

BETWEEN :

ANNIE HULLSUPPLIANT;

AND

HIS MAJESTY THE KINGRESPONDENT.

1939
Sept. 11.
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Nov. 17.
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Crown—Petition of Right—The Returned Soldiers' Insurance Act, 10-11 Geo. V, c. 54—Manitoba and Ontario Insurance Acts—Exchequer Court Act, R.S.C., 1927 c. 34, s. 32—Limitation of actions—Manitoba and Ontario Limitation of Actions Act.

B., a returned soldier, resident at Winnipeg, Manitoba, was issued a policy of insurance under the provisions of The Returned Soldiers' Insurance Act, 10-11 Geo. V, c. 54, and amendments thereto, the suppliant being named the beneficiary therein. The contract was signed at Ottawa, in the Province of Ontario, by the Minister of Finance, on behalf of the Dominion of Canada. B. died in 1932. The Court found that there was no fraudulent concealment or misrepresentation of facts on the part of B. in his application for insurance.

The respondent pleaded that suppliant's right of action was barred by the failure to commence action within the time required by s. 152 (1) of The Manitoba Insurance Act, or of a corresponding provision in the Insurance Act of Ontario. These statutes provide that "any action or proceeding against the insurer for the recovery of insurance money shall be commenced within one year next after the furnishing of reasonably sufficient proof of the maturity of the contract and of the right of the claimant to receive payment . . ." The Manitoba and Ontario Limitation of Actions Acts provide for the commencement of actions within six years after the cause of action arose. The Returned Soldiers' Insurance Act contains no provision relating to prescription and the limitation of actions. The Exchequer Court Act, R.S.C., 1927, c. 34, s. 32, provides: "The laws relating to prescription and the limitation of actions in force in any

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province between subject and subject shall, subject to the provisions of any Act of the Parliament of Canada, apply to any proceeding against the Crown in respect of any cause of action arising in such province ”

Maclean J. *Held*: That the “ laws ” referred to in s 32 of The Exchequer Court Act are the public general Acts relating to the limitation of actions, unless a special period of limitation is fixed by some particular provincial statute for proceedings in respect of acts done in pursuance of or in the execution of such statute, and such statute clearly contemplates the same subject-matter as that involved in any proceeding taken against the Crown in the right of the Dominion of Canada.

2 That this proceeding is not barred by the terms of the Insurance Act of the Province of Manitoba, or that of Ontario, relating to the limitation of actions.

PETITION OF RIGHT praying a declaration that a contract of insurance issued to suppliant’s husband, now deceased, by the Dominion of Canada, pursuant to The Returned Soldiers’ Insurance Act, is in full force and effect, and that respondent is liable to pay suppliant any amounts payable under the terms of the said contract of insurance.

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

A. W. Morley and G. T. Chapman for suppliant.

C. V. McArthur, K.C. and F. R. Evans for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, now (November 17, 1939) delivered the following judgment:

The suppliant here was named the beneficiary in a contract of insurance, issued by the Dominion of Canada, in the amount of \$3,000, on August 6, 1930, under the provisions of The Returned Soldiers’ Insurance Act, Chap. 54 of the Statutes of Canada, 1920, and amendments thereto, upon the life of her late husband, William J. Banks, a returned soldier, who died in November, 1932. The suppliant has since remarried, her present husband being one, Thomas Hull. The application for the said policy of insurance was made by the deceased Banks, in writing, on July 25, 1930. The respondent, upon the death of the insured, refused to pay to the suppliant any amounts pay-

able to her under the said contract of insurance upon the ground that the application therefor contained certain statements which were untrue to the knowledge of the applicant Banks, and which, it is claimed, rendered the policy null and void. The suppliant by her petition prays for a declaration that the said contract of insurance is still in full force and effect, and that the respondent is liable to pay to her any amounts payable under the terms of the said contract of insurance.

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It will be convenient first to refer to the principal provisions of The Returned Soldiers' Insurance Act, and amendments thereto, under which the contract of insurance in question issued. Sec. 3, ss. (1) and ss. (5) are as follows:

3. (1) The Minister may enter into an insurance contract with any returned soldier in Canada or with any widow, providing for the payment of five hundred dollars or any multiple thereof, not, however, exceeding five thousand dollars in the event of the death of the insured.

(5) The contract may also provide that if the insured becomes totally and permanently disabled and rendered incapable of pursuing continuously any substantially gainful occupation, and if such disability is not deemed to be attributable to his service so as to bring him under the provisions of The Pension Act, the premiums thereafter falling due under the contract shall be waived and the insured shall be entitled to receive as a disability benefit an annual payment not exceeding one-twentieth of the sum insured, the said benefit to continue during the lifetime of the insured but not to exceed twenty such payments in all; and that if the insured dies before the twentieth such payment has been made the balance of the sum assured shall be payable as a death benefit, in accordance with the provisions of this section.

Sec. 13 provides that:

The Minister may refuse to enter into an insurance contract in any case where there are in his opinion sufficient grounds for his refusing.

And Sec. 15 provides that:

No medical examination or other evidence of insurability shall be required in respect of any contract issued under this Act: Provided, however, that the Minister may, for the purpose of determining whether he shall refuse to enter into a contract of insurance in any case under the provisions of section Thirteen of this Act, require such medical examination or other evidence of insurability of the insured as he may deem necessary.

No medical examination was required in this case by the Minister.

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^{2.}
THE KING. In the exercise of the powers conferred upon the Minister by sections thirteen and fifteen of the said Act, the Minister shall be governed
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Provided that applicants with or without pensionable disability who are so seriously ill that they have no expectancy of life, and who have dependents who are entitled to become beneficiaries under the contract as provided under the Act, shall be insurable under The Returned Soldiers' Insurance Act up to, and inclusive of, 1st January, 1923.

Classes I and II of the Schedule referred to in sec. 10, ss. (2) of the Statutes of Canada, 1922, are as follows:

Class I. Applicants who are not seriously ill.

(a) An applicant with dependents, ill with a pensionable disability.

Application is to be accepted.

(b) An applicant without dependents, who is ill with a pensionable disability.

Application is to be accepted.

(c) An applicant with dependents, ill with a disability that is not pensionable.

Application is to be accepted.

(d) An applicant without dependents, ill with a disability that is not pensionable.

Application is to be accepted.

Class II. Applicants who are seriously ill.

(a) An applicant with dependents, seriously ill with a pensionable disability.

Application is to be accepted.

(b) An applicant with dependents, dangerously ill, with a disability that is not pensionable.

Application is to be refused.

(c) An applicant without dependents, seriously ill with a pensionable disability.

Application is to be refused.

(d) An applicant without dependents, seriously ill with a disability that is not pensionable.

Application is to be refused.

Class III of the Schedule, as amended, relates to applications from persons in so serious a condition of health that they have no reasonable expectation of life, and the Schedule provides that such "applications are to be refused."

A brief reference might perhaps be made at this stage to what is called the "Veterans' Bureau," a branch of the Department of Pensions and Public Health, and which I shall have occasion to mention later. The Pension Act, Chap. 157, R.S.C., 1927, as amended by Chap. 35 of the Statutes of Canada, 1930, provides by sec. 10k that:

(1) Provision shall be made for the constitution of a branch of the Department to be known as the "Veterans' Bureau" which, subject to the direction of the Minister, shall be administered by a chief pensions advocate who shall be assisted by such other pensions advocates and such additional staff as may be required for the proper performance of the duties of the branch.

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Sec. 53 of the Pension Act as so amended provides that:

Upon the reference of any application to the chief pensions advocate as aforesaid, it shall be his duty

- (a) To notify the claimant and any interested soldiers' service organization of the reference of the claim to him;
- (b) to cause the case to be prepared for presentation on behalf of the claimant to the Pension Tribunal;
- (c) when the case is so prepared, to cause application to be made to the registrar of the Pension Tribunal, at the request of the claimant, and on notice to the chief commission counsel, to have a time and place fixed for the hearing of the application; and
- (d) to arrange for the presentation of the claim before the tribunal at such time and place either by himself or a pensions advocate, unless the claimant elects to have the same presented by some other person at his own expense.

The above provisions of the Pension Act thus make provision for the establishment of the Veterans' Bureau, and the appointment of pensions advocates whose duties, *inter alia*, are to prepare the case of applicants for pension for presentation to the Pension Tribunal, and by subsequent amendments to the Act pensions advocates are now required to be barristers of good standing at the bar of any of the provinces of Canada. As will later appear, the deceased, Banks, subsequent to the date of the insurance contract in question, applied for pension under the Pension Act, and in preparing his case for presentation to the Pension Tribunal, he was assisted by one of the pensions advocates of the Veterans' Bureau, by whom certain forms, to be used in support of his application were supplied, and which, when completed, were submitted to the Pension Tribunal.

It will be apparent that the purpose of The Returned Soldiers' Insurance Act was to provide an unusually liberal scheme of insurance for certain of those who had served in the Great War. In the case of any of those who were ill, but not seriously ill, with a pensionable or non-pensionable disability, with or without dependents, the application was to be accepted; if they were seriously ill with a pensionable disability, and with dependents, the application was to be accepted; if the applicant were dangerously ill with

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a disability that was not pensionable, and with dependents, the application was to be refused; if the applicant were without dependents, seriously ill with a disability that was or was not pensionable, the application was to be refused; and if the applicant were in so serious a condition of health that he had no reasonable expectation of life, the application was to be refused. It may be presumed that many of those eligible for insurance under this Act would be unable to obtain insurance in regular life insurance companies. The Act even provides that the Minister may enter into an insurance contract with the widow of a returned soldier, upon the same premium terms that were available to her deceased husband, for the benefit of certain beneficiaries. The Act also provides that if the insured had become totally and permanently disabled, incapable of pursuing any gainful occupation, and such disability were not deemed attributable to war service so as to bring him under the provisions of the Pension Act, the premiums thereafter falling due were to be waived and the insured would become entitled to receive as a disability benefit a certain annual payment during his lifetime. I should perhaps mention that the departmental file of Banks referable to his enlistment, his war service, and his discharge, would be available to the authorities having to consider his application for insurance under the Act, and that file would reveal any casualties or illnesses suffered by him during the period of his war service, and down to the time of his discharge.

[The learned President reviewed the evidence and concluded that it had not been established that there was any fraudulent concealment or misrepresentation of facts on the part of Banks in his application for insurance.]

The Crown pleads that the suppliant's right of action is barred on the ground that the same was not commenced within one year after the furnishing of proof of the death of Banks, and relies on sec. 152 (1) of The Manitoba Insurance Act, and in the alternative to a corresponding section in The Insurance Act of the Province of Ontario. In November, 1932, the petitioner furnished the Returned Soldiers' Insurance Branch of the Department of Pensions with sufficient proof of the death of Banks, and of the maturity of the contract of insurance. The date of filing of this petition in the Exchequer Court was November 18,

1936. It does not appear from the record when the petition was filed with the Secretary of State, but it must have been some time prior to November, 1936. The record does not appear to indicate when the petition was served upon the Attorney-General of Canada, but that, in my opinion, is not of importance, and at least no point was raised concerning the date of the service of the petition.

Sec. 152 (1) of The Manitoba Insurance Act provides that "any action or proceeding against the insurer for the recovery of insurance money shall be commenced within one year next after the furnishing of reasonably sufficient proof of the maturity of the contract and of the right of the claimant to receive payment, or within six years after the maturity of the contract, whichever period shall first expire, but not afterwards." The Manitoba Limitation of Actions Act, s. 3, ss. (f), as amended by Chap. 24, Statutes of Manitoba, 1932, provides that "actions for the recovery of money (except in respect of a debt charged upon land), whether recoverable as a debt or damage or otherwise, and whether on a recognizance, bond, covenant or other specialty, or on a simple contract, express or implied, and actions for an account or for not accounting within six years after the cause of action arose." The Limitations Act of the Province of Ontario contains a similar provision. Sec. 32 of the Exchequer Court Act provides that: "The laws relating to prescription and the limitation of actions in force in any province between subject and subject shall, subject to the provisions of any Act of the Parliament of Canada, apply to any proceeding against the Crown in respect of any cause of action arising in such province." The Returned Soldiers' Insurance Act contains no provision relating to prescription and the limitation of actions and the question arises whether it is the Manitoba Insurance Act or the Manitoba Limitation of Actions Act, or the corresponding statutes of the Province of Ontario, which applies here. The contract of insurance here in question was signed at Ottawa in the Province of Ontario, by the Minister of Finance, on behalf of the Dominion of Canada.

Mr. McArthur argued that while the provisions of the Manitoba Insurance Act did not bind the Crown in the right of the Dominion, yet it was open to the Crown to take advantage of sec. 152 of the Manitoba Insurance

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Act, or in the alternative the corresponding provision of The Insurance Act of Ontario. The Returned Soldiers' Insurance Act, and the Manitoba and Ontario Insurance Acts, are, in almost every respect, in such contrast that it is hardly to be believed that the Parliament of Canada ever contemplated that the limitation periods of the latter Acts were intended to apply to actions arising under The Returned Soldiers' Insurance Act. I think it is the Manitoba Limitation of Acts Act, or the corresponding Ontario Act, that is applicable here.

The Exchequer Court Act having provided that the laws relating to prescription and the limitation of actions in force in any province between subject and subject shall apply to any proceeding against the Crown in respect of any action arising in any province, it would appear to me that the "laws" there referred to are the public general Acts relating to the limitation of actions, unless a special period of limitation is fixed by some particular provincial statute for proceedings in respect of acts done in pursuance of or in the execution of such statute, and such statute clearly contemplates the same subject-matter as that involved in any proceeding taken against the Crown in the right of the Dominion, and under a law of the Dominion of Canada. The contract of insurance in question here was not entered into under the authority and terms of the Insurance Acts of Manitoba or Ontario. Such statutes are in scope and purpose entirely different from The Returned Soldiers' Insurance Act under the terms of which the contract of insurance here in question was entered into. I would seriously doubt if it were ever contemplated by the legislature that the limitation of actions provision of any provincial Insurance Act should apply to contracts of insurance entered into under the terms of The Returned Soldiers' Insurance Act.

It is true that The Returned Soldiers' Insurance Act deals with the subject-matter of life insurance, but on a basis and for an end altogether different from that contemplated by the provincial Insurance Acts which have been mentioned; the provisions of The Returned Soldiers' Insurance Act were made available to applicants of a special class, in a limited amount, for a limited period, and upon liberal and unusual terms as to cost, health and

medical examination. The considerations determining the period of limitation of actions in the public general Insurance Acts of the provinces would be different, I think, from those which would arise in a special enactment such as The Returned Soldiers' Insurance Act, one specially designed for the welfare and protection of dependents of certain returned soldiers. It is unnecessary to review in detail the provisions of the provincial Insurance Acts which have been here mentioned but generally speaking they are so dissimilar to those of The Returned Soldiers' Insurance Act that they may be said, in the practical sense, to relate to a different subject-matter altogether. In the insurance world The Returned Soldiers' Insurance Act would hardly be classified or recognized as an Act pertaining to life insurance. I am therefore of the opinion that the proceeding here is not barred by the terms of the Insurance Act of the Province of Manitoba, or that of Ontario, relating to the limitation of actions.

The suppliant therefore succeeds in her petition, for the principal amount mentioned in the insurance contract less the amount of the premiums which were paid and returned. I know of no principle upon which the suppliant can recover the interest claimed by her, and as set forth in her petition. The suppliant will have the costs of the petition.

Judgment accordingly.

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