

1930
 Dec. 29.

IN THE MATTER OF the application of William D. Skitch No. 435,035 for pension,

1931
 Jan. 2.

AND

IN THE MATTER OF a reference by the Honourable the Minister of Pensions and National Health pursuant to the provisions of subsection 8 of section 51 of the Pensions Act as enacted by section 30, Chapter 38 of the Statutes of 1928.

Reference by Minister under Pension Act—Application by Minister to withdraw reference—Vested rights—Effect of repeal—Interpretation Act.

In May, 1929, the Minister of Pensions and National Health, under sec. 30, ss. 8 of 18-19 Geo. V, c. 38, being an Act amending the Pensions Act (R.S.C., 1927, c. 157, s. 51), referred to this court, a dispute as to the jurisdiction of the Appeal Board to render a certain judgment. The Reference was duly filed in court on June 14, 1929, and on October 23, 1930, the widow of the soldier in whose favour the judgment was given filed her statement of claim. The Minister now applies for an order permitting him to withdraw the Reference, on the ground that the Act under which it had been made had been repealed, and that the court had now no jurisdiction to proceed with the same.

Held. That the jurisdiction of a court of record, when it has once obtained, cannot be ousted by any forced interpretation, and that the jurisdiction of this court to proceed with the present Reference was not taken away by the statute of 1930, (20-21 Geo. V, c. 35).

2. That a decision or judgment having been rendered by the Federal Appeal Board, in this matter, it was not one which came under the provisions of section 15 of 20-21 Geo. V, c. 35, which provides a means of dealing with appeals remaining undisposed of at the date of the coming into force of the Act.

APPLICATION by the Minister of Pensions and National Health, to withdraw the Reference made as aforesaid, and duly filed in this court.

The matter was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

Mr. Miall for the Minister, argued that the Act of 1930 ousted the court of the jurisdiction given it by the Act of 1928, amending the Pensions Act (R.S.C., 1927, c. 157). That the matter was one of procedure; that by the new Act new procedure was substituted for the old. He referred to the Interpretation Act, sec. 19, s.s. 2. ("a" and "b"). That this was not a departmental reference under section 37 of the Exchequer Court Act.

Mr. R. Quain for the claimant argued that the court could not grant the Minister's request. That his client has a judgment in her favour, and that the jurisdiction of the tribunal which rendered this judgment having been questioned, the matter was referred to this court. The claimant has a vested right which was not taken away by the Act of 1930. That the matter was not one of procedure but of substantive right. If Parliament had intended to take away claimant's right under the judgment, it would have done so by explicit terms. That the section of the new Act provides for dealing with appeals undisposed of at the time of the coming into force of the Act, which is not the case before the court.

Mr. C. Reilly was also heard for claimant. He argued that the decision of the Pension Appeal Board was a judgment, and that the section of the Pension Act referred to conferred a right on the claimant, which was to be heard before this court, and to have her claim determined by it. He also concurred in the remarks by Mr. Quain.

The further facts and questions of law raised are stated in the Reasons for judgment printed below.

THE PRESIDENT, now (January 2, 1931), delivered judgment.

This is a matter coming before me for adjudication upon a summons issued on behalf of the Minister of Pensions and National Health to show cause why a Reference to the Exchequer Court of Canada by the said Minister should not be withdrawn from the records of the Court.

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The summons sets out the grounds of the application. It calls upon the claimant "to show why the cause or matter above mentioned, referred by the Honourable the Minister of Pensions and National Health to this Honourable Court should not, in view of the provisions of section 51 of the Pension Act as enacted by section 14 of Chapter 35 of the Statutes of 1930 and of section 15 of the said Chapter 35, now be withdrawn."

The Reference in question was signed by the Minister of Pensions and National Health on the 29th day of May, 1929, and was filed in the court on the 14th June, 1929. The Reference up to the present time has not been proceeded with. The claimant filed a statement of claim on the 23rd October, 1930, but the question of her right to do so does not call for decision on the present application. Neither the power of the Minister to make the Reference nor its validity are attacked in this application, and the sole question that falls for decision by me is whether the provisions of Chapter 35, Statutes of Canada, 1930, oust this court of jurisdiction to proceed with the Reference.

Counsel for the Minister relied on the provisions of sections 14 and 15 of the above mentioned Act of 1930 as supporting his contention that the Reference should be withdrawn for lack of jurisdiction in this Court to proceed with it.

The power of the Department of Pensions and National Health to refer disputes as to the jurisdiction of the Federal Appeal Board to the Exchequer Court under sec. 30 of the statute of 1928 amending the Pensions Act (18-19 Geo. V, Chap. 38), appears to be taken away by the Act of 1930.

An examination of section 14 discloses that provision is there made for procedure in matters coming before the Board of Pension Commissioners, the Pension Tribunal and the Pension Appeal Court, and that Parliament has not in that section by any express words interfered with any matter referred to the Exchequer Court previous to the Act of 1930 coming into force. Conceding this, counsel for the Minister contended that under the provisions of the Interpretation Act in the Revised Statutes of 1927, chapter 1,

section 19, subsection 2 (a) and (b), the new procedure set up by the Act of 1930 must be substituted for the procedure by way of a reference to the Exchequer Court.

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I cannot accede to this contention as regards this reference for two reasons: First it is met by the fundamental rule of construction that the jurisdiction of a court of record, when it has once obtained, cannot be ousted by any forced interpretation. "It is supposed that the Legislature would not make any important innovation, without a very explicit expression of its intention." (Maxwell on Statutes 7th ed., p. 113). Secondly, there is a question of substantive and vested right on the part of the claimant involved in the decision of the Reference before this court, namely, the maintenance of a decision or judgment by the old Pension Appeal Board, and by the terms of the very section of the Interpretation Act relied on by counsel for the Minister, I find that where an enactment is repealed, unless a contrary intention appears, the repeal is not to be taken as "affecting any right . . . acquired . . . under the Act . . . so repealed." I refer to section 19, subsection 1, clause (c).

As to the bearing of sec. 15 of the Act of 1930 on the right to withdraw the Reference, I also fail to agree with the contention of counsel for the Minister. The section reads:

15. 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.

The appeal to the Federal Appeal Board by the claimant was not undisposed of *at the date of the coming into force* of the Act of 1930. The judgment of the Board was pronounced on the 3rd August, 1926, the Act came into force on the 30th May, 1930.

The summons will be dismissed with costs to the claimant.

Ordered accordingly.
