Privy Council Appeal No. 20 of 1933.

Clifford B. Reilly - - - - - - - - *Appellant*

v.

The King - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH DECEMBER, 1933.

Present at the Hearing:

LORD ATKIN.
LORD RUSSELL OF KILLOWEN.
LORD MACMILLAN.
LORD WRIGHT.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD ATKIN.]

This is an appeal from the Supreme Court of Canada, which affirmed a decision of Maclean J. in the Exchequer Court of Canada, dismissing a petition of right in which the present appellant, Mr. Reilly, was the suppliant. The suppliant's case was that, in pursuance of the Pensions Act, he had on August 16th, 1928, been appointed a member of the Federal Appeal Board for a term of five years; that, in breach of contract, he had been dismissed in October, 1930, and he claimed damages. There is no dispute as to the facts. By an Act to Amend the Pensions Act, Chapter 62 of the Statutes of Canada, 1923, there was constituted a Board under the title, "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. One of the members was to 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." Of the members first appointed to the Board other

than the Chairman one-half were to be appointed for a term of two years, and the others for a term of three years, and they were to be eligible for reappointment for such further terms not to exceed five years as the Governor-in-Council may deem advisable. The Chairman was to be paid a salary of seven thousand dollars a year; the other members six thousand, to be paid monthly out of any unappropriated money forming part of the Consolidated Revenue Fund of Canada. R.S.C., 1927, c. 157, s. 50.

The appellant, Mr. Reilly, was in 1923 a practising member of the Bar of Quebec. On August 17th, 1923, in pursuance of an Order in Council, he was appointed by letters patent under the Great Seal of Canada a member of the Federal Appeal Board for the term of three years. The appointment was extended by Orders in Council of June 4th, 1926, and August 18th, 1927, and by an Order in Council of August 16th, 1928, was extended for a further five years, provided that the appointment might be terminated at any time in the event of the reduction in the Board's work to an extent sufficient to permit of its performance by fewer Commissioners. This event never arose. But on May 30th, 1930, the Canadian Legislature passed "An Act to Amend the Pension Act," Statutes of Canada, 1930, c. 35. By Section 14 of that Act Section 50 of the Pensions Act, as amended by subsequent Acts, was repealed, and by Section 9 a Pensions Tribunal was constituted, consisting of a Chairman and eight other members, with salaries of $7,000 and $6,000 respectively, to hold office for ten years, subject only to earlier removal for cause. By Section 10 a Pension Appeal Court was constituted, consisting of a President and two other members. Their tenure was the same as that of the members of the Pension Tribunal; their salaries were to be respectively $8,000 and $7,000 a year. Mr. Reilly's office was thus abolished: neither he nor any of the members was appointed to the new Tribunal or Court; nor was any compensation paid to any of them. In October, 1930, Mr. Reilly was requested to vacate the premises he had occupied in pursuance of his office.

The petition of right is founded on averments that there was a contract between the suppliant and the Crown and that the contract had been broken. Both Courts in Canada have decided that by reason of the statutory abolition of the office Mr. Reilly was not entitled to any remedy, but apparently on different grounds. Mr. Justice Maclean concluded that the relation between the holder of a public office and the Crown was not contractual. There never had been a contract: and the foundation of the petition failed. Mr. Justice Orde's judgment in the Supreme Court seems to admit that the relation might be at any rate partly contractual; but he holds that any such contract must be subject to the necessary term that the Crown could dismiss at pleasure. If so, there could have been no breach.

Their Lordships are not prepared to accede to this view of the contract, if contract there be. If the terms of the appointment definitely prescribe a term and expressly provide for a power to determine " for cause " it appears necessarily to follow that any implication of a power to dismiss at pleasure is excluded. This appears to follow from the reasoning of the Board in *Gould* v. *Stuart* [1896], A.C. 575. This was not the case of a public office, but in this connection the distinction between an office and other service is immaterial. The contrary view to that here expressed would defeat the security given to numerous servants of the Crown in judicial and quasi-judicial and other offices throughout the Empire, where one of the terms of their appointment has been expressed to be dismissal for cause.

In this particular case their Lordships do not find it necessary to express a final opinion on the theory accepted in the Exchequer Court that the relations between the Crown and the holder of a public office are in no degree constituted by contract. They content themselves with remarking that in some offices at least it is difficult to negative some contractual relations, whether it be as to salary or terms of employment, on the one hand, and duty to serve faithfully and with reasonable care and skill on the other. And in this connection it will be important to bear in mind that a power to determine a contract at will is not inconsistent with the existence of a contract until so determined.

But the present case appears to their Lordships to be determined by the elementary proposition that if further performance of a contract becomes impossible by legislation having that effect the contract is discharged. In the present case the office held by the appellant was abolished by statute: thenceforward it was illegal for the executive to continue him in that office or pay him any salary: and impossible for him to exercise his office. The jurisdiction of the Federal Appeal Board was gone. The position, therefore, seems to be this. So far as the rights and obligations of the Crown and the holder of the office rested on statute, the office was abolished and there was no statutory provision made for holders of the office so abolished. So far as the rights and obligations rested on contract, further performance of the contract had been made by statute impossible, and the contract was discharged. It is perhaps unnecessary to add that discharged means put an end to and does not mean broken. In the result, therefore, the appellant has failed to show a breach of contract on which to found damages.

It was, however, contended that this result is avoided by the provisions of the Interpretation Act, R.S.C. 1927, c. 1, s. 19:

> " Where any Act or enactment is repealed—then unless the contrary intention appears, such repeal or revocation shall not . . . (*c*) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactment or regulation so repealed or revoked."

The answer is obvious. There was no right acquired under the appointment to the office except a right which from the inception was subject to be determined by the office being abolished by statute. The propositions which establish that there was no breach of contract negative any protection under this section.

Finally, and almost inevitably in such a case, an appeal was made to the British North America Act, and it was said that legislation abolishing the office without compensation was an interference with "property and civil rights." But, as before, if the right was in itself determinable by statute, there was no interference with it.

It would be strange that the Dominion should have power to create an office but no power to abolish it except on the terms of awarding compensation apparently for the full term of the original office. The case on this point may be put in two ways. Either the Act of 1930 did not interfere with any civil right, or, if it did, its interference was necessarily incident to the undoubted power of the Dominion to abolish the old and create the new office. For the reasons above given the former seems preferable, but either will suffice.

For these reasons their Lordships will humbly advise His Majesty that this appeal be dismissed.

In the Privy Council.

CLIFFORD B. REILLY

v.

THE KING.

DELIVERED BY LORD ATKIN.

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