

1927
June 15.
Sept. 6.

MARY THOMASSUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Crown—Pensions—Contract—Grace and bounty of the Crown

Held, that no contractual relations resulted from the various sections of the Pensions Act (9-10 Geo. V, c. 43) and amendments thereto, between the Crown or the Pensions Board and the soldier or his dependents, upon which an action to recover might be based.

That the words "shall be entitled" in section 34 of the said Act were intended merely to authorize the Pensions Board to make the payment, but were in no way imperative upon them.

That pensions are an act of grace and bounty of the Crown which must be left to the discretion of the Government; and there can be no review of the discretions of the Pensions Board by this Court.

PETITION OF RIGHT by suppliant to recover certain amount as pension for the death of her son.

(1) (1917) Pat. Office Gaz. (U.S.) Vol. 239, p. 656.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

R. V. Sinclair, K.C., for suppliant.

Edward Miall for respondent.

The facts are stated in the reasons for judgment.

THE PRESIDENT, this 6th September, 1927, delivered judgment.

In this case the suppliant claims to be entitled under the Pensions Act, to receive a pension at the rate of \$60 per month, from the date of the death of her son, Benjamin Thomas, namely, the 29th day of June, 1922, down to the 1st day of December, 1925. The suppliant alleges in her petition that after May, 1915, her said son was up to the time of his death her sole support. Further, that on the 17th day of May, 1916, he enlisted for service in the Great War, and served overseas until his discharge from the Forces, on the 8th day of June, 1919. That while serving overseas he was gassed, and after his return to Canada was sick and ailing, although able to work at times, and that during such periods as he was able to work, he supported the suppliant. Subsequent to the death of her son the suppliant applied to the Board of Pension Commissioners for a pension as being a dependent mother, but the Board refused to grant such application upon the ground that the condition resulting in her son's death was not attributable to military service. The suppliant thereupon appealed from the said decision to the Federal Appeal Board, which on October 26, 1925, determined that the death of her son was attributable to his military service. On December 28, 1925, the Board of Pension Commissioners ruled that a pension would be paid to the suppliant at the rate of \$60 per month from the 1st day of December, 1925. The suppliant further alleges that at various times since the said pension was awarded her she applied to the Board of Pension Commissioners for retroactive pension from the date of her son's death up to the date of the Federal Appeal Board's decision amounting to \$2,440; but that the said Board had refused to pay the same "in view of the contributions made by the Canadian Patriotic Fund,

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and contributions from other persons interested in your suppliant's welfare, as well as income from other sources." The Crown by its Statement in Defence denies the right of the suppliant to recover the amount claimed in the Petition of Right on the ground, *inter alia*, that the amount payable to the suppliant in the way of a pension was subject to the discretion of the Board of Pension Commissioners, and that their decision in the matter cannot be reviewed by this court upon a Petition of Right.

The suppliant's right to recover the amount claimed may be said to depend wholly upon a relation of contract subsisting between her and the Crown, as represented by the Board of Pension Commissioners. The principle generally recognized by the courts in England, the decisions of which have been followed in Canada, is that any claim to a pension is not a claim arising out of contract between those in the military service, and the Crown. I would refer to *Mitchell v. The Queen* (1); *Leaman v. The King* (2); *Dunn v. The Queen* (3); *Cooper v. The Queen* (4); *Yorke v. The King* (5).

The Exchequer Court has had occasion to consider the contract relationship existing between both civil servants and military officers and the Crown. In the case of *Balderson v. The Queen* (6) it was held that:

Where under the provisions of the Civil Service Superannuation Act (R.S.C., c. 18) the Governor in Council exercises the discretion or authority conferred upon him by such an Act to determine the allowance to be paid to a retired civil servant, his decision as to the amount of such allowance is final, and the Exchequer Court has no jurisdiction to review the same.

The English cases decided prior to that case were relied on by Mr. Justice Burbidge. His judgment was affirmed by the Supreme Court of Canada (7). In the case of *Bacon v. The King* (8), Audette J. decided that a gratuity to a military officer is in its very nature a matter depending entirely upon the grace and bounty of the Crown, and that no action will lie against the Crown to recover the same. The authorities are well reviewed in this case.

(1) (1896) 1 Q.B.D. 121; *Note*.

(2) (1920) 3 K.B. 663.

(3) (1896) 1 Q.B.D. 116.

(4) (1880) L.R. 14 Ch. D. 311.

(5) (1915) 31 T.L.R. 220.

(6) (1897) 6 Ex. C.R. 8.

(7) (1898) 28 S.C.R. 261.

(8) (1921) 21 Ex. C.R. 25.

The various sections of the Pensions Act, being chapter 43 of the Statutes of Canada, 1919, and the amendments thereto, do not it seems to me set up any contract between the Crown or the Pensions Board, and the soldier or his dependents. I cannot see in any section of the entire Act any specific contractual relations, established between the soldier and his dependents, and the Crown or the Board. The provisions of section 34 of the Pensions Act are relied upon by the suppliant, and while that section enacts that a parent "shall be entitled" that expression does not carry the case any further than the Statutes and Royal Warrants upon which the English cases have been decided. The whole case has to be looked at as involving an act of bounty by the Crown, and the administration of such act of bounty is left in the discretion of an arm of Government, known as the Pensions Board. So far as the court is concerned no review can be made of the decisions of the Pensions Board, even if the Board goes wrong, and I think it is quite clear that such was the intention of the statutes. The only appeal in, or review of, such matters from the Pensions Board is to the Federal Appeal Board, as provided for by chap. 62, sec. 11 of the Statutes of Canada, 1923.

For the reasons given I am of the opinion that the suppliant is not entitled to the relief claimed. There will be no order as to costs.

Judgment accordingly.

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Maclean J.