN THE EXCHEQUER COURT OF CANADA.

Between

CLIFFORD B. REILLY - - - - - - - *Petitioner*

and

HIS MAJESTY THE KING - - - - - - *Respondent.*

TO THE KING'S MOST EXCELLENT MAJESTY.

PROVINCE OF ONTARIO, COUNTY OF CARLETON.

10 The humble Petition of Clifford B. Reilly, K.C., of the City of Ottawa, in the Province of Ontario, Barrister, a Lieutenant in the Canadian Expeditionary Force sheweth that :—

1. Your suppliant is a member of the Bar of the Province of Quebec and was engaged in the practice of law in the City of Montreal in that Province in the year 1923.

In the Exchequer Court of Canada.

No. 1. Petition of Right, 7th January 1931—*continued.*

2. In the month of August, 1923, the Honourable Charles Stewart, then Minister of the Interior, telephoned from Ottawa to your suppliant in Montreal and offered him, on behalf of Respondent's government in Canada, employment as a member of the Federal Appeal Board.

3. Your suppliant accepted the said offer after conferring personally with the said Minister of the Interior and with the Minister of Justice and learning from them the nature of the duties he was expected to perform and the remuneration he would be paid therefor.

4. On the 17th August 1923, by Letters Patent and under the Great Seal of Canada, the Respondent constituted and appointed your suppliant to be a member of the Federal Appeal Board to have, hold, exercise and enjoy the said office of a member of the Federal Appeal Board unto your suppliant with all and every the powers, rights, authority, privileges, profits, emoluments and advantages unto the said office of right and by law appertaining during the term of three years. 10

5. Your suppliant was, on the 17th of August, 1923, by Order in Council passed under authority of Chapter 62 of the Statutes of 1923 appointed a member of the Federal Appeal Board, for a term of three years.

6. Your suppliant's appointment was extended by Orders in Council of June 4th, 1926 (P.C. 882), of August 18th, 1927 (P.C. 1515). 20

7. By an order in Council of August 16th, 1928 the said appointment was further extended for a period of five years from August 17th, 1928, provided that the said appointment might be terminated at any time in the event of reduction in the Board's work to an extent sufficient to permit of its performance by fewer Commissioners.

8. The Board's work consisted in disposing of appeals made by former members of Your Majesty's forces and their dependents from refusals of pension by the Pension Commissioners for Canada.

9. Your suppliant accepted the said appointment and from time to time the said extensions or renewals, and took up residence in Ottawa in August, 1923, and continuously carried out, until some time in October, 1930, the duties prescribed for him. 30

10. Your suppliant has duly declared himself to be, and is, still willing and able to carry out any duties, obligations or requirements arising out of the said employment.

11. At the end of September, 1930, (26,000) twenty-six thousand appeals were ready to be disposed of by the Board and the Board's work had not been reduced to an extent sufficient to permit of its performance by fewer Commissioners.

12. On the 10th of October, 1930, your suppliant was requested by the Assistant Deputy Minister of Pensions and Health to vacate the premises which were allotted to him in August, 1923, for the performances of his duties as a member of the Federal Board. 40

In the Exchequer Court of Canada.

No. 1. Petition of Right, 7th January 1931—*continued.*

13. On the said 10th day of October, 1930, the said Deputy Minister of Pensions and Health communicated to your suppliant a letter from the Minister of Justice, dated September 29th, 1930, addressed to the Minister of Pensions and Health, which letter your suppliant requests your Majesty to produce at the trial of this action, and in which the Minister of Pensions and Health was advised that the Federal Appeal Board was abolished and that all legal right of any member of the Board to any salary or emoluments would cease as of the 1st of October, 1930.

14. Your suppliant has not received any salary for the months of 10 October, November and December, 1930.

15. Respondent has broken the contract which he made with your suppliant.

16. The remuneration which Respondent agreed to pay to your suppliant and did pay to him until the end of September, 1930, was the sum of (6,000) six thousand dollars per annum plus a living allowance of (15) fifteen dollars per day for every day that your suppliant was absent from Ottawa in the performance of his duties.

17. Your suppliant was absent from Ottawa in the performance of his duties for (200) two hundred days in each year and his remuneration 20 therefor was (3,000) three thousand dollars making with the salary (6,000) six thousand dollars a total of (9,000) nine thousand dollars per year.

18. From the breach of contract complained of in Paragraph 15 your suppliant has suffered damages to the extent of (25,000) twenty-five thousand dollars.

Your suppliant therefore humbly prays,

(*a*) That the Crown be condemned to pay your suppliant the sum of (25,000) twenty-five thousand dollars and costs.

(*b*) Such other and further relief as may be deemed just.

Dated at Ottawa, this 7th day of January, 1931.

30 To The Honourable The Secretary of State of Canada.

To The Honourable The Attorney General of Canada.

REDMOND QUAIN,

Counsel for the said Clifford B. Reilly.

In the Exchequer Court of Canada.

No. 2. Statement of Defence, 1st June 1931.

No. 2.

Statement of Defence.

Filed this 1st day of June, A.D. 1931.

The Honourable Hugh Guthrie, His Majesty's Attorney-General for the Dominion of Canada, on behalf of the Respondent says :—

1. He admits the allegations set out in paragraphs 1 and 8 of the Petition of Right.

2. He does not admit the allegations or any of them set out in paragraphs 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16 and 17 of the Petition of Right or that the Letters Patent under the Great Seal of Canada or the several Orders in Council or letters referred to therein are of the purport or to the effect in the said paragraphs of the Petition of Right alleged, and he says that the said documents, if any such existed or now exist, which he does not admit, will speak for themselves.

3. He denies the allegations, and each of them, set out in paragraphs 15 and 18 of the Petition of Right.

4. He denies that the said Orders in Council, or any of them, referred to in the Petition, created, or were intended to create, a contract between His Majesty the King, in the right or interest of His Government of Canada and the suppliant or that His Majesty contracted or agreed to employ the suppliant as a member of the Federal Appeal Board for any period or periods of time.

5. He says that no contract or agreement was ever made by or on behalf of His Majesty in the right or interest of His Government of Canada with the suppliant for any of the services or matters in the Petition mentioned or for the payment to the suppliant of any moneys therefor.

6. He says further,—

(*a*) That the Federal Appeal Board was originally constituted under the authority of sec. 10 of c. 62 of the Statutes of Canada, 1923, entitled " An Act to amend the Pension Act."

(*b*) That by c. 35 of the Statutes of Canada, 1930, entitled " An Act to amend the Pension Act," the enactments embodied in secs. 50, 51, 52 and 53 of the Pension Act, R.S.C., 1927, c. 157 (as amended by c. 38 of the Statutes of 1928), relating to the Constitution of the Federal Appeal Board, were repealed, and provision was made for the establishment of new tribunals to be called the Pension Tribunal and the Pension Appeal Court for the purpose of adjudicating on applications for pensions not granted by the Board of Pension Commissioners for Canada; and said c. 35 received the royal assent on the 30th May, 1930, and the provisions thereof came into force, as provided by s. 17 thereof, on the 1st October, 1930.

(*c*) That, upon the coming into force of said c. 35 of the Statutes of 1930, the Federal Appeal Board was abolished and ceased to exist.

(*d*) That no provision was made by said c. 35 of the Statutes of 1930, or any other statute for the payment to any of the members of the Federal Appeal Board holding office, as such, on October 1st, 1930, of any compensation for loss of office consequent upon the abolition of the said Board as aforementioned.

10 (*e*) That, after the abolition of the Federal Appeal Board on October 1st, 1930, as aforementioned, no authority existed for the payment to the members of the Federal Appeal Board, or any of them, of any salary or other compensation.

(*f*) That if the said Order in Council of the 16th August, 1928 (P.C. 1506), referred to in par. 7 of the Petition of Right, did have effect, as alleged, to extend the term of appointment of the suppliant, as a member of the Federal Appeal Board, for the period of 5 years from August 17th, 1928, the suppliant acquired no property or contract right or interest in the said
20 office or in the prospective term or salary thereof, and both the office and the salary thereof were subject at all times to be, and were in fact lawfully, abolished and discontinued at the will of the sovereign authority, the Parliament of Canada, without regard to any right, interest or expectation of the suppliant in respect thereof.

(*g*) That if the suppliant had any right to be paid the salary of a member of the Federal Appeal Board, that right existed, in law, only as an incident of the said office and as growing out of the actual performance of the duties appertaining to it;
30 and the abolition of the said office on the 1st October, 1930, as aforementioned, necessarily involved the abolition or annulment of any right of the suppliant to be paid the salary which had been attached to it.

7. He denies that the living allowance referred to in par. 16 of the Petition of Right formed part of the salary or remuneration attached by law to the office of member of the Federal Appeal Board, and he submits that if the suppliant suffered any loss by reason of the discontinuance of the said living allowance, upon the abolition of the said Board on October 1st, 1930, as aforementioned, it is not a loss for which, as a matter of law, any
40 damages can be recovered.

8. He denies that the suppliant has suffered damages to the amount of $25,000, as alleged in par. 18 of the Petition of Right, or any damages, or that the suppliant has any claim for the recovery of any sum of money whatsoever by way of debt or damages for breach of contract against His Majesty.

In the Exchequer Court of Canada.

No. 2. Statement of Defence, 1st June 1931—*continued.*

9. He submits that the Petition of Right herein is insufficient and bad in substance and in law in that it does not disclose a sufficient or lawful or any obligation on the part of His Majesty towards the Suppliant or any legal or equitable right of the Suppliant against His Majesty cognizable by this honourable Court or enforceable therein.

10. On behalf of His Majesty the Attorney-General prays that the said Petition may be dismissed with costs.

This Statement of Defence is filed on behalf of His Majesty by the Honourable Hugh Guthrie, Attorney-General of the Dominion of Canada, this 1st day of June, 1931, by 10

W. STUART EDWARDS,
Solicitor for the Attorney-General of Canada.

No. 3. Opening of Trial, 28th October 1931.

No. 3.

Opening of Trial.

CLIFFORD B. REILLY, a witness called on behalf of the suppliant, SWORN.

MR. QUAIN : Just a moment, Mr. Reilly. I will first file the original order in council appointing Mr. Reilly and certified copies of the two orders in council extending his term.

P. C. 1620, dated 17th August, 1923, will be - - Exhibit No. 1.
Mr. Reilly's Commission, dated 17th August, 1923 - Exhibit No. 2. 20
P. C. 882, dated 4th June, 1926 - - - - Exhibit No. 3.
P. C. 1506, dated 16th August, 1928 - - - Exhibit No. 4.

HIS LORDSHIP : What was the Original Statute ?

MR. QUAIN : Chap. 157, and Section 50 establishes the Federal Appeal Board. It is the Pensions Act. It might be well for me to call your Lordship's attention to a provision in the last Order in Council, now filed, Exhibit No. 4. This order in council recites on page 2, the second last paragraph :

> " In view of the above considerations the Minister, in pursuance of the authority vested in him, recommends that the term of appointment as Members of the Federal Appeal Board of the said C. B. Reilly, J. H. Roy, C. W. E. Meath and B. L. Wickware, be extended for a period of five years from August 17th, 1928, provided that the appointment of any of the said members may be terminated at any time in the event of reduction in the Board's work to an extent sufficient to permit of its performance by fewer Commissioners." 30

That event did not occur and I understand it is not contended by the Crown that it did occur. That, however, is not in the statute.

HIS LORDSHIP : What is the purpose of calling Mr. Reilly ?

Mr. QUAIN: I do not think the mere production of an Order in Council itself will create a contract unless we establish he accepted the thing by entering into office.

HIS LORDSHIP: Mr. Plaxton, will you not admit that?

Mr. PLAXTON: Yes, I will, my Lord.

Mr. QUAIN: Is it contended it is not a contract?

HIS LORDSHIP: That is the whole point.

Mr. QUAIN: I must establish what took place between Mr. Reilly and the Government in order to show that the thing that was done was not the 10 conscripting of Mr. Reilly for this service but an offer made by the Crown to Mr. Reilly and the acceptance by Mr. Reilly of that offer.

HIS LORDSHIP: The Orders in Council speak for themselves.

Mr. QUAIN: My point is this, shortly: an order in council in itself does not create a contract; the contract is created by the offer contained in the order in council and the acceptance of the offer.

HIS LORDSHIP: The Order in Council is all you have to rely on, that is all that makes your contract. Conversations between Mr. Reilly and Ministers of the Crown would not matter.

Mr. QUAIN: The effect of the conversation was that they inquired of 20 him if he would accept an offer which they would make to him and I will establish that the Order in Council was an offer and that upon his going into the office he accepted the offer.

Mr. FRIPP: He could not give verbal evidence as to that; the Orders in Council must speak for themselves.

HIS LORDSHIP: I do not see what good it will do any way. He was appointed by Order in Council; he accepted the office and entered into employment.

Mr. QUAIN: If that is agreed to by my friend then that is all.

Mr. FRIPP: We agree that he was appointed and that he entered into 30 the service of the Crown by virtue of the statute and Order in Council, but whatever the nature of that occupation or position was is another question.

Mr. QUAIN: The view might be taken that Mr. Reilly made the offer, that he said to the various Ministers " I will become your Commissioner, if you will appoint me," and that the Order in Council constituted an acceptance. I see, however, that your Lordship is satisfied as to what did occur; there is an admission there was an offer of the position and an acceptance of such offer. With this then I am quite satisfied.

HIS LORDSHIP: You do not mean to say that this was forced on Mr. Reilly.

40 Mr. QUAIN: No, my Lord, that is the very point.

HIS LORDSHIP: Call Mr. Reilly, if you wish.

Mr. QUAIN: This case may go farther than this Court and while your Lordship understands the circumstances I am not sure everybody might.

In the Exchequer Court of Canada.

No. 3. Opening of Trial, 28th October 1931—*continued.*

Mr. QUAIN: I will examine Mr. Reilly.

Q. Mr. Reilly, you are the suppliant in this action, *Reilly* v. *The King*? —*A.* Yes.

Q. Will you tell the Court shortly the circumstances leading up to your acceptance of the position?

Mr. FRIPP: I register an objection to that. The whole claim, if there be any, arises out of the document itself; not only one document but all the documents. He cannot give verbal testimony as to what was said. It was afterwards reduced to writing by Order in Council.

Mr. QUAIN: Somebody might take the view that Mr. Reilly did not know what the terms were. The Order in Council does not state all the terms. 10

HIS LORDSHIP: I do not see, Mr. Quain, how you are going to get around the well-known rule of evidence that you cannot give evidence of the steps leading up to a contract unless the contract is ambiguous and requires some explanation. There will be no disagreement about this. He was appointed by Order in Council under authority of the statute. You may put on the record that he was appointed a Commissioner to act.

Mr. QUAIN: It may be contended that there is nothing in this Order in Council saying he is appointed at a salary of $6,000. 20

HIS LORDSHIP: Is that not agreed?

Mr. FRIPP: That is in the statute, my Lord.

Mr. QUAIN: Is it agreed that the terms contained in the statute are admitted to be imported into the Order in Council; if not, then the Order in Council does no good. The statute provides for the salary and the most material part is his appointment.

HIS LORDSHIP: Why do you not admit that, Mr. Plaxton?

Mr. PLAXTON: The appointment took effect under the statute and the salary was $6,000.

HIS LORDSHIP: $6,000, as named in the statute? 30

Mr. QUAIN: And upon the terms contained in section 50 which is applicable and which says he may be removed for cause at any time by the Governor-in-Council; that is part of our contract. Section 50 says that the Chairman shall hold office during pleasure and in the next phrase it is said that the others shall hold office for a term of years.

HIS LORDSHIP: Is it not agreed that that section of the statute is applicable to this case, Mr. Plaxton?

Mr. FRIPP: I think so, my Lord.

Mr. QUAIN: Then, with that admission, it satisfies me. Mr. Reilly accepted the appointment; is that also conceded. It must appear somewhere in the record? 40

Mr. PLAXTON: Yes.

In the Exchequer Court of Canada.

No. 3.
Opening of Trial, 28th October 1931—*continued.*

Mr. QUAIN : That the suppliant accepted the appointment contained in the various Orders in Council and acted in pursuance of the acceptance. That will save a great deal of evidence. The next question, my Lord, is whether my client, if entitled to anything, is entitled to the amount of salary from 1st October, 1930 to 17th August, 1933. If that is conceded it will save a lot of evidence as to damages, etc.

Mr. FRIPP : That is asking us to admit the very foundation of our Defence.

Mr. QUAIN : If we are entitled to anything we are entitled to that.

10 Mr. FRIPP : We say he is not entitled to anything.

Mr. QUAIN : But if we are entitled to any sum of money, would you not admit that the salary for the balance of the term would be the amount we would be entitled to and should have been paid ?

Mr. FRIPP : I will not admit that. You know what his salary was. That is your claim.

HIS LORDSHIP : I do not think you require any evidence on that, Mr. Quain. If there was a contract and it was broken by the Crown then Mr. Reilly is entitled to damages and clearly I think it would be for the unexpired term.

20 Mr. QUAIN : That is my own view of it. I think I am safe in allowing it to go as things are as there is no specific allegation objecting to the amount on any grounds other than the general grounds that we are not entitled to anything.

HIS LORDSHIP : It is agreed and assumed that Mr. Reilly was removed from office on October 1st, 1930.

Mr. PLAXTON : Yes, my Lord, and that is in the pleadings.

Mr. QUAIN : Then I will not examine Mr. Reilly. It is a question of law. I do not know, my Lord, whether you have before you a copy of the statutes. Here is a copy of the statute, my Lord, and I can give you a copy
30 of the Orders in Council.

HIS LORDSHIP : I have the Exhibits here. Have you any verbal evidence to offer, Mr. Fripp ?

Mr. FRIPP : No, my Lord, we have not.

HIS LORDSHIP : Any documentary evidence ?

Mr. FRIPP : No, my Lord.

Mr. QUAIN : Then, my Lord, I will deliver my main argument.

In the Exchequer Court of Canada.

No. 4. Order re-opening trial for additional argument, 5th November, 1931.

No. 4.

Order Re-opening Trial for Additional Argument.

IN THE EXCHEQUER COURT OF CANADA.

Before :—

The Honourable Mr. Justice MACLEAN In Chambers.

Between

CLIFFORD B. REILLY - - - - - - - *Petitioner*

and

HIS MAJESTY THE KING - - - - - - *Respondent.*

UPON THE APPLICATION of counsel for the petitioner and upon hearing what was alleged by counsel for both parties. 10

IT IS ORDERED that the trial of this action be re-opened for the purpose of hearing argument of counsel upon the question whether chapter 35 of the Statutes of Canada, 1930, was not *ultra vires* of the Dominion of Canada to such extent, if any, as the said enactment purports to deprive petitioner of any property or civil rights or other right or remedy or any recourse in respect of the matters set out in the petition of right herein.

AND IT IS FURTHER ORDERED that the said argument do take place before this court at the court house in the City of Ottawa on Tuesday the 17th November, 1931, at eleven o'clock in the forenoon. 20

AND IT IS FURTHER ORDERED that notice of the time and place for hearing of the said argument be given His Majesty by serving a copy of this order within three days from the date hereof by leaving such copy at the office of the said Attorney General in the City of Ottawa.

AND IT IS FURTHER ORDERED that the costs of and incidental to this application be reserved until the hearing of the said argument.

DATED at Ottawa, this 5th day of November, 1931.

(Sgd.) CHAS. MORSE,
Registrar.

In the Exchequer Court of Canada.

No. 5. Reasons for Judgment of Maclean, J., 27th November 1931.

No. 5.

Reasons for Judgment of Maclean, J.

MACLEAN, J.: The petitioner here claims damages for breach of an alleged contract. The facts may be briefly stated. Chap. 62 of the Statutes of Canada 1923, amending the Pension Act, authorized the creation of a Board, to be known as The Federal Appeal Board, the members thereof to be appointed by the Governor-in-Council on the recommendation of the Minister of Justice. The function of the Board was to hear and determine certain appeals from decisions of the Board of Pension Commissioners 10 refusing applications for pension under the provisions of The Pension Act. The statute provided that of the members first appointed to the Board, other than the Chairman, one half should be appointed for a term of two years, and the others for a term of three years; by an amending statute a member of the Board was eligible for reappointment and for a term not exceeding five years. The Chairman was to hold office during pleasure, and any member might be removed for cause at any time. In August 1923, by Order-in-Council, the petitioner was appointed a member of the Board for the term of three years, at a salary of $6,000. per annum. Upon the expiration of this period the petitioner was re-appointed for a term of two 20 years. By an Order-in-Council, dated August 16th, 1928, the petitioner was again re-appointed a member of the Board, for the period of five years from August 17th, 1928, and it is with this period with which we are concerned. In the last mentioned Order-in-Council it was provided that the appointment of the petitioner and others therein named, might be terminated at any time " in the event of reduction in the Board's work to an extent sufficient to permit of its performance by fewer Commissioners." By Chap. 35 of the Stat. of Canada 1930, the provisions of the Pension Act relating to the creation of the Federal Appeal Board were repealed, and provision was made for the establishment of two new tribunals to be respec- 30 tively called a Pension Tribunal and a Pension Appeal Court, for the purpose of adjudicating upon applications for pensions refused by the Board of Pension Commissioners for Canada; the provisions of this statute came into force on the 1st of October, 1930, and thereupon the Federal Appeal Board ceased to exist. It is the salary for the unexpired term of the five year period which the petitioner claims as damages, amounting to $17,000.00 or thereabouts.

While the petitioner may have grounds for feeling that he has not been justly dealt with, still I have come to the conclusion that he cannot succeed in this proceeding. The issue in this case has a somewhat ancient lineage; 40 that is to say it raises the question whether, in the absence of legislation on the matter so clear and positive as to dispel reasonable doubt, an appointment to serve the State in a public capacity creates a contractual relationship between the Crown and the appointee; if there is not that relationship, actions of this nature are groundless. The cases both in England and the

In the Exchequer Court of Canada.

No. 5. Reasons for Judgment of Maclean, J., 27th November 1931 —*continued.*

Dominions and also in the United States, on the question, are legion, because as has been said, persons extruded from office are prone to wage their law against the Crown or State under which the office was held.

In British constitutional practice since 1689, the date of the Act of Settlement, these appointments generally follow upon a statute requiring them to be made. Legislation of this sort is construed as not altering the settled law of the land unless it uses apt words for the purpose. The settled principle of law is that public office is a distinctive thing and is not contractual in its nature. Public offices are either judicial or ministerial. Judicial offices are now generally held during good behaviour, while ministerial offices are determinable at pleasure. See Chitty on Prerog. Chap VII. The Crown has by law authority to dismiss at pleasure, either its civil or military officers, because a condition to that effect is an implied term of the contract of service, unless it be that there is some statutory provision for a higher tenure of office, or that the power of the Crown is otherwise expressly restricted. *Gould* v. *Stuart* (1) and *Dunn* v. *The Queen* (2) *In De Dohse* v. *The Queen* cited in *Dunn* v. *McDonald* (3), Lord Watson said, that if a concluded contract had been made, it must have been held to have imported into it a condition that the Crown had the power to dismiss, and that if any authority representing the Crown were to exclude such power by express stipulation, that would be a violation of the public policy of the country and could not derogate from the power of the Crown. See also *Nixon* v. *Attorney-General* (4). Halsbury's Laws of England, Vol. 23, p. 352, lays down the law in respect of the right of a public officer to compensation when his office has been abolished as follows :—" At common law no public officer has any right to compensation for abolition of his office; but when such an office is abolished by statute it is not unusual for the legislature to grant the right. In such cases the extent of the right and the person entitled thereto must be ascertained from the particular statute "; in the case before me there is no such statutory provision. American law is to the same effect.

Mechen on Public Offices and Officers p. 4 says :—" A public office is never conferred by contract, but finds its source and limitations in some act or expression of the governmental power." The same principle is exhaustively discussed in the case of *Conner* v. *The Mayor of the City of New York* (5). The fact that here the appointment purports to be for the term of five years does not make it any more a contract than one made to continue during good behaviour.

It is also to be observed that, on the part of the Crown, there is nothing suggestive of an agreement that the office in question here should continue for the full period for which the petitioner was appointed, or, that if the office was abolished the salary would continue for that period; in fact there could not be such an engagement, because the statute does not bestow

(1) 1896, A.C. 575.
(2) 1896, 1 Q.B.D. 117.
(3) 1897, 66 L.J.Q.B. 420 and 423.
(4) 1930, 1 Ch. Div. 566 at p. 595.
(5) 4 N.Y. Superior Court R., 2 Sanford, p. 355.

In the Exchequer Court of Canada.

No. 5. Reasons for Judgment of Maclean, J., 27th November 1931 —*continued.*

authority upon the Governor in Council so to do. On the part of the petitioner there is nothing in the nature of a contract. He did not enter into any obligation to continue in office for the full term of the appointment; he was at liberty to resign at any time.

It is not necessary in the case before me to discuss the essentials of a public office, because the Commission under which the suppliant was empowered to act uses the word "office" as descriptive of the field of public duty to which he was appointed. There being no contract, there cannot be force in the contention of Mr. Quain for the petitioner, that the petitioner possessed a "right" which S. 9 of the Interpretation Act preserves and which no repealing legislation could affect. There being no contract there can be no "right." As to the contention, based upon the theory of a contract arising between the suppliant and the Crown, that the repealing Act of 1930 is *ultra vires* of the Parliament of Canada as interfering with property and civil rights in that it undertakes to vacate or determine the suppliant's office, it, of course, fails of force when it is found that he is not before the Court on the basis of contract; but it is fairly obvious that the argument is a two-edged sword, for if Parliament was forbidden by the reason put forward from breaking the alleged contract, then it had no power or capacity to create a contract in the first instance. The contention that a subsequent Parliament cannot repeal a statute of a former Parliament does not require demonstration of its unsoundness. It offends an elementary doctrine of constitutional law.

The petition is therefore dismissed. In the circumstances of the case there will be no order as to costs, except, that the respondent will have the costs of and incidental to the application to re-open the argument.

In the Exchequer Court of Canada.

No. 6. Formal Judgment, 27th November 1931.

No. 6.

Formal Judgment.

IN THE EXCHEQUER COURT OF CANADA.

Friday the 27th November 1931.

Present:

The Honourable the PRESIDENT.

IN THE MATTER OF THE PETITION OF RIGHT OF CLIFFORD B. REILLY - - - - - - - - - - *Suppliant*

and

HIS MAJESTY THE KING - - - - - - - - *Respondent.* 10

The Petition of Right of the above named suppliant having come on for trial at the City of Ottawa, on the 28th day of October and on the 17th day of November, 1931, before this Court in the presence of counsel for the suppliant and the respondent, upon hearing read the pleadings herein and upon hearing the evidence adduced at trial and what was alleged by counsel aforesaid, this court was pleased to direct that this action should stand over for judgment and the same coming on this day for judgment.

THIS COURT DOTH ORDER AND ADJUDGE that the said suppliant is not entitled to the relief sought by his Petition of Right herein.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE 20 that suppliant do pay respondent forthwith after taxation thereof the costs of and incidental to the hearing of argument upon the question whether Chapter 35 of the Statutes of Canada, 1930, was *ultra vires* in certain aspects thereof, and that there be no other costs to any of the parties.

By the Court,

(Sgd.) ARNOLD W. DUCLOS,
Deputy Registrar.

No. 7. Notice of Appeal to the Supreme Court of Canada, 18th December 1931.

No. 7.

Notice of Appeal to the Supreme Court of Canada.

TAKE NOTICE that the suppliant herein intends to prosecute an 30 appeal to the Supreme Court of Canada, from the judgment of this Court herein dated the 27th November, 1931.

Dated this 18th day of December, 1931.

QUAIN & WILSON,
Solicitors for the Suppliant.

To the Registrar of the Exchequer Court of Canada.

No. 8.
Consent as to contents of Case, 2nd February 1932.

No. 8.

Consent as to Contents of Case.

The parties hereto consent that the following documents shall comprise the Case herein :—

1. Petition of Right, dated 7th January, 1931.
2. Statement of Defence, dated 1st June, 1931.
3. Evidence, dated 28th October, 1931.
4. Notice of Appeal, dated 18th December, 1931.
5. Exhibit No. 1, P.C. 1620, dated 17th August, 1923.
6. Exhibit No. 2, Plaintiff's Commission, dated 17th August, 1923.
7. Exhibit No. 3, P.C. 882, dated 4th June, 1926.
8. Exhibit No. 4, P.C. 1506, dated 16th August, 1928.
9. Order permitting additional argument, dated 5th November, 1931.
10. Reasons for Judgment, dated 27th November, 1931.
11. Formal Judgment, dated 27th November, 1931.
12. Consent as to Contents of Case.

Dated at Ottawa this 2nd February, 1932.

A. E. Fripp,
for Crown.

Quain & Wilson,
for Appellant.

No. 9.
Factum of Clifford B. Reilly.

No. 9.

Factum of Clifford B. Reilly.

PART I.

Statement of Facts.

This is an appeal from a judgment of the Exchequer Court dismissing appellant's action against respondent for compensation or damages for breach of contract.

By Section 50 of the Pensions Act (R.S.C. 157) it was enacted that :

" Sec. 1.—There shall be a Board . . . appointed by the Governor-in-Council on the recommendation of the Minister of Justice.

" Sec. 2.—One of the members shall be appointed by the Governor-in-Council chairman of the Board, and shall hold that office during pleasure, and any member may be removed for a cause, at any time, by the Governor-in-Council.

" Sec. 4.—Of the members first appointed to the Board, other than the chairman, one-half shall be appointed for the term of two years and the other for the term of three years and they shall be eligible for re-appointment for such further terms, not to exceed five years, as the Governor-in-Council may deem advisable.

" Sec. 9.—The chairman shall be paid a salary of $7,000 per annum, each of the other members shall be paid a salary of $6,000 per annum, and such salaries shall be paid monthly out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada."

In virtue of this legislation, appellant was duly engaged as a Crown servant to carry out the duties of a member of the Federal Appeal Board.

By amendment to the Pensions Act in 1925 it was provided that the members of the Federal Appeal Board should be eligible for re-appointment for a further term of two years, and Appellant was re-appointed, by P.C. 882, dated 4th June, 1926. 10

By a further amendment to the said Statute, (Canada, 1927, Ch. 65, Section 10) provision was made for the re-appointment of the same members for a term not to exceed five years and pursuant to power contained therein, by P.C. 1506, dated 16 Aug., 1928, (Exhibit 4, Record, page 48), Appellant's term was " extended for a period of five years from August 17th, 1928, provided that the appointment of any of the said members may be terminated at any time in the event of reduction of the Board's work to an extent sufficient to permit its performance by fewer Commissioners " (Record, P.48, Line 40) and (whether the Order-in-Council was an acceptance of an offer from Appellant or whether Appellant's subsequently continuing 20 in the employment constituted an acceptance of an offer contained in the Order-in-Council), both parties treated Appellant's employment as having been renewed or extended for the five-year period subject to the restrictions contained in the Order-in-Council for termination in the event of reduction of the Board's work.

It was common ground that such reduction did not occur.

In the year 1930 by Section 14 of Chapter 35 of the Statutes of Canada, 1930, (First Session) assented to on the 30th May, 1930, Sections 50 and 51 of the Pensions Act were repealed. The new Sections 50 and 51 had no reference to the previous subject matter of the old sections, but Sections 9 30 and 10 as formerly constituted were replaced by new sections providing for new pensions bodies (Sec. 5 of Chapter 35).

The 1930 Act came into force on the 1st October, 1930, and from that date Respondent failed to continue paying Appellant his salary and treated the latter's employment as being at an end. The employment was not terminated by Order in Council or other formal document.

Appellant's claim is for a sum of money equal to salary at the rate of $6,000 per year, from the 1st October, 1930 to 17th August, 1933, $17,274.

PART II.

Errors alleged in Judgment appealed from. 40

Appellant alleges that the Judgment appealed from is erroneous in the following respects :—

1. In that it does not find that there was a contractual relationship between Appellant and Respondent.

2. In that it does not find that, if there were no such relationship, Respondent was entitled to sue for and recover in the Court appealed from, the sum sued for.

3. In that it does not set forth that there was a statutory provision inconsistent with the right to dismiss at will.

4. In that it failed to find that Appellant has a contractual or other right to receive the amount sued for enforcible in the Court appealed from, of which Respondent did not, by the 1930 legislation, intend to deprive him, and of which in any event, respondent could not deprive him.

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PART III.

Points of Argument.

1. There is such a thing as a contract with the Crown for personal services.

2. Section 50 of the Pensions Act authorized the Minister of Justice to find someone willing and able to fill the duties of a member of the Federal Appeal Board upon the terms set forth in that section, and authorized the Governor-in-Council to engage him upon those terms.

3. Appellant and respondent thereupon entered into a contract for the personal services of appellant upon the said conditions.

20 4. The term imported into or implied in the employment of Crown servants, that their employment is only " during pleasure," is capable of being restricted or relinquished *by legislation.*

5. Section 50 constitutes a relinquishment of the advantage of that term in the case of members of the Federal Appeal Board *other than the chairman*, and such implied term or condition is not part of the contract with such other members.

6. By the repealing legislation, Parliament did not indicate an intention to deprive appellant of any of his rights or to relieve itself of any of its obligations. It abolished his office, perhaps, but did not deprive him of 30 his remedy for breach of contract, nor did it legislate itself out of its other obligations toward appellant.

7. If it did purport to so deprive him, then the legislation is, to that extent, ultra vires as an infringement of " property and civil rights " jurisdiction of the provinces. In Canada jurisdiction over " property and civil rights " is in the provinces and the right which the British parliament had, to re-assert the right to dismiss at pleasure, was not given to the Dominion in the apportionment of powers, contained in the British North America Act.

8. The learned trial judge ought to have assessed damages but it was 40 common ground at the trial that appellant is entitled to an amount equal to his salary for the unexpired period, if he is entitled to anything.

1. *There is such a thing as a contract with the Crown for personal services.*

There is no authority for the theory that the judicial or quasi-judicial services of a public servant cannot be the subject of a contract, under modern constitutional usage. Such theory (if it ever had a basis) would in any event have had its basis in usage and expediency only and is now entirely out of harmony with the absolute necessity for modern governments to enter into such contracts for personal services with officers who occupy judicial positions on Commissions of various sorts. Such contracts need not be entirely in writing, any more than need any other contract.

When the terms are set forth in a statute, and the appointee is (whether verbally or otherwise) made familiar with such terms, and offered the employment and (verbally or otherwise) accepts, or agrees to accept it, and is duly appointed by whatever method is provided in the statute and enters into the employment, it is submitted that this transaction cannot be called anything but a contract. It is quite a different thing from the case of an individual being called upon for military service, or even from the same officer being conscripted for public service without having the option to reject the call.

Such engagements as that of appellant have all the ingredients of contract, by whatever definition they are tested, and cannot be anything else.

Instances in which the question of whether there has been a contract for personal services with the Crown are rare because most of the cases have been decided upon the principle that there was no statutory restriction upon the power to dismiss at will, but contracts for personal services with the Crown have been either expressly or impliedly recognized as a perfectly valid form of contract in the following cases :—

In *Sutton* vs. *Attorney-General*, 39 T.L.R. 294 Lord Birkenhead said at p. 296 " that although that circular was general in its terms . . . the Appellant having enlisted under that circular must be taken to have accepted the offer of the Postmaster-General there set out . . . " and refers to the arrangement as a contract throughout his judgment.

Viscount Finlay says at p. 298 sec. column 1st par. " his rights in respect of these increases, if he has any, are purely contractual and his claim is based upon the failure of the Government to implement the agreement with him which he alleges is shown by the circular."

Lord Sumner said (p. 299, 3rd para., 1st column) " being in the nature of an offer by advertisement, it could not be otherwise, but when it becomes a contract by the suppliant's acceptance of it, there arises a strictly several contract."

In *Shenton* vs. *Smith* [1895], A.C. 229, Smith was unsuccessful because the term which he claims was broken was held not to have been a term of his engagement. The judgment appealed from had held that Smith was entitled to believe that certain regulations formed part of his contract with the Government, and the Privy Council decided otherwise, but there was no suggestion in that judgment that a contract with the Government for personal services could not exist.

In *Balderson* vs. *The Queen,* 28 S.C.R. 261, Taschereau J. made the following references to a contract: "There is no room whatever for the Appellant's contention that it was a condition of his contract of employment that . . .," p. 266.

See also *Hales* vs. *The King,* 1918, 34 T.L.R. 589.

In *Denning* vs. *Secretary for India,* 37 T.L.R. 138 (1920), the contract was not made pursuant to any statute but the whole case was fought out on the theory that there was a contract (as indeed there was one in writing) but that the right to dismiss at pleasure could not be relinquished otherwise than by statute. In this case the contract itself purported to relinquish such right.

In *Dunn* vs. *The Queen,* 1896, 1 Q.B. 116, at p. 118, it was held that the right of the Crown to terminate at any time "*must be imported into the contract.*"

In *Gould* vs. *Stuart,* 1896, A.C. 575, Sir Richard Couch at p. 578 stated that certain provisions "are inconsistent with importing into the *contract of service* the term."

Like any contract with a special class of persons they may have conditions peculiar to themselves implied by usage or custom.

One of such conditions is that they are (unless otherwise by statute specified) in effect during pleasure, *i.e.,* they are terminable at the will of the Crown. This is for the public good and has been supported by the Courts on the grounds of public policy.

2. *Section 50 of the Pensions Act authorized the Minister of Justice to find someone willing and able to fill the duties of a member of the Federal Appeal Board upon the terms set forth in that section, and authorized the Governor-in-Council to engage him upon those terms. (See the section.)*

3. *Appellant and respondent thereupon entered into a contract for the personal services of appellant upon the said conditions.*

4. *The term imported into, or implied in, the employment of Crown servants that their employment is only "during pleasure" is capable of being restricted or relinquished by legislation.*

In all contracts for personal services expressed to be for a specified term, the right of the employer to terminate before the end of the term and without compensation is governed by the rule that where there is in the contract an express provision for such prior termination (whether at pleasure or otherwise) the provision is effective; and where there is no express provision for such earlier termination no such earlier termination can occur without liability for breach of contract except where a provision to that effect is imported into the contract, e.g., by usage or custom.

Such provision (as well as any other provision) will be imported into any contract between two parties where they understand or ought to understand that the importation of such a term is in accordance with the well recognized practice in contracts of that nature.

This is not peculiar to contracts with the Crown, it is common to all contracts :—

Chitty, Contracts, 18th Edition, p. 668.

The importation of such term into personal service agreements with the Crown is said to have been on grounds of public policy, and such importation is said by some authors to be a prerogative of the Crown.

Whatever it be, or however it arose, no valid reason appears to exist for not applying to the interpretation of personal service contracts with the Crown the ordinary rules for the interpretation of contracts, in considering whether or not the terms are inconsistent with the importation of such provision. 10

It is well recognized law that Respondent's right to dismiss at will without notice and without compensation is a right which is capable of being waived by appropriate legislation :—

Halsbury's Laws of England, Vol. 7, p. 22, No. 23—" *Except where it is otherwise provided by Statute,* all public officers and servants of the Crown hold their appointment at the pleasure of the Crown . . . "

Chitty on Contracts, p. 332—" Servants of the Crown hold office at the pleasure of the Crown, *unless by statute some higher tenure of office is provided.*" 20

Shenton v. *Smith* [1895], A.C. 229, at p. 234–5—" *Unless in special cases where it is otherwise provided,* servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service." (Lord Hobhouse.)

Red. Amphitrite v. *The King,* 1921, 3 K.B., 500, at p. 503–4—" Thus in the case of the employment of public servants, which is a less strong case than the present, it has been laid down that, *except under an Act of Parliament,* no one acting on behalf of the Crown has authority to employ any person except upon the terms that he is dismissible at the Crown's pleasure; the reason being that it is in the interests of the community that the Ministers for the time being advising the Crown should be able to dispense with the services of its employees if they think it desirable." 30

Dunn v. *The Queen,* 1896, 1 Q.B., 116, at p. 120—" It is essential for the public good that it (the contract) should be capable of being determined at the pleasure of the Crown, except in certain exceptional cases where it has been deemed to be more for the public good that some restriction should be imposed on the power of the Crown to dismiss its servants." (Lord Herschell.)

Gould v. *Stuart* [1896], A.C. 575, at p. 578—" These provisions, which are manifestly intended for the protection and benefit of the officer, are inconsistent with the importing into *the contract of service* the term that the Crown may put an end to it at its pleasure. In that case they would be superfluous, useless, and delusive. This is, in their Lordships' opinion, an exceptional case, in which it has been deemed for the public good that a civil service should be established under certain regulations and with some 40

qualification of the members of it, and that some restriction should be imposed on the power of the Crown to dismiss them." (Sir Richard Couch.)

In practically all the above cases, the petition was dismissed, but upon grounds which do not exist in the present appeal, namely, that there was in those cases no statutory restriction upon the implied power to dismiss at pleasure without compensation.

Appellant does not contend that the Crown's implied power of dismissal without compensation can be restricted or eliminated otherwise than by or in virtue of a statute. It is apparent therefore that cases such as 10 *Denning* v. *Secretary of State for India,* 37 T.L.R. 138 (1920), are not in point.

In all contracts the relinquishment of any implied term must be by proper authority—in the case of the Crown, by Parliament. If the statutory terms set forth with respect to Appellant's appointment are inconsistent with importing into Appellant's contract of service the term that the Crown may put an end to it at pleasure and without compensation, then this case (and that of his colleagues) is "an exceptional case in which it has been deemed for the public good that some restriction should be imposed on the power of the Crown to dismiss . . . " (*Gould* v. *Stuart* [1896], 20 A.C.575.)

5. *Section* 50 *constitutes a relinquishment of the advantage of that term in the case of members of the Federal Appeal Board other than the chairman, and such implied term or condition is not part of the contract with such other members.*

In Appellant's contract the following terms are inconsistent with such implication or importation :—

1. A specified term of years (originally three, later five).

2. Express provision for removal *for cause* by the Governor-in-Council.

30 As to the provision in the last Order-in-Council that " the appointment of any of the said members may be terminated at any time in the event of reduction in the Board's work to an extent sufficient to permit of its performance by fewer commissioners " (Record page 49 line 23) whether or not that was a proper exercise of the authority conferred is irrelevant because it was to the advantage of the Crown and in any event appellant accepted that term and continued in the service of respondent.

Parliament had in mind its right to dismiss at will because in the one case where it desired to reserve such right, it said so in plain terms :—

" 2. Chairman of the Board . . . shall hold that office *during* 40 *pleasure,* and any member may be removed *for a cause. . . .*"

" 4. Of the members first appointed to the Board, other than the Chairman, one-half shall be appointed for the term of two years, and the other for a term of three years, and they shall be eligible for re-appointment for such further terms, not to exceed five years, as the Governor-in-Council may deem advisable."

A member who is to be a Crown servant during pleasure does not require to have a term of removal for cause made applicable to him, because if cause arises he can be dismissed under the "during pleasure" term.

Parliament expresses itself otherwise when it desires to reserve the right to remove at will a servant whom it employs for a specified term.

The original legislation is an instance in which Respondent "provided otherwise by statute"—as indeed Respondent ought to do when the ability to offer the servant permanency in the office is more in the public interest than is the right to dismiss at will and without compensation. 10

If a contract for personal services or otherwise is terminated without notice, which by its provisions is thus terminable, obviously no right of action exists against the employer who terminates it. It is thus with the Crown where it terminates, before the time fixed, an employment as to which the implied power to so terminate is not relinquished by Statute.

Such being the case it has come to be said that no right to compensation for loss of employment or office, exists in the office-holder. This statement is elementary common sense and is applicable to all contracts terminable at will, between any two parties, where such a power is implied. 20

It is, however, wholly inapplicable to contracts which are not terminable at will whether with the Crown or with others.

Notwithstanding any legislation restricting or relinquishing the power, the Crown servant (*in Great Britain but not in Canada*) may still be removed and deprived of his recourse, or the conditions of his engagement may be amended, because of the sovereign power of the British Parliament over all things, including property and civil rights.

The cases reported are not even close to being on all fours with the present case, for the very good reason that it is not the practice of Governments to dismiss their servants (particularly judicial or quasi-judicial officers) at will and without compensation when the terms of their employment are such as exist in the present instance. 30

6. *By the repealing legislation, Parliament did not indicate an intention to deprive appellant of any of his rights or to relieve itself of any of its obligations. It abolished his office, perhaps, but did not deprive him of his remedy for breach of contract, nor did it legislate itself out of its other obligations toward appellant.*

Section 19 of the Interpretation Act R.S.C. 1 reads as follows :—

> "19.—Where any act or enactment is repealed, or where any regulation is revoked, then, *unless the contrary intention appears,* such repeal or revocation shall not, save as in this section otherwise provided, 40
>
> (*b*) affect the previous operation of any Act, enactment or regulation so repealed or revoked, or anything duly done or suffered thereunder; or

(*c*) affect any right, privilege, obligation or liability, acquired, accrued, accruing or incurred under the Act, enactment or regulation so repealed or revoked; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such privilege, obligation, liability . . . as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced . . . as if the Act or regulation had not been repealed or revoked."

10 Section 20 reads as follows :—

" Whenever any Act or enactment is repealed, and other provisions are substituted by way of amendment, revision or consolidation,

(*a*) all regulations, orders, ordinances . . . made under the repealed Act or enactment shall continue good and valid, in so far as they are not inconsistent with the substituted Act or enactment, until they are annulled and others made in their stead . . . . "

Section 19 however is the section most in point, although if the words 20 " orders or ordinances " include an order-in-council then that section may be relevant.

It may perhaps be successfully argued that there was indicated in the repealing legislation an intention contrary to the continuance of the office or position as distinguished from continuance of the remedies, obligations and other rights, arising out of the contract.

There is however no such intention discernable so far as the other aspects of the contract are concerned.

It is submitted that the remedy now sought is a remedy in respect of appellant's privileges and respondent's obligations and liabilities under 30 the contract and that such remedy may be " instituted, continued or enforced . . . as if the Act had not been repealed or revoked."

It is submitted that these sections simply set forth the rules which every text book on interpretation of statutes declares and which many cases have established.

The common law rights of the subject are not held to have been taken away or affected by a statute unless it is so expressed in clear language or must follow by necessary implications, and in such cases only to such an extent as may be necessary to give effect to the intention of the Legislature thus clearly manifested :

40 *B.C. Electric Railway* vs. *Crompton,* 1910, 43 S.C.R. 1, 13.

Vancouver vs. *C.P.R.* 1894, 23 S.C.R. 1.

Commissioner of Public Works vs. *Logan,* [1903] A.C. 355 at 363.

Minister of Railways and Harbours of South Africa vs. *Simmer* [1918], A.C. 591.

Prentice vs. *Sault Ste. Marie,* 1928, C.L.R. 309, 316.

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It is presumed that, where the objects of an act do not obviously imply a contrary intention, the Legislature does not desire to confiscate the property or to encroach upon the rights of persons and it is therefore expected that if the contrary is intended it will be made manifest, if not in express words, at least by clear implication and beyond reasonable doubt. Such statutes should be strictly construed. If the statute is ambiguous the Court should lean to the interpretation which would support existing rights:—

Lamontagne vs. *Quebec Rly. Light*, etc, 1915, 50 S.C.R. 423.
Midland Railway vs. *Young*, 22 S.C.R. 190. 10
Williams vs. *Box*, 1910 44 S.C.R. 1, 10.
Hydro Electric Power Commission vs. *Grey*, 1924, 55 O.L.R. 339.

The fact that many of the above cases are not cases in which individuals were directly concerned, does not change the principle, as the principle is well recognized.

If the constitutional argument advanced in this case is well founded, then there is a further reason for finding that the statute which repealed the sections in question does not prevent appellant succeeding.

The common law rule as to the effect of repeal will not be dealt with because it is not in point—there is a statutory rule which overrides the 20 common law rule.

It should not be inferred by mere implication that (when the Crown has by statute relinquished its right to dismiss at pleasure and thus procured the servant to accept the employment) it intends to deprive him of his right to compensation or damages simply because it finds it necessary to re-arrange the system of hearing appeals and incidentally to abolish the offices.

The " contrary intention " of course must exist *in the repealing legislation* and cannot be inferred from subsequent acts of respondent.

No provision for dealing with Appellant's rights is contained in the 30 repealing legislation or now exists in the Act, but it is submitted that this is more consistent with an intention on the part of respondent to negotiate with Appellant as to his compensation, and (to speculate further as to intention) to settle his claim by re-appointing him to one of the new tribunals—an intention possibly affected by the political event which occurred between the passing of the repealing legislation in June, 1930 and the setting up of the new tribunals in October, 1930.

It is submitted that the confiscation of a legal right or remedy is not the kind of thing that will be read into a statute because of the failure to make provision therefor, or even because the statute provides for a breach 40 of contract.

Some of the following cases relate to Section 14 of the Interpretation Act, Revised Statutes of Ontario, Chapter 1, but this Act is so similar to the Dominion Act that (subject to the fact that the power of the Province

to interfere with property and civil rights is unquestioned) the cases are in point:—

Abell vs. *York* 61 S.C.R. 345 at P. 347 and 350 and 352.
C.P.R. vs. *Parke*, 1899, A.C. 535.
Metropolitan vs. *Hill* 1881, 6 A.C. 193, 208.
Chadwick vs. *McCrie* 56 O.L.R. 143.
St. Catherines vs. *Hydro* 61 O.L.R. 465, 1930, 1 D.L.R. 409, 418–19.
Hudson vs. *Biddulph* 45 O.L.R. 432, 441.
Scott vs. *Windsor*, 53 O.L.R. 565.
10 *Re Hunt and Lindensmith* 51 O.L.R. 320.
Upper Canada vs. *Smith* 61 S.C.R. 413, 417, 419.

For a specific declaration that a contract is to be treated as void, see 1922 Ontario Statutes, Ch. 69, Sec. 29, Sub-sec. 2.

It has been argued by respondent that when the office is abolished, it necessarily follows that the right to salary provided in respect of the personal services entailed in filling the office ceases. The expression that the salary is " an incident of the office " has been used. Exactly what is meant by " an incident of the office " is not made clear, nor is there nor can there be any jurisprudence cited in support of any such statement.

20 In any event the principal contention of Appellant is that what is sued for is damages, not salary.

There is however good authority to support the statement that the abolition of an office can have no possible effect on the right of one who holds the office under a contract for a term of years which has not expired, to receive compensation for the breach of contract:—

Champagne vs. *Montreal Public Service* (1917), 33 D.L.R. 49 (Privy Council).

Otherwise a company which appointed a manager for a term of 10 years could avoid its obligations and deprive the manager of his remedy, 30 by abolishing the position of manager.

Parliament did not intend to deprive appellant of anything more than his office, if indeed it deprived him of that.

Where compensation, however inadequate, for abolition or variation of the office, or for other breach of the terms of the engagement, is provided for prior to the engagement (whether by statute or otherwise) the rule *inclusio unius exclusio alterius* might apply to prevent the servant claiming other compensation in respect of the contract. And so also where certain events are provided for, in which compensation for termination of the office or other breach of the agreement is to be paid and some other event 40 occurs to break the contract, the same rule might prevent recovery—upon the inference that the statute, for instance, dealt with the question of remedies to the exclusion of those not specified.

In the case of Dominion legislation however a distinction would have to be drawn between those cases in which the special provision for compensation of such limited nature, or in such limited events, was originally open for acceptance or rejection by the prospective servant, and those

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cases in which such limitation upon the servant's recourse was enacted during the term of service. It is submitted that in the latter cases the legislation would be ultra vires of the Dominion Parliament, though perfectly competent for the British Parliament, or other parliaments with powers similar to theirs.

The repealed sections simply created the office or position and provided the authority and set forth the terms pursuant to which a contract was to be entered into for the personal services in connection therewith.

7. *If it did purport to so deprive him, then the legislation is, to that extent,* ultra vires *as an infringement of " property and civil rights " jurisdiction of the provinces. In Canada jurisdiction over " property and civil rights " is in the provinces and the right which the British parliament had, to re-assert the right to dismiss at pleasure, was not given to the Dominion in the apportionment of powers, contained in the British North America Act.*

10

One who entered into such a contract in England took it subject to the possibility that Parliament might notwithstanding the term originally laid down pass such legislation as would deprive appellant of his rights and remedies and relieve respondent of its obligation. Such legislation it is true would have to do so in very express terms, but if the legislation was such as to indicate an indubitable intention to break the contract and deprive appellant of his rights and remedies, then this would be the " contrary intention " required under the section of the English Interpretation Act, corresponding to Section 19 of The Interpretation Act, Canada, and would have to be given effect to.

20

Not so in Canada. The right to so amend this particular statute as to confiscate appellant's right to compensation never lay with the Dominion —in the beginning it was allocated elsewhere (namely, to the Province) by the fundamental law which created the Dominion Parliament itself, the B.N.A. Act.

As a result of what occurred between him and respondent, appellant became vested with certain valuable " property and civil rights within the province "—including his civil remedies for breach of contract.

30

Thenceforward only the legislature of his Province could take these from him, except in the remote contingency of interference therewith being necessary to prevent the frustration of some legislation over which the Dominion had jurisdiction, or (in another view) being necessarily incidental to the exercise of such jurisdiction.

And even as to this exception it is contended that since the Dominion Parliament cannot confiscate property even in the exercise of its powers under Section 91 of the B.N.A. Act :

40

Montreal vs. *Montreal Harbour* [1926], A.C. 299, 313.

it follows that it cannot *confiscate* a chose-in-action, a right to sue.

In Canada therefore appellant is entitled to have and to hold his property and civil rights (wheresoever and howsoever acquired) free from molestation by Dominion legislation, save where such molestation is, as

has been said in one case, " necessary to prevent the defeat of the scheme " only (*i.e.* the scheme in the furtherance of which the interference occurs) :—

A.G. for Canada v. *A.G. for Ontario* [1898] Appeal Cases 700, 715, cited by Mr. Justice Duff in the Board of Commerce case 60, S.C.R. 456 at page 496, para. 1, last few lines.

It follows therefore that any Dominion legislation which declares that other Dominion legislation may interfere with property and civil rights (except to the extent that such interference is warranted under the rules laid down in the various cases which will be referred to below) is also
10 ultra vires.

The expression " property and civil rights " embraces the rights arising from contracts :—

Citizens vs. *Parsons* [1881], 7 A.C. 96, at page 110, and numerous other cases.

In any event, whether appellant's claim is contractual, or arises out of some other relationship, it comes within the heading " property and civil rights " and while it is submitted that appellant's claim is contractual, it comes within section 18 of the Exchequer Court Act in any event, in that actions of this general type have been considered time and again on
20 the merits by English courts, as indicated by the cases cited on this appeal by both parties. Section 18 reads as follows :—

> " The Exchequer Court shall have exclusive original jurisdiction in all cases in which demand is made or relief sought in respect of any matter which might, in England, be subject of a suit or action against the Crown."

How far the Dominion, acting within its own sphere, may infringe on property and civil rights would appear to be a matter for separate consideration in each case, but some of the expressions used as a guide to the extent permitted are :—

30 " For the purpose of preventing the scheme of the Act from being defeated "—*Larue* v. *Royal Bank*, 1926, C.L.R. 218, at page 227."

" . . . under necessity in highly exceptional circumstances . . ." *Board of Commerce* case [1922], 1 A.C. 191.

" In order to prevent the defeat of the scheme," *in re Board of Commerce*, 60 S.C.R., at page 496, Duff, J.

". . . essential to the exercise of the Dominion legislative authority . . ." Brodeur, J., at page 519 of the same case.

". . . to prevent the defeat of the scheme only . . ." *A. G.*
40 *Canada* v. *A. G. Ontario* [1898], A.C. 700, 715.

". . . where the legislative power cannot be effectually exercised without affecting the proprietary rights . . ."*A. G. Quebec* v. *Nipissing Central*, 1926, 3 D.L.R. 545, at page 550.

". . . necessarily incidental to the Dominion jurisdiction . . ." *Fisheries and Canneries* case [1930], A.C. 111, 121 and 122.

See also *R.* v. *Nalder,* 1923, 1 D.L.R. 262; *Sandwich* v. *Union,* 1925, 2 D.L.R. 707, 712; *R.* v. *Collins,* 1926, 4 D.L.R. 548; *Insurance Contracts,* 58 O.L.R. 404; *Rice* v. *Messenger,* 1929, 2 D.L.R. 669, 681, 695; *re Combines Act,* 1931, A.C. 310, 325.

Furthermore the relationship between appellant and respondent also comes within subsection 16 of section 92 of the British North America Act :—

> " 16. Generally all matters of a merely local or private nature in the province."

It is submitted however it is not necessary to Appellant's case to argue this, though the same reasoning as is set forth elsewhere on the constitutional point would apply.

It cannot be seriously argued that appellant's right to receive the balance of his salary upon the abolition of his office would affect in the slightest degree the carrying out of the pensions scheme.

The abolition of appellant's office, as distinguished from his right to receive compensation, may well have been an interference with property and civil rights justifiable under the plea that the right to experiment with different methods of hearing pensions complaints was essential, or necessarily incidental, or ancillary to the exercise of pensions jurisdiction.

Appellant draws a sharp distinction between the right to abolish the office, and the right to deprive him of his compensation. Appellant may be quite willing to lose the prestige and honour of his office but quite unwilling to be summarily deprived of his right to compensation from respondent for its failure to carry out his engagement with him.

The right of the office holder to compensation is purely a private matter between him and respondent and has nothing to do with the revision or otherwise of the scheme.

Some jurisdiction over the salaries and allowances and civil and other officers of the government of Canada is given by subsection 8 of section 91 :—

> " 8. *The fixing of and providing for* the salaries and allowances of civil and other officers of the government of Canada."

To give complete jurisdiction over " the salaries " is one thing and to give jurisdiction over " the fixing of and providing for " such salaries is necessarily another.

It is submitted that (having in mind the fact that salaries and allowances of all persons are purely matters of provincial jurisdiction but that some measure of control of these was necessary for the Dominion government to have) the framers of the Act felt that such salaries and allowances had to be fixed by the Dominion parliament and that since such officers were officers of the Dominion it was fair that they should provide for such salaries also.

But the jurisdiction ends with the fixing of and providing for these items.

The purpose of that sub-section was to see to it that the Dominion (and not the Provinces) paid the salaries and allowances—and not to permit it to fail to pay them. The same reasoning applies to Lieutenant Governors (Sec. 60) and Judges of the Superior Courts (Sec. 100).

It is submitted that jurisdiction to confiscate or otherwise interfere with contractual or other rights respecting salary (including the right to sue for damages for breach of a contract to pay a salary) is not given by sub-section 8. The payment of salaries is simply one of numerous aspects of a contract for personal services.

10 Respondent did fix Appellant's salary and provided for it up to the 1st of October, 1930. The question now is not one of salary, but of compensation for breach of his rights, although it is true that such compensation may be equal to the unpaid salary. On the other hand it might well be some other amount entirely.

If Appellant is successful the amount payable to him will hardly be charged to " Salary and allowances of civil and other officers of the Government of Canada."

The obligation of a servant to continue to serve is not indispensable to the formation of a contract between him and his employer. The master 20 may be bound to keep him until the end of the term and the servant may either by custom of the employment (or by special term thereof) be at perfect liberty to leave at any time. It is submitted however that Appellant in this instance was bound to continue in office and to perform his duties and to remain a Crown servant, and that while he could not be physically forced to carry out a contract for personal services (any more than any other employee), nevertheless the Crown had the right to sue him for breach of contract if he failed to do so.

No difficulty need arise on this Appeal on the question of where the money is to come from. The Court at best can only certify that Appellant 30 is entitled to certain sums of money (Schedule D, Petition of Right Act R.S.C. 158) and is not concerned with whether or not, or whence, the sum is obtained by respondent. In any event there is no evidence that no money is available to pay the compensation now sought by the Appellant, or any other judgment for damages, or other money claim against the Crown.

8. *The trial judge ought to have assessed damages but it was common ground at the trial that appellant is entitled to an amount equal to his salary for the unexpired period, if he is entitled to anything.*

REDMOND QUAIN,
Of Counsel for Appellant.

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No. 10.

Factum of His Majesty the King.

PART I.

STATEMENT OF FACTS.

1. This is an appeal by the suppliant from the judgment of the Honourable Mr. Justice MacLean, President of the Exchequer Court of Canada, bearing date the 27th day of November, 1931, whereby he dismissed the appellant's action with costs.

2. The action was brought by the suppliant to recover damages for breach of an alleged contract and the substance of the allegations on which this claim is based, is that by Order-in-Council of the 16th August, 1928, the suppliant was re-appointed a member of the Federal Appeal Board for the term of five years from 17th August, 1928; that the Crown agreed to pay him, and did pay him until the end of September, 1930, salary in the sum of $6,000 per annum, plus a living allowance of $15 per day for every day that he was absent from Ottawa in the performance of his duties; that as he was absent from Ottawa in the performance of his duties for 200 days in each year, his remuneration from this source amounted to $3,000 per annum, making with the salary a total remuneration of $9,000 per annum; that he has not received the salary of his office since the end of September, 1930; that he is willing and able to perform the duties of his office, and that the Crown has, therefore, broken the contract which it made with him.

3. The Federal Appeal Board was originally established under the authority of sec. 10 of chap. 62 of the Statutes of 1923. This section, as amended by sec. I of chap. 65 of the Statutes of 1927, was carried into the revised statutes 1927 as sec. 50 of the Pension Act, chap. 157 of the said Revised Statutes. That section reads as follows :—

> Section 50.—1. There shall be a Board known as " The Federal Appeal Board," consisting of not less than three nor more than seven members appointed by the Governor in Council on the recommendation of the Minister of Justice.
>
> 2. One of the members shall be appointed by the Governor in Council chairman of the Board, and shall hold that office during pleasure, and any member may be removed for cause, at any time, by the Governor in Council.
>
> 3. The majority of the members shall be persons who served in the naval, military or air forces of Canada during the war.
>
> 4. Of the members first appointed to the Board, other than the Chairman, one-half shall be appointed for a term of two years and the other for a term of three years, and they shall be eligible for re-appointment for such further terms, not to exceed five years, as the Governor in Council may deem advisable.

5. During such time as the Governor in Council may determine, three members shall constitute a quorum thereof, and thereafter a majority of the members shall constitute a quorum.

6. Each member shall devote the whole of his time to the performance of his duties under this Act, and shall not accept or hold any office or employment inconsistent therewith.

7. In case of the illness, absence or inability to act of any member, the Governor in Council may appoint a person to act in his stead.

10 8. No member shall be disqualified to act by reason of interest or of kindred or affinity to any person interested in any matter before the Board, but in such case the Governor in Council may, either upon the application of such member or otherwise, appoint some disinterested person to act in his stead.

9. The Chairman shall be paid a salary of seven thousand dollars per annum, each of the other members shall be paid a salary of six thousand dollars per annum, and such salaries shall be paid monthly out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada.

20 4. By Section 14 of chap. 35 of the Statutes of 1930 entitled " An Act to amend the Pension Act," the legislation relating to the constitution of the Federal Appeal Board was repealed, and provision was made for the establishment of new tribunals to be called the Pension Tribunal and the Pension Appeal Court for the purpose of adjudicating on applications for pensions not granted by the Board of Pension Commissioners for Canada. Said chap. 35 received the Royal Assent on the 30th day of May, 1930. Sec. 14 thereof provides, in part, as follows :—

> Sections fifty and fifty-one of the said Act, as amended by chapter thirty-eight of the Statutes of 1928, and fifty-two and fifty-
> 30 three of the said Act, are repealed and the following are substituted therefor :—

Section 17 provides that,

> This Act shall come into force on the first day of October, 1930.

PART II.

Points in Issue.

1. The office of member of the Federal Appeal Board was created, and the salary appertaining to it fixed, by Statute.

> The Pension Act, R.S.C. 1927, C. 157, s. 50.

2. The Governor in Council in the exercise of the power conferred by
40 the Statute appointed the suppliant to this office, his last appointment being for a period of five years, from August 17th, 1928.

> The Pension Act, s. 50 (1), (2), (3) and (4), Order in Council, dated 17th August, 1928, (P.C. 1506).

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Repeal of sections of Act under which suppliant was appointed.

3. By sec. 14 of chap. 35 of the Statutes of 1930 entitled "An Act to amend the Pension Act," secs. 50, 51, 52 and 53 of the Pension Act, R.S.C. 1927, chap. 157, under which the Federal Appeal Board was constituted and vested with certain jurisdiction in relation to pension appeals, were repealed, in effect (as provided by s. 17) from the 1st day of October, 1930.

The suppliant's services, as a member of the Federal Appeal Board, were terminated as of that date.

4. The suppliant alleges that his appointment to his office as member of the Federal Appeal Board, gave rise to a contract, whereby the Crown came under an obligation to continue him in office and to pay him the salary attached thereto, for the unexpired portion of his term of office, that is, from October 1st, 1930, to August 17th, 1933; that this contract has been broken by the Crown, and that he is, therefore, entitled to damages based upon the emoluments of the office for such unexpired term.

The Respondent submits that the judgment appealed from is correct and that it should be affirmed upon the grounds set out in the reasons for judgment of the learned Trial Judge, and the further grounds set forth in the Brief of Argument.

PART III.

Brief of Argument.

1. What was the nature of the petitioner's right to hold office and receive the salary attached thereto under the Order-in-Council of August 16th 1928? The petitioner alleges, in effect, that that right was a vested contractual right. This allegation is based upon an erroneous conception of the true legal effect of an appointment to the office of member of the Federal Appeal Board under sec. 50 of the Pension Act.

2. The view is abundantly established by the authorities that a public office is not property; that there is no contractual relation, either express or implied, between a public officer and the Government whose agent he is; and that his right to compensation, if it exists at all, exists as an incident of his office and he is entitled to the compensation "not by force of any contract but because the law attaches it to the office."

(*a*) Many of the ancient executive and ministerial offices, known to English law, were inheritable and assignable, and were treated as incorporeal hereditaments.

> Bacon's Abr. tit. "Offices and Officers" (H) Halsbury's Laws of England, Vol. 24, pp. 160, 161.

But these were common law offices, depending chiefly upon usage; and the doctrine did not extend to judicial offices or other offices pertaining to the administration of justice. Offices of modern origin are governed by the

Statutes creating them and confer no life estate or irrevocable tenure unless the statute expressly so provides.

Smyth v. *Latham*, 1833, 9 Bing, 692, 703, per Tindal, C.J.; *Conner* v. *City of New York*, 5 N.Y. pages 285, 295, Ruggles C.J. said :

" Public offices are not incorporeal hereditaments; nor have they the character or qualities of grants. They are agencies. With few exceptions, they are voluntarily taken, and may at any time be resigned. They are created for the benefit of the public, and not 10 granted for the benefit of the incumbent. Their terms are fixed with a view to public utility and convenience, and not for the purpose of granting the emoluments during that period to the office-holder."

(*b*) There is no contract, either express or implied, between a public officer and the Government whose agent he is. A public office is distinguishable from an employment or contract by the fact that a public office is never conferred by contract but finds its source and limitations in some act or expression of the governmental power; that it involves a delegation of some part of the sovereign power or functions of government to be exercised by him for the benefit of the public.

20 Meachem on Public Officers, p. 5, sec. 5 :

The position of the law on this subject was ably stated by Sandford J. in *Conner* v. *City of New York*, 2 Sandf. (N.Y. Sup. Ct.) 355, 370, 371, as follows :—

" We think it must be assumed that there is no contract, express or implied, between a public officer and the Government whose agent he is. The latter enters into no agreement, that he shall receive any particular compensation for the time he shall hold office; nor in the case of a statutory office, that the office itself shall continue any definite period. Where the constitution limits the compensation, 30 it is beyond legislative control; but that makes no contract.

On the part of the officer, there is still less in the nature of a contract. Whether he hold under the constitution, or a statute, he is under no obligation to continue to discharge his duties a single day. He may resign at any time, and no power of the Government can prevent him."

(*c*) The statute merely authorized the Governor in Council to appoint members of the Federal Appeal Board; not to enter into any contract with any person for the performance of the duties of a member. The suppliant's service was consequently rendered, as in *Tucker* v. *The King*, 7 Ex. C. R. 351, 40 360, (affirmed, 32, S. C. R. 722), " not . . . in virtue of any contract, but by virtue of the appointment under the statute."

The elements of contract are entirely wanting. There was no mutuality nor obligation on the suppliant to accept office, or, having accepted, to serve out his term of office. He might have resigned the office at any time, and no power of the Government could have prevented him. Neither was there

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any agreement with the suppliant to receive any particular compensation for the time during he would hold office, nor that the office itself should continue for any definite period.

DECISIONS OF COURTS IN ENGLAND.

(*g*) If the suppliant's right to hold the office and to receive the salary attached to it had really depended upon a contract with the Crown (apart from the statutory provisions), the decisions of the Courts in England show that notwithstanding a stipulation for holding office for a term of years, the contract would have been terminable at the pleasure of the Crown.

> *De Dohse* v. *The Queen* (1885–6), 66 L.J. (Q.B.) 422, and *Dunn* v. *The Queen,* (1896) I. Q.B. 116; *Hales* v. *The King* (1918) 34, T.L.R. 589.

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(*h*) The fact that the suppliant might have been entitled to recover salary for services actually performed and accepted in the office during its continuance upon implied contract to pay, does not effect the submission.

3. *No compensation for loss of office at common law.*

In order to test the suppliant's claim, it will be convenient to consider first whether the suppliant would have been entitled to any compensation for abolition of office at common law.

The answer to this question is clearly in the negative. The repeal of secs. 50 to 53 inclusive, of the Pension Act, undoubtedly had effect to abolish the Federal Appeal Board, and consequently, the office of a member of that Board.

20

Where an Act was repealed, it was formerly regarded in the absence of provisions to the contrary, as never having existed except in regard to matters past and closed. Such was the common law rule.

> Maxwell on the Interpretation of Statutes, 7th ed., p. 342.

Consequently at common law, no public officer had any right to compensation for the abolition of his office by statute.

> Halsbury's Laws of England, Vol. 23, p. 352; *The Queen* v. *Lechmere* (1851) 16 Q.B. 284, 289; See also *Young* v. *Waller* [1898], A.C. 661, 665, per Lord Watson:

30

> " The substance of the defendant's third plea, to which the plaintiff demurs, is that the plaintiff is not entitled to any compensation under the Act of 1884. If that can be shewn it follows that the plaintiff has no title to insist on his claim of damages at common law as for breach of contract."

4. *No compensation in virtue of s.* 19 *of the Interpretation Act.*

(*a*) It remains to consider whether s. 19 of the Interpretation Act, so far modifies the position at common law as to afford a basis for the suppliant's claim to compensation.

40

S. 19 (1) of the Interpretation Act provides that the repeal of an Act shall not, unless the contrary intention appears,

(*c*) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, . . . so repealed . . .; or,

(*e*) affect any investigation, legal proceeding or remedy in respect of any such privilege, obligation, liability . . . as aforesaid :

and any such . . . legal proceeding or remedy may be instituted, continued or enforced . . . as if the Act . . . had not been 10 repealed.

(*b*) The rule embodied in this section does not create rights or privileges; it merely saves any right or privilege " acquired," " accrued " or " accruing " with any remedy for its enforcement under an Act which is repealed, then only to the extent that an intention contrary or repugnant to the operation of such a saving has not been expressed in the Act which effects the repeal.

(*c*) *S.* 19 *of the Interpretation Act not applicable.*

The provisions of c. 35 of the statutes of 1930, which by s. 14 repealed secs. 50 to 53 inclusive, of the Pension Act, manifest an intention contrary or repugnant to the operation of s. 19 ss. (1) (*c*) of the Interpretation Act.

20 (*d*) The principle to be applied in such a case was laid down by Collins, M.R. in the Case of *In Re R.*, (1906) 1 Ch., 730, 736, as follows :—

" There were one or two other cases cited which have an important application to the present case, that is to say, cases where you find in an Act a repealing clause followed by a saving clause. There you have to see how far the two enactments can co-exist. It seems to me that the principle laid down in those cases is applicable to the present case. And that principle is this : Where you have a repeal and you have also a saving clause, you have to consider whether the substituted enactment contains anything incompatible 30 with the previously existing enactment. The question is, Aye or No, is there incompatibility between the two ? And in those cases the judges, in holding that there was a saving clause large enough to annul the repeal, said that you must see whether the true effect was to substitute something incompatible with the enactment in the Act repealed; and that, if you found something in the repealing Act incompatible with the general enactments in the repealed Act, then you must treat the jurisdiction under the repealed Act as *pro tanto* wiped out. That is settled by the cases of *In re Busfield* (32 Ch. D. 123) and *Hume* v. *Somerton* (25 Q.B.D. 239). In both 40 those cases the judges relied upon the incompatibility of the substituted enactments with the old enactments, and held that in consequence of that incompatibility the jurisdiction under the old Act could not remain; but they were prepared to hold that the saving clause would, if there were no incompatibility between the enactments, have the effect of annulling the repeal."

(*e*) The point then, is whether there is anything in question of the repealing Act (ch. 35, 1930) incompatible with the secs. repealed (secs. 50 to 53 of the Pension Act) so as to preclude the operation in respect of the latter of the saving clause, s. 19, (I) (*c*) of the Interpretation Act.

(*f*) It is submitted that there is. The repeal of secs. 50 to 53 of the Pension Act, was incidental to a scheme involving the setting up of entirely new machinery in connection with the administration of pensions. It set up two entirely new tribunals, charged with the duty of hearing and disposing of appeals in pension cases from the decision of the Board of Pension Commissioners. That Parliament intended that these new tribunals should 10 replace the Federal Appeal Board and exercise complete jurisdiction over the subject of pension appeals, and that the Federal Appeal Board should definitely pass out of existence appears to be made manifest, not only by the repeal of secs. 50 to 53 of the Pension Act, but by other provisions of c. 35 relating to the new tribunals, and to the jurisdiction they should exercise. For instance, s. 51, ss. 2, as enacted by s. 15, provides that,—

> " Any application heretofore disposed of by the Federal Appeal Board may, notwithstanding such disposition, be renewed at any time under this Act; "

and s. 15 provides that,— 20

> " All appeals heretofore taken to the Federal Appeal Board and remaining undisposed of at the date of the coming into force of this Act, shall be deemed to have been referred thereunder for hearing by the pension Tribunal, and shall be dealt with accordingly."

(*g*) It seems to be the clear intent of the repealing Act that the judicial machinery established by it for adjudication of claims to pension, should be complete in itself, and that the Federal Appeal Board should pass out of existence on October 1st, 1930; and if that be the intention manifested, then that intention is repugnant to the operation of the rule of s. 19 ss. (I) (*c*) of the Interpretation Act, in respect of the appealed enactment and conse- 30 quently fatal to the claim of the petitioner. Because it follows that the office of member of the Federal Appeal Board, and the jurisdiction pertaining to it, having been abolished without any saving, so also was any right to the compensation which existed merely as an incident of the office abolished. The right to compensation grows out of the rendition of the services. *Conner* v. *City of New York*, 5 N.Y.R. 285, 296; *Taylor* v. *Beckham*, 178 U.S. 548, 577; 3 Kent. Co. p. 454, note (I); and it having become impossible, by reason of the abolition of the office, for the suppliant to render any further services after October 1st, 1930, the abolition of the office involved the abolition of any right to the compensation attached 40 to the office.

(*h*) *S.* 19 *of the Interpretation Act, even if applicable, does not save any right to compensation.*

Even if the provisions of c. 35 of 1930 were not repugnant to the operation of s. 19 (I) (*c*) in respect of the suppliant's claim to compensation it

would still be necessary to find that on October 1st, 1930, the suppliant had " acquired " a right or privilege to hold the office of member of the Federal Appeal Board, and to be paid the salary attached to it, for the then unexpired portion of the term of his office, or that such right had " accrued " to him, or was " accruing."

The petitioner could assert no right or privilege in respect of that office, or its emoluments, which does not depend upon the effect of s. 60 of the Pension Act, or the Order in Council of August 16th, 1928.

It may be conceded that the effect of that Order in Council, under the 10 statute, was to give him the right or privilege, as against all intruders and unfounded claims, to hold the office and to receive the emoluments thereof, for the term of five years, subject to removal by the Crown for cause. But that appointment, as regards the Crown, was at all times subject to the implied condition that Parliament, which had created the office and fixed the emoluments thereof, might, at its pleasure, at any time alter or abolish the office or its emoluments, without regard to the rights, interests, or expectations of the incumbent, as in its judgment the public interest might require.

The only right or privilege which the suppliant enjoyed, was a right or 20 privilege revocable by Parliament at its will.

In re certain statutes of the Province of Manitoba, relating to education, 22 S.C.R. 577.

Sir Henry Strong, C.J., at p. 655 :—

> " As it is a prima facie presumption that every legislative enactment is subject to repeal by the same body which enacts it, every statute may be said to contain an implied provision that it may be revoked by the authority which has passed it, unless the right of repeal is taken away by the fundamental law, the overriding constitution which has created the legislature itself."

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30 " Our courts, both state and national " said Mr. Justice Lamar, in delivering the opinion of the Supreme Court of the United States in *Crenshaw* v. *U.S.*, 134 U.S. 99, " look on these questions through the form to the substance of things; and, in substance, a statute under which one takes office and which fixes the term of office at one year, or during good behaviour, is the same as one which adds to those provisions the declaration that the incumbent shall not be dismissed therefrom. Whatever the form of the statute, the officer under it does not hold by contract. He enjoys a privilege revocable by the sovereignty at will; and one Legislature cannot deprive its 40 successor of the power of revocation. See also *Butler* v. *Pennsylvania,* 10 How. 402, 416, and other authorities cited above in par. 8 (d)."

It follows then that no right or privilege in respect of his term of office, or in respect of the emoluments thereof, had been " acquired " by,

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or had " accrued " or was " accruing " to, the suppliant, within the meaning of s. 10 (1) (c) of the Interpretation Act when on October 1st, 1930, s. 50, of the Pension Act was repealed, and the suppliant's office as member of the Federal Appeal Board, thereby abolished.

Wherefore the Respondent submits that this appeal should be dismissed with costs.

A. E. FRIPP,
of Counsel for the Respondent.

No. 11. Reasons for Judgment. (A) Orde, J., *ad hoc* (concurred in by Anglin, C.J., and Rinfret and Lamont, JJ.).

No. 11.

Reasons for Judgment.

(A) ORDE, J., *ad hoc* (concurred in by ANGLIN, C.J., and RINFRET and LAMONT, JJ.).

The sole question here is whether or not by virtue of the legislation creating the office and the nature of his appointment thereto, the Appellant acquired a contractual or other vested right to the office and its emoluments.

It is argued that there was a contract between the Appellant and the Crown for the performance by the Appellant of the duties of the office during the period of time covered by his commission and for the payment by the Crown of the statutory salary therefor, and that the Crown cannot escape its liability in respect therefor merely because Parliament abolished the office.

Whether the Crown might not so bind itself by contract to pay for specific services over a certain period as to incur liability for a breach thereof is not the question here. Assuming the possibility of such a contract, was there any such contract in the present case?

I find it difficult to see in what way the appointment of the Appellant to be a member of the Federal Appeal Board under the Pensions Act as it then stood differed from many other appointments to offices under the Crown. It was urged during the argument that the earlier negotiations or communications between the Minister and the Appellant which culminated in the Order-in-Council authorising the appointment, constituted, by way of offer and acceptance, a contract binding upon the Crown. But the circumstances leading up to the appointment did not differ materially from those which must accompany most appointments to public offices, and I cannot see how they distinguished this appointment from any other.

There is, of course, in every appointment to public office a contractual element in that the Crown, in effect, promises to pay the salary or other emolument fixed by law for services performed. But this in no respect affects the Crown's prerogative right, unless restricted by statute, to dismiss the servant at any time without liability for damages or further compensation.

In the Supreme Court of Canada.

No. 11. Reasons for Judgment. (A) Orde, J., *ad hoc* (concurred in by Anglin, C.J., and Rinfret and Lamont, JJ.)—*continued*

The principles governing appointments to civil offices under the Crown are summarised in Robertson's Civil Proceedings By and Against the Crown at p. 359. Even if there be a contract of service, the Crown's absolute power of dismissal is deemed to be imported into it, and nothing short of a statute can restrict that power.

Here there was no dismissal from office by the Crown in the ordinary sense. Parliament abolished the office. The power of the Crown to abolish a civil office and thereby to deprive the holder thereof of any right to further compensation is recognised in *Young* v. *Waller* [1898], A.C. 661. If in cases where its power is not restricted by Statute the Crown may abolish an office, *a fortiori* Parliament which created it must surely possess the power.

It was argued that notwithstanding the abolition of the offices, it must be assumed that Parliament did not intend to deprive those appointed thereto of their vested rights. In other words that in the absence of some express statutory provision to the contrary, the rights of the holders of the abolished offices to damages or compensation as upon a breach of contract were implicitly reserved. No authority for this as a general principle was cited, but reliance was placed upon the provisions of Sec. 19 of The Interpretation Act, R.S.C. (1927), Ch. 1, which preserves rights, privileges, obligations and liabilities acquired, accrued, accruing or incurred under a repealed Act. But this argument begs the question. If there is no right there is nothing to preserve. If the Appellant's appointment to his office even for a definite period did not deprive the Crown of the right to terminate the appointment at any time, and *a fortiori* did not deprive Parliament of the power, by abolishing the office, of automatically terminating the appointment, what right was there to preserve?

The judgment of the learned President of the Exchequer Court is right, and the appeal should be dismissed with costs.

(B) Cannon, J.

(B) CANNON, J.: The fundamental rule of our constitution requires that the legislative, executive and judicial branches of our body politic must be kept distinct and respect the independence of one another. No tribunal can interfere with the free agency of one or, as in this case, two of the constituent parts of the sovereign power. We cannot interfere with the dismissal by the Executive, following the abolition by Parliament of Plaintiff's office, although the Plaintiff's commission may be read as indicating that the right of the Crown to terminate his engagement at any time has seemingly not been imported in the Order-in-Council which extended his term of office for a definite period of five years from August 17th, 1928.

Blackstone, No. 243, says that the subjects of England are not totally destitute of remedy, in case the Crown should invade their rights by private injuries:—

> If any person has, in point of property, a just demand upon the King, he must petition him to his Court of Chancery, where his Chancellor will administer right as a matter of grace, though not

In the Supreme Court of Canada.

No. 11. Reasons for Judgment. (B) Cannon, J.—*continued.*

upon compulsion. And this is entirely consonant to what is laid down by the writers on natural law. " A subject," says Puffendorf (Law of N. and N.b. 8, c. 10), " so long as he continues a subject, has no way to *oblige* his prince to give him his due, when he refuses it; though no wise prince will ever refuse to stand to a lawful contract. And, if the prince gives the subject leave to enter an action against him, upon such contract, in his own Courts, the action itself proceeds rather upon natural equity, than upon the municipal laws." For the end of such action is not to *compel* the prince to observe the contract, but to *persuade* him. 10

We cannot do more. Let Parliament remedy Appellant's wrong if they see fit, but the Exchequer Court and this Court cannot enforce the demand of the Petition of Right; and the appeal must be dismissed with costs, if Respondent will exact them.

No. 12. Formal Judgment, 15th June 1932.

No. 12.

Formal Judgment.

IN THE SUPREME COURT OF CANADA.

Wednesday, the 15th day of June, A.D. 1932.

Present :—

The Right Honourable F. A. ANGLIN, C.J.C., P.C. 20
The Honourable Mr. Justice RINFRET.
The Honourable Mr. Justice LAMONT.
The Honourable Mr. Justice CANNON.

The Honourable Mr. Justice Orde, *ad hoc*, being absent his judgment was announced by the Right Honourable The Chief Justice, pursuant to the Statute in that behalf.

Between

CLIFFORD B. REILLY - - - - - - - - - - *Appellant*

and

HIS MAJESTY THE KING - - - - - - - - - *Respondent.* 30

The appeal of the above-named Appellant from the Judgment of the Exchequer Court of Canada pronounced in the above Cause on the 27th day of November, 1931, having come on to be heard before this Court on the 27th day of May, A.D. 1932, in the presence of Counsel as well for the Appellant as the Respondent, whereupon and upon hearing what was alleged by Counsel aforesaid this Court was pleased to direct that the said appeal should stand out for Judgment, and the same coming on this day for Judgment.

In the Supreme Court of Canada.

No. 12. Formal Judgment, 15th June 1932—*continued.*

THIS COURT DID ORDER AND ADJUDGE that the said Judgment of the Exchequer Court of Canada should be and the same was affirmed, and that the said appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondent.

(Sgd.) J. F. SMELLIE,
Registrar.

In the Privy Council.

No. 13. Order in Council granting special leave to appeal to His Majesty in Council, 16th March 1933.

No. 13.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE.

10 The 16th day of March, 1933.

Present :

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT — VISCOUNT BRIDGEMAN.
MASTER OF THE HORSE — MR. CHANCELLOR OF THE DUCHY OF LANCASTER
CAPTAIN MARGESSON.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 9th day of March, 1933, in the words following, viz. :—

" WHEREAS by virtue of His late Majesty King Edward the
20 Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Clifford B. Reilly in the matter of an Appeal from the Supreme Court of Canada between the Petitioner Appellant and Your Majesty Respondent setting forth (amongst other matters) that the Petitioner desires to obtain special leave to appeal from a Judgment of the Supreme Court dated the 15th June 1932 affirming a Judgment of the Exchequer Court of Canada dated the 27th November 1931 which dismissed the Petitioner's Petition of Right : that the main questions involved in the Appeal are whether the term that
30 employment in the service of the Crown is only " during pleasure " was restricted or relinquished by Section 50 of Chapter 157 of the Revised Statutes of Canada (The Pensions Act), upon the terms of which and pursuant to which the Petitioner entered into the service of the Crown and whether Section 14 of Chapter 35 of the Statutes of Canada 1930 (First Session) which repealed Section 50 indicated on the part of Parliament an intention (within the meaning of Sections 19 and 20 of the Interpretation Act R.S.C. c. 1) to deprive the Petitioner of his civil rights or remedies for breach by the Crown

In the Privy Council.

No. 13. Order in Council granting special leave to appeal to His Majesty in Council, 16th March 1933—*continued.*

of his contract with the Crown and whether if it did so indicate it was not *ultra vires pro tanto* as an interference with property and civil rights within the Province which was not justifiable as ancillary to the exercise of the powers of the Dominion within its own sphere of legislation: and reciting the facts out of which the Petition arises: And humbly praying Your Majesty in Council to order that the Petitioner shall have special leave to appeal from the Judgment of the Supreme Court dated the 15th June 1932 or for such further or other Order as to Your Majesty in Council may appear fit:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of Canada dated the 15th day of June 1932 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

NOTE.—By subsequent Order in Council this Order was varied by waiving security for costs.

EXHIBITS.

Exhibits.

No. 1.—Order in Council No. 1620.

No. 1.
Order in Council
No. 1620,
17th August
1923.

Certified copy of a Report of the Committee of the Privy Council approved by His Excellency the Governor-General on the 17th August, 1923.

P.C. 1620.

The Committee of the Privy Council have had before them a report, dated 13th August, 1923, from the Minister of Justice, submitting that Section 10 of " An Act to amend the Pension Act," Chapter 62 of the Statutes of Canada, 1923, provides for the constitution of a Board, to be
10 known as " The Federal Appeal Board," consisting of not less than five nor more than seven members to be appointed by Your Excellency in Council on the recommendation of the Minister of Justice, to hear appeals in respect of any refusal of pension by the Board of Pension Commissioners as specified in Section II of the said Chapter 62, and likewise to hear appeals from decisions as to the right of ex-members of the Forces to treatment with pay and allowances subject to regulations to be enacted by Your Excellency in Council pursuant to Section 2, of Chapter 69, of the Statutes of Canada, 1923, and " Act to amend Department of Soldiers' Civil Re-establishment Act ";

20 It is further provided that the majority of the members shall have served in the Naval, Military or Air Forces of Canada during the War; that the Chairman shall hold office during pleasure; that of the members first appointed, other than the Chairman, one-half shall be appointed for a term of two years and the others for a term of three years; that the Chairman shall be paid a salary of $7,000 per annum and each of the other members $6,000 per annum.

In pursuance of the foregoing, the Minister recommends that " The Federal Appeal Board," be constituted, to consist of five members; the said Board to discharge the functions assigned to them and to exercise
30 the powers conferred by the provisions of Chapters 62 and 69 of the Statutes of Canada, 1923, and any other function or power which may be assigned to or conferred upon them by Your Excellency in Council acting in the discharge of competent authority.

The Minister further recommends the appointment of the following as Chairman and Members of the said Board respectively:

To be Chairman :—

C. W. Belton, of the City of Toronto, in the Province of Ontario, Physician, a Colonel in the Canadian Expeditionary Force;

To be Members for a term of three years from the date hereof;

Exhibits.

No. 1. Order in Council No. 1620, 17th August 1923—*continued.*

C. B. Reilly, formerly of Calgary, in the Province of Alberta, Lawyer, a Lieutenant in the Canadian Expeditionary Force;

John Roy, of the City of Quebec, in the Province of Quebec, Commercial Agent, a Lt.-Col. in the Canadian Expeditionary Force;

To be Members for a term of two years from the date hereof;

C. W. E. Meath, of the City of Toronto, in the Province of Ontario, Superintendent, Toronto Office, Employment Service of Canada, a Captain in the Canadian Expeditionary Force;

Bruce L. Wickware, of the City of Ottawa, in the Province of Ontario, Physician, a Captain in the Canadian Army Medical Corps. 10

The Committee concur in the foregoing recommendations and submit the same for approval.

E. J. LEMAIRE,
Clerk of the Privy Council.

No. 2. Commission appointing Appellant a member of the Federal Appeal Board, 17th August 1923.

No. 2.—Commission appointing Appellant a member of the Federal Appeal Board.

BYNG OF VIMY.

SEAL.

" E. L. NEWCOMBE " 20
Deputy Minister of Justice CANADA

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, KING, Defender of the Faith, Emperor of India.

To CLIFFORD BERNARD REILLY, of the City of Montreal, in the Province of Quebec, in our Dominion of Canada, Esquire, one of His Majesty's Counsel learned in the law for the Province of Alberta, a Lieutenant in the Canadian Expeditionary Force.

GREETING :—

KNOW YOU, that reposing trust and confidence in loyalty, integrity 30 and ability, we, pursuant to the Statute in that behalf made and provided, have constituted and appointed, and we do hereby constitute and appoint you the said Clifford Bernard Reilly, to be a member of the Federal Appeal Board.

TO HAVE, hold, exercise and enjoy the said office of a member of the Federal Appeal Board unto you the said Clifford Bernard Reilly with all and every the powers, rights, authority, privileges, profits, emoluments and advantages under the said office of right and by law appertaining during the period of three years.

In testimony whereof we have caused these our letters to be made patent and the great seal of Canada to be hereunto affixed.

Exhibits.

No. 2. Commission appointing Appellant a member of the Federal Appeal Board, 17th August 1923—*continued.*

Witness, our right trusty and well beloved Julian Hedworth George Baron Byng of Vimy, General on the Retired List and in the Reserve of Officers of our Army, Knight Grand Cross of our Most Honourable Order of the Bath, Knight Grand Cross of our Most Distinguished Order of St. Michael and St. George, Member of Our Royal Victorian Order, Governor-General and Commander in Chief of our Dominion of Canada.

At our Government House, in our City of Ottawa, this 17th day of August, in the year of Our Lord one thousand nine hundred and twenty-three, in the Fourteenth year of our reign.

BY COMMAND,

" THOMAS MULVEY "

Under Secretary of State.

(*Reverse Side*)

Commission appointing Clifford Bernard Reilly, Esquire, a Member of the Federal Appeal Board. Dated 17th August 1923.

Recorded 4th October, 1923, lib. 212, fol. 443.

" THOMAS MULVEY " D.E.T.

Registrar General of Canada

Res. No. 76,629.

No. 3.—Order in Council No. 882.

No. 3. Order in Council No. 882, 4th June 1926.

P.C. 882.

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 4th June, 1926.

The Committee of the Privy Council have had before them a report, dated 4th June, 1926, from the Minister of Justice, submitting that Chapter 62 of the Statutes of 1923 provides for the creation of a Federal Appeal Board consisting of not less than five nor more than seven members appointed by the Governor in Council on the recommendation of the Minister of Justice. It was provided in the said Statute that of the members first appointed to the Board other than the Chairman, one-half should be appointed for a term of two years and the others for a term of three years.

By amendment to the said Statute contained in Chapter 49 of the Statutes of 1925, it is provided that the said members shall be eligible for re-appointment for a further term of two years should Your Excellency deem it advisable.

Exhibits.

No. 3. Order in Council No. 882, 4th June 1926—*continued.*

Under authority of Chapter 62 of the Statutes of 1923, the following members were appointed for a term of three years by Order in Council of 17th August, 1923 (P.C. 1620):

Clifford B. Reilly, K.C., of the City of Montreal, Province of Quebec, Barrister, a Lieutenant in the Canadian Expeditionary Force.

John H. Roy, of the City of Quebec, Province of Quebec, a Lieutenant-Colonel in the Canadian Expeditionary Force.

The Minister recommends that the term of appointment as members of the Federal Appeal Board of the said Clifford B. Reilly, K.C., and John H. Roy, be extended to a term of five years from August 17th, 1923, instead of three years as provided. 10

The Committee concur in the foregoing and submit the same for Your Excellency's approval.

E. J. Lemaire,

Clerk of the Privy Council.

No. 4. Order in Council No. 1506, 16th August 1928.

No. 4.—Order in Council No. 1506.

P.C. 1506.

Certified to be a true copy of a minute of a meeting of the committee of the Privy Council, approved by his Excellency the Governor General on the 16th August, 1928. 20

The Committee of the Privy Council have had before them a Report, dated 15th August, 1928, from the Minister of Justice, stating that Chapter 62 of the Statutes of 1923 provided for the creation of a Federal Appeal Board consisting of not less than five nor more than seven members appointed by His Excellency the Governor-General in Council on the recommendation of the Minister of Justice. It was provided in the said Statute that of the members first appointed to the Board other than the Chairman, one half should be appointed for a term of two years and the others for a term of three years.

By an amendment to the said Statute contained in Chapter 49 of the Statutes of 1925, it was provided that the said members should be eligible for re-appointment for a further term of two years should His Excellency the Governor-General in Council deem it advisable. By a further amendment to the said Statute contained in Chapter 65 of the Statutes of 1927 it is provided that the said members shall be eligible for re-appointment for such further terms not to exceed five years, as the Governor in Council may deem advisable. 30

Under authority of Chapter 62 of the Statutes of 1923 the following members were appointed for terms of three years and two years respectively by Order in Council dated 17th August, 1923 (P.C. 1620) and by Orders in Council of 19th August, 1925 (P.C. 1389) of June 4th, 1926 (P.C. 882) and 40

of August 18th, 1927 (P.C. 1615), the appointments were extended until August 17th, 1928.

Clifford B. Reilly, K.C., of the City of Montreal, Province of Quebec, Barrister, a Lieutenant in the Canadian Expeditionary Force;

John H. Roy, of the City of Quebec, in the Province of Quebec, a Lieutenant-Colonel in the Canadian Expeditionary Force;

C. W. E. Meath, of the City of Toronto, Province of Ontario, Superintendent Toronto Office Employment Service of Canada, a Captain in the Canadian Expeditionary Force;

10 Bruce L. Wickware, of the City of Ottawa, in the Province of Ontario, physician, a Captain in the Canadian Army Service Corps.

The Minister further reports that amendments to the Pension Act contained in Chapter 38 of the Statutes of 1928 considerably enlarge the work of the Federal Appeal Board by removal of the time limit for application for pension and in that the time for entering appeals is extended from August 17th, 1925, until December 31st, 1928, or within two years of the date of the decision complained of. There is still a large number of appeals before the Board and as a consequence of these amendments many new appeals are now being made.

20 In view of the above considerations the Minister, in pursuance of the authority vested in him, recommends that the term of appointment as members of the Federal Appeal Board of the said C. B. Reilly, J. H. Roy, C. W. E. Meath and B. L. Wickware, be extended for a period of five years from August 17th, 1928, provided that the appointment of any of the said members may be terminated at any time in the event of reduction in the Board's Work to an extent sufficient to permit of its performance by fewer Commissioners.

The Committee concur in the foregoing recommendation and submit the same for approval.

30 E. J. Lemaire,

Clerk of the Privy Council.

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*.

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,
17, Victoria Street,
S.W. 1.
For the Appellant.

CHARLES RUSSELL & Co.,
37, Norfolk Street,
Strand, W.C. 2.
For the Respondent.

EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.4.