

IN THE MATTER OF THE PETITION OF RIGHT OF

1902
 Nov. 10.
 WILLIAM HARGRAVE.....SUPPLIANT;
 AND
 HIS MAJESTY THE KING.....RESPONDENT.

Postmaster's salary—Claim for difference between amount authorized and that paid—Interest—Civil Service Act, R. S. C. c. 17, sec. 6 and sched. B.—51 Vict. c. 12, sec. 12—Extra allowances.

By *The Civil Service Act* (R. S. C. c. 17, sched. B.) a city Postmaster's salary, where the postage collections in his office amount to \$20,000 and over, per annum, is fixed at a definite sum according to a scale therein provided. No discretion is vested in the Governor in Council or in the Postmaster-General to make the salary more or less than the amount so provided. Notwithstanding the statute, it was the practice of the Postmaster-General to take a vote of Parliament for the payment of the salaries of postmasters. For the years between 1892 and 1900, except one, the amount of the appropriation for the suppliant's salary was less than the amount he was entitled to under the statute.

Upon his petition to recover the difference between the said amounts, *Held*, that he was entitled to recover.

2. That the provision in the 6th section of *The Civil Service Act* to the effect that "the collective amount of the salaries of each department shall in no case exceed that provided for by vote of parliament for that purpose" was no bar to the suppliant's claim, even if it could be shown that, if in any year the full salary to which the suppliant was entitled had been paid, the total vote would have been exceeded.

Such provision is in the nature of a direction to the officers of the Treasury who are entrusted with the safe-keeping and payment of the public money, and not to the courts of law. *Collins v. The United States* (15 Ct. of Clms. at p. 35) referred to.

3. The suppliant was not entitled to interest on his claim.

4. The provision in the 12th section of the *Civil Service Amendment Act, 1888*, (51 Vict. c. 12) that "no extra salary or additional remuneration of any kind whatsoever shall be paid to any deputy head, officer or employee in the Civil Service of Canada, or to

any other person permanently employed in the public service," does not prevent Parliament at any time from voting any extra salary or remuneration; and where such an appropriation is made for such extra salary or remuneration, and the same is paid over to any officer, the Crown cannot recover it back.

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PETITION OF RIGHT for the recovery of an alleged balance of salary due to a city postmaster.

The facts of the case are stated in the reasons for judgment.

June 20th, 1902.

The case was heard at Ottawa.

Dr. Travers Lewis, for the suppliant, contended that under schedule B of *The Civil Service Act* (1) the suppliant, between the years 1892 and 1899, was entitled to be paid the sum of \$2,800, per annum, because the postage collections of his office amounted to over \$80,000. The statute cited left nothing to the discretion of the Governor in Council or to that of the Postmaster-General; the salary was fixed definitely and finally by the scale in schedule B.

Secondly, no appropriation bill, without apt words, could override a solemn Act of Parliament. Parliament never intended in merely granting supplies to repeal any of its existing Acts. Therefore, whether the estimates of the Postmaster-General's department provided a larger or smaller sum than was fixed by the statute, the suppliant was nevertheless entitled to the annual salary prescribed in the schedule to the statute—no more and no less. The departmental estimates are not to be taken as the will of Parliament in the matter now before the court; that must be determined solely by reference to the provisions of *The Civil Service Act*. The suppliant looks to that Act and the terms of his commission for the embodiment of his rights.

(1) R. S. C. c. 17.

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He cited *Mechem on Public Officers* (1); *19 Am. and Eng. Encyc. of Law* (2); *United States v. Langston* (3); *Dunwoody v. United States* (4); *Wallace v. United States* (5); *Collins v. United States* (6).

F. H. Chrysler, K.C., for the respondent, argued that the suppliant could only obtain an increase of salary upon an order in council passed under the provisions of sec. 24 of *The Civil Service Act*. No such order in council was in evidence. Again, the 6th section of the Act provides that "the collective amount of the salaries of each department shall in no case exceed that provided for by the vote of Parliament for that purpose." Hence the plain intention of Parliament is that all salaries must be estimated for in the supply bill. Civil servants can only be paid on the basis of the parliamentary appropriation.

Allowances have been made to the suppliant in this case without sufficient authority therefor, and the Crown counterclaims against his petition for a return of the moneys paid him as such allowances.

Dr. Lewis replied.

THE JUDGE OF THE EXCHEQUER COURT now (November 10th, 1902,) delivered judgment.

The suppliant brings his petition to recover the sum of two thousand and fifty dollars, and interest, for salary as postmaster of the City of Winnipeg, over and above the amount paid to him during the years from 1892 to 1900. The defence is that he was paid all the salary that he was entitled to for the years mentioned. The Crown also claims by way of counterclaim the sum of two thousand three hundred and ninety-three

(1) Secs. 885, 887.

(2) (1st ed.) p. 595.

(3) 21 Ct. of Clms. 10 and 118

U. S. 389.

(4) 143 U. S. 535.

(5) 133 U. S. 185.

(6) 15 Ct. of Clms. 22.

dollars and thirty cents for sums paid to the suppliant in excess of his ordinary salary during the years 1882 to 1890, inclusive.

By *The Civil Service Act* in force during the years in which the suppliant's claim arose (1) it was, among other things, in substance provided that the city postmasters should be paid according to the following scale:—

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“ CITY POSTMASTERS.

“ Class 1. When postage collection exceed \$250,000	\$4,000
“ 2. “ “ are from 200,000 to \$250,000...	3,750
“ 3. “ “ “ 150,000 to 200,000..	3,500
“ 4. “ “ “ 100,000 to 150,000..	3,250
“ 5. “ “ “ 80,000 to 100,000..	2,800
“ 6. “ “ “ 60,000 to 80,000..	2,400
“ 7. “ “ “ 40,000 to 60,000..	2,200
“ 8. “ “ “ 20,000 to 40,000...	2,000
“ 9. “ “ less than.....	20,000.. 1,400

to \$1,800, as the Postmaster-General determines. These salaries shall not be supplemented by any allowances, commissions or perquisites whatsoever” (2).

It may be stated in passing that it is conceded, and if it were not, it is clear that the words “ as the Postmaster-General determines” occurring in this extract refers to the 9th class mentioned, and not to the preceding classes.

To comprehend the question at issue it should be borne in mind that, notwithstanding the statutory authority cited, it has been the practice to take a vote of Parliament for the payment of the salaries alluded to. Not that a vote is taken for the amount of each salary; but an estimate is made up and submitted to Parliament, giving in detail the salaries and allowances and other things for which it is intended to

(1) R. S. C. c. 17, as amended (2) R. S. C. c. 17, s. 25; and 52 Victoria, chapter 12, and by 52 Victoria, c. 12, s. 3.
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make provision, and then there is a vote for a large sum covering all these matters. Perhaps it will be convenient to illustrate this by reference to a particular year. In the fiscal year ending the 30th of June 1893, the total vote for the post office under the head of "Collection of Revenue" was \$3,420,800.40 (1). Of that sum \$2,046,842 was attributed to the "mail service"; \$1,163,350 to "salaries and allowances"; and \$206,000 to "miscellaneous." By referring to the "estimates" for that year, page 84, it will be seen that these three amounts were included in vote numbered 258. Then follows at pages 85 to 90 the items in detail that go to make up the amount of \$1,163,350 for salaries and allowances, among which, at page 90, the salary of the postmaster at Winnipeg is set down at \$2,400; and that is the amount that was paid him in that year, although the postage collections at Winnipeg for the same year were \$93,211.56, a sum sufficient under the statute to entitle him to a salary of \$2,800. In all the years referred to there is only one year in which the salary paid to the suppliant exceeded the amount mentioned in the estimate. For the fiscal year ending the 30th June, 1897, the estimate for his salary was \$2,600, and the amount paid \$2,800. The postage collections at the Winnipeg office were for that year \$98,125.49, so that the amount paid and the amount authorized by the statute were in that year the same. For convenience, these particulars and some others respecting the claim for the year mentioned and later years are given in the statement on the following page.

Now what reason can be advanced against allowing the salary in this case at the rate prescribed by the statute? No question of acquiescence or of the statute of limitations as to any part of the claim is set up.

(1) 55-56 Victoria, c. 2, Acts of 1892, p. 30.

STATEMENT REFERRED TO IN NOTES OF REASONS FOR JUDGMENT.

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Fiscal Year.	Amount voted for salaries and allowances of outside service of Post Office; part of total vote.	Reference to Statute.	Estimate of salary for postmaster at Winnipeg, as given in estimates; not in Statute.	Postage collections at Winnipeg.	Salary of the Postmaster at Winnipeg, according to the Civil Service Act.	Except in the year 1896-97, the salary was paid according to the estimate; in that year \$2,800 was paid. Balance claimed.
	\$ cts.		\$ cts.	\$ cts.	\$ cts.	\$ cts.
1892-1893	1,163,350 00	55-56 Vict., c. 2, Acts of 1892, p. 40	2,400 00	93,211 56	2,800 00	400 00
1893-1894	1,185,420 00	56 Vict., c. 1, Acts of 1893, p. 37	2,600 00	91,815 01	2,800 00	200 00
1894-1895	1,202,220 00	57-58 Vict., c. 1, Acts of 1894, p. 45	2,600 00	85,721 90	2,800 00	200 00
1895-1896	1,193,515 00	58-59 Vict., c. 2, Acts of 1895, p. 24	2,600 00	91,417 34	2,800 00	200 00
1896-1897	1,223,295 00	60 Vict., c. 3, Acts of 1896-97, vol. 1, p. 47	2,600 00	98,125 49	2,800 00
1897-1898	1,172,400 00	60-61 Vict., c. 2, Acts of 1897, p. 44	2,800 00	108,876 54	3,250 00	450 00
1898-1899	1,171,081 00	61 Vict., c. 1, Acts of 1898, p. 43	2,800 00	111,067 72	3,250 00	450 00
1899-1900	1,065,305 70	62-63 Vict., c. 2, Acts of 1899, p. 32	2,800 00	116,020 92	*1,083 33	150 00
Amount claimed						2,050 00

* For one-third of year.

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The only question is whether under the statute he was entitled to a larger salary than that paid to him in the years mentioned.

By referring to schedule B of the statute it will be seen that there are some cases in which a minimum salary, and a maximum salary is attached to an office, and in such cases there can, I think, be no doubt that the officer would not be entitled to an increase of salary, until the increase had been authorized by the Government or by Parliament. A definite and certain amount is not authorized. But where the amount is prescribed by the statute itself nothing more is necessary. Now the salary to be paid to a city postmaster is made to depend upon the postage collections of the office under his charge. Where these are less than \$20,000 the Postmaster-General is to decide as to what the salary is to be within prescribed limits. But in other cases there is no discretion as to the amount to be paid vested in anyone. It is suggested that the intention may have been that the Governor in Council should fix the amount of salary of a city postmaster for any given year by reference to, and in accordance with, the postage collections of the preceding year. But that is not what the statute says. Such a provision might have its advantage, but if Parliament had intended so to provide it would no doubt have used language indicative of that intention. When, for instance, a statute in effect provides that where the postage collections at a post office are between eighty thousand dollars and one hundred thousand dollars a year, an annual salary of two thousand eight hundred dollars shall be paid to the postmaster at that office, the natural meaning of the words is that the salary is payable in respect of the year in which the collections are made, and not in respect of some other year. If that is the meaning of the statute, it cannot, I think,

be said that its provisions were overridden or rendered nugatory by the estimate presented each year to Parliament. That was only what it professed to be, an estimate. It was not possible in the particular case here in question to know in advance what the postage collections at the Winnipeg Post Office would be, and so at best only an estimate could be given of what the salary would be. The salary, according to the statute, might be more or less than such estimate. Some authority at the end of the year must determine that. But no discretion was vested in the Governor in Council, or anyone else, to make it either more or less than an amount to be ascertained by "the scale" prescribed by Parliament. The rule was given, the rest was a matter of calculation.

It is suggested, however, that the provision for determining the salary of city postmasters must be read subject to section 24 of *The Civil Service Act*, by which it is enacted that no increase of salary shall be given except upon an order in council passed in the manner therein prescribed. I do not think that section is applicable to the present case. The salary of a city postmaster may, under the provision referred to, be for any given year more or less than it was for the preceding year; yet it is, under the statute, his salary for that year, and if it is more than it was for the preceding year there is no question of increase in the sense in which that word is used in the 26th section of the Act. That section would no doubt apply in cases where the Governor in Council had authority to increase a salary; or where some discretion was vested in him to be exercised with respect to the amount of it. But here, as has been said, there is no such discretion. The rule is given. By that rule the salary is to be ascertained, and then it is for an amount certain, the amount so ascertained.

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Then it was also argued, perhaps not very strongly, that the provision in the 6th section of *The Civil Service Act* to the effect "that the collective amount of the salaries of each department shall in no case exceed that provided for by vote of Parliament for that purpose," makes against allowing the claim in question here. But it is not shown that if in any year the full salary to which the suppliant was entitled had been paid the total vote would have been exceeded. And even if that could be shown the provision would not, I think, be a bar to the suppliant's right to recover in this court. Such provisions are, as was said in *Collins v. The United States* (1), directions to the officers of the Treasury who are entrusted with the safe-keeping and payment of the public money, and not to courts of law, which are established for the purpose of determining legal liabilities, not of dealing with appropriations. It must often happen in this court that there will be no existing appropriation out of which to meet a judgment against the Crown, and for such a case provision has been made that the amount awarded shall be paid out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada (2). The officers of the Treasury must, of course, look to the Appropriation Acts. If a vote for any service is exhausted, nothing more must be paid in respect of that service until another vote is taken. That frequently happens, and nothing is more common than supplementary votes to meet such cases. But that is not a consideration to affect the decision as to whether or not an officer is by law entitled to a given or prescribed salary.

With respect to the principal sum of two thousand and fifty dollars claimed the petition must, I think,

(1) 15 Ct. of Clms. at p. 35.

(2) *The Exchequer Court Act*, 50-51 Vict. c. 16, s. 47.

be sustained. I do not allow any interest thereon. Before leaving this branch of the case it may perhaps be well to add that even if one should come to the conclusion that under the statute a city postmaster's salary for any year should be determined, as was argued, by the postage collections made at his office in the preceding year, the suppliant's claim would not fail except as to part of the amount claimed. He would not under that construction of the statute be entitled to the sum of four hundred and fifty dollars claimed in respect of the year ending 30th June, 1898. Whether or not he would be entitled to the four hundred dollars claimed for the year ending 30th June, 1899, would depend upon the postage collections for the preceding fiscal year, which are not given. As to that further enquiry would be necessary. But the construction of the statute suggested would not affect the other amounts claimed.

The counter-claim set up on behalf of the Crown is to recover back certain allowances paid to the suppliant over and above the amount paid him as a salary between July 1st, 1882 and July 1st, 1890.

The following extract is taken from Schedule B appended to *The Canada Civil Service Act, 1882* (1).

“CITY POSTMASTERS.

“Class 1.	Where postage collections exceed \$80,000.....	\$2,600
“ 2	“ “ are from 60,000 to \$80,000	2,400
“ 3	“ “ “ 40,000 to 60,000	2,200
“ 4	“ “ “ 20,000 to 40,000	2,000
“ 5	“ “ are less than 20,000	1,400

to \$1,800, as the Postmaster-General may determine. These salaries shall not be supplemented by any allowance, commissions or perquisites whatsoever.”

That these were the salaries to be paid in the cases mentioned was not expressly stated in the statute, but

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left to implication; and the matter stood that way until 1883, when it was expressly provided that the officers, clerks and employees mentioned in Schedule B of the Act should be paid according to the scale thereby established (1). By the forty-ninth section of the Act of 1882 it was provided that no extra salary, or additional remuneration of any kind whatsoever should be paid to any deputy head, officer or servant in the Civil Service of the Dominion, unless such sum should have been placed for that special purpose in the estimate submitted to and voted by Parliament. This provision was amended in 1884 by omitting the word "special" and by inserting between the words "purpose" and "in" the words "in each case" (2), so that the provision read that no such extra salary or additional remuneration was to be paid unless a sum was placed for that purpose in each case in the estimates submitted to and voted by Parliament. *The Civil Service Act* of 1882 and the amendments thereto were, in 1885, superseded by *The Civil Service Act* of that year, and the latter by Chapter 17 of *The Revised Statutes of Canada*, but without any further change in the provisions that have been referred to (1). In 1888 the provision as to the extra salaries was further amended and re-enacted in the form following: "No extra salary or additional remuneration of any kind whatsoever shall be paid to any deputy head, officer or employee in the Civil Service of Canada, or to any other person permanently employed in the public service." It is obvious, however, that no substantial change in the law was occasioned by the omission of the provision respecting a special vote by Parliament of any such extra salary or additional remuneration. The amendment of 1888 did not, and could not, bind the hands of Parliament for the future; and whenever

(1) 46 Vict. c. 7, s. 9.

(2) 47 Vict. c. 15, s. 5.

thereafter Parliament saw fit to vote any extra salary or additional remuneration to any person, the provision referred to was to that extent and for that special case abrogated.

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Now with reference to the salary and allowances paid to the suppliant for the fiscal year ending the 30th of June, 1883, it appears that he was paid sixteen hundred dollars as salary and six hundred and forty dollars as a provisional allowance to meet the exceptionally increased cost of living in Manitoba. Such an allowance was at the time made to many officers of the service living in that province. I do not in the estimates for that year find any special provision for the allowance. Neither do I find any estimate for the salary of the postmaster at Winnipeg. The details of the amount to be voted for the services of the post office in Manitoba and the Territories were not in that year given with the same particularity that we find in later years. The reason for that perhaps is to be found in the fact that the estimates for that year were prepared before *The Civil Service Act* of 1882 was passed, and the necessity for giving very full details had not arisen. The appropriation out of which the suppliant was paid for the fiscal year mentioned will be found in the Act 45 Vict. chapter 2, schedule B (2), and in 46 Vict. chapter 2, schedule A (3). And the details, such as they are, will be found in the estimates for that year at page 94, and in the supplementary estimates of 1883-84, at page 12.

For the fiscal year ending the 30th June, 1884, there was appropriated by Parliament, for the post office service in Manitoba, Keewatin and the Northwest Territories the sum of \$153,120 (4). Among the

(1) 48-49 Vict. c. 46, ss. 25, 51 and schedule B; R. S. C. c. 17, ss. 25, 51 and schedule B. (3) Acts of 1893, p. 16. (4) 46 Vict. c. 2, schedule B; Acts of 1883, p. 42.

(2) Acts of 1882, p. 37.

1902 items which in the aggregate made up that amount
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 v. 105, under the head of "salaries" the following :
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Heads of Expenditure.	1882-83.	1883-84.	Compared with Estimates of 1882-3.	
			Increase.	Decrease.
	\$ cts.	\$ cts.	\$ cts.	\$ cts.
<i>Salaries.</i>				
Inspectors' Division :				
1 Inspector		2,000 00		
1 Assistant Inspector		1,000 00		
1 Second Class Clerk		930 00		
1 Third " "		600 00		
1 Chief Railway Mail Clerk		1,000 00		
11 Third Class " "		5,280 00		
City Post Office, Winnipeg :				
1 Postmaster		2,200 00		
6 Second Class Clerks		5,760 00		
16 Third " "		9,080 00		
7 Letter Carriers		2,800 00		
1 Messenger		500 00		
For provisional allowance of 40 per cent. on ordinary salaries, to meet exceptionally increased cost of living in Manitoba.		12,000 00		
Night duty and mileage allowance to Railway Mail Clerks		1,000 00		
Remittance to Country Postmasters for balances of salary		500 00		
Total salaries	25,000 00	44,620 00	19,620 00	

A similar appropriation is made for the years ending respectively on the 30th of June, 1885, 1886, 1887, 1888, 1889 and 1890; and in the estimates for these years like details are given. In each year the suppliant's salary was paid according to the amount stated in the estimates for that year; and, out of the amounts submitted in the estimates for the provisional allowances on ordinary salaries to meet the exceptional cost of living in Manitoba, he was in common with others paid an allowance over and above his salary. By a letter from the Secretary of the Post Office Department to the suppliant, under date of May 17th, 1893; (exhibit F. 4) he was advised that the allowance would,

after the 1st of July, 1883, be as follows: "12½ per cent. per annum on salaries of from \$1,000 to \$2,000; " 25 per cent. on salaries of from \$600 to \$1,000; and " 40 per cent. on salaries of \$600 and under." Whether this scale of allowances was prescribed by an order in council, or by the Postmaster-General, does not, I think, appear, nor does it matter. The suppliant was paid the allowance for the fiscal years ending, respectively, on the 30th of June, 1884, 1885, 1886 and 1887 at the rate of twelve and one-half per centum on the salary for each of these years, as estimated for, and paid. For the years ending, respectively, on the 30th of June, 1888, 1889 and 1890 he was paid at a lesser rate; but by what authority the amount was reduced is not shown.

It is now sought to recover by way of counter-claim these allowances so paid to the suppliant. It is argued that there was no sufficient warrant in law for their payment, and in that connection it is said that an appropriation for an allowance over ordinary salaries to a number of officers mentioned is not a compliance with the provisions of *The Civil Service Act* that requires the sum to be placed, for that purpose, in each case, in the estimates submitted to and voted by Parliament. That is the only objection that is taken to the payments made in the years in which the provision was in force. There is no question of mistake or concealment, or fraud. It was the intention of Parliament and of the Government that these allowances should be paid. The amounts must have been passed by the officers of the Treasury for whom the provisions referred to was a direction and a prohibition. The payments are no doubt to be found in the public accounts that were prepared and laid before Parliament from year to year. If the sufficiency of the provision or authority for making the payments had been chal-

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lenged in any year in which they were made; if it had then been suggested that it was doubtful or not sufficiently clear that such authority existed, there can, I think, be no question that any such doubts would have been removed, for it is clear that it was intended in the years mentioned to make this provisional allowance to cover the exceptional cost at that time of living in Manitoba.

I do not refer to the hardship involved in compelling anyone to whom moneys have been paid for such a purpose to return the same many years afterwards. As one has to say, and I regret to add, to say more frequently than one cares to do, the hardship of the case has nothing to do with the question of law, if the law be clear. No responsibility as to that rests with the court. But in such a case it is reasonable for a court to hold its hand if the matter is not clear, and that, I think, will be sufficient for the present case. The statute provides that the extra salary or allowance should in each case be placed in the estimates submitted to and voted by Parliament. In the cases under discussion an amount was placed in the estimates and voted by Parliament to meet a number of cases, leaving the Governor in Council or the Postmaster-General, out of the amount appropriated, to make provision for each case. A class of cases, not a particular case, was provided for. But after all it is not material whether that constituted a literal compliance with the statute or not. If it did, or even if it was a substantial compliance with the statute, that is the end of the matter. If it was not a compliance with the statute; then we have disclosed an intention on the part of Parliament in the particular cases not to comply with it, and to that extent to modify the statute. What does appear very clearly is the intention of Parliament, notwithstanding anything to the con-

trary, to make provision for the payment of these allowances, and that being so, how can it now be said that they were paid without parliamentary authority? That applies to all of the allowances in question here, except that paid in the fiscal year ending 30th June, 1883.

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It appears from an order in council of the 14th of June, 1883, in evidence as Exhibit "D," that the suppliant's salary was increased on the 1st of July, 1883, from \$1,600 to \$2,200, and that the postage collections at the Winnipeg office then stood at a sum between \$40,000 and \$60,000 per annum. This, I think, constitutes all the evidence before the court as to what the postage collections were in any year between 1882 and 1890, so that it is not possible to say what, according to the statute, the suppliant's salary should have been during any of these years, except perhaps the year ending 30th of June, 1883. For that year it is, I think, fair to infer from the order in council that such collections exceeded the sum of \$40,000, and if they did, the suppliant was entitled to a salary of \$2,200, which would only exceed the salary and allowance on salary paid to him by the small sum of \$40, and apart altogether from the special appropriation for the allowances mentioned, it could not in any case be said that the payments to him, on account of salary, were paid without authority of law so long as the total was within the amount prescribed by the statute. That applies as well to the payments made in the years subsequent to 1883, if the salary as given in the estimate was in any year less than the suppliant was by law entitled to. It would not, it seems to me, in any view of this case, be proper to allow the counter-claim without an enquiry as to the postage collections made in the respective years mentioned, so as to ascertain if the amount to which the suppliant was entitled in

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any year was exceeded by the amount of salary and allowance on salary paid to him during such year. But in the view I take of the case no such enquiry is necessary. There will be judgment for the suppliant for two thousand and fifty dollars, and for his costs of the petition.

Judgment accordingly.

Solicitor for the suppliants: *Lewis & Smellie.*

Solicitor for the respondent: *E. L. Newcombe.*
