

1897  
 Oct. 27.

JOHN M. BALDERSON .....SUPPLIANT ;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

*Civil servant—Superannuation—R. S. C. c. 18—Discretion of Governor in Council—Reviewing same—Jurisdiction—Petition of right.*

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 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.

**P**ETITION of Right claiming a further superannuation allowance to a civil servant retired under the provisions of R. S. C. c. 18.

The facts appear in the reasons for judgment.

The case came on for hearing, at Ottawa, on the 27th October, 1897.

*W. D. Hogg*, Q.C. and *J. M. Balderson*, for the suppliant, contended that under the 11th section of the Superannuation Act, R. S. C. c. 18, where a person is retired from the civil service ostensibly for the purpose of promoting economy in such service, it is obligatory upon the Governor in Council to add ten years to the length of time they have been regularly employed by the Government in order to arrive at a fair compensation for the deprivation of office. (*Julius v. The Bishop of Oxford* (1); *Hardcastle on Statutes* (2); *The Queen v. The Bishop of Oxford* (3); *McDougall v. Paterson* (4); *Endlich on Statutes* (5).) The court should declare the suppliant's right to the additional allowance.

(1) 5 App. Cas. 225.

(2) 2nd ed. 316.

(3) 4 Q. B. D. 245.

(4) 6 Exch. 387.

(5) Sec. 306.

*The Solicitor General of Canada* (with whom was *E. L. Newcombe Q. C., D. M. J.*).—The court has no jurisdiction to interfere with the Governor in Council when he has exercised his discretion as to the amount to be allowed to a retired civil servant. The civil servant is expressly denied by the 8th section any absolute right to a retiring allowance. He has to depend upon the bounty of the Crown; and whether he be given a small allowance or none the courts cannot aid him. (*Cooper v. The Queen* (1); *Bell v. The Queen* (2); *Matton v. The Queen* (3); *Dunn v. The Queen* (4); *Shenton v. Smith* (5).)

1897  
BALDERSON  
v.  
THE  
QUEEN.  
Argument  
of Counsel

Mr. Hogg replied, citing *Gould v. Stuart* (6).

At the conclusion of the argument The JUDGE OF THE EXCHEQUER COURT delivered judgment:—

I do not think that anything is to be gained by delaying the judgment of the court in this case, as I entertain no doubt myself as to what that judgment should be.

The court has jurisdiction to give relief in two views of the case only: first, that the action is based upon a contract; secondly, that it arises under some law of Canada. Section 15 of *The Exchequer Court Act* provides: "The Exchequer Court shall have exclusive original jurisdiction in all cases in which demand is made or relief sought in respect of any matter which might, in England, be the subject of a suit or action against the Crown, and for greater certainty, but not so as to restrict the generality of the foregoing terms, it shall have exclusive original jurisdiction in all cases in which the land, goods or money of the subject are in the possession of the

(1) 14 Ch. D. 311.

(2) [1896] 1 Q. B. D. 121.

(3) 5 Ex. C. R. 401.

(4) [1896] 1 Q. B. 116.

(5) [1895] A. C. 229.

(6) [1896] A. C. 575.

1897  
 ~~~~~  
 BALDERSON  
 v.  
 THE  
 QUEEN.  
 ~~~~~  
 Reasons  
 for  
 Judgment.  
 ~~~~~

“ Crown, or in which the claim arises out of a contract entered into by or on behalf of the Crown.”

Now, I think we may put aside without further discussion the question as to whether there was a contract or not. There is no express contract to pay or provide on retirement of the public officer any certain, or any retiring allowance, and I think there is no such contract to be implied from his employment in the civil service.

Then with reference to the second view of the case, namely, as to whether the action may be maintained under clause (d) of the 16th section of *The Exchequer Court Act*, it will be seen that the provision gives the court jurisdiction in respect of “ Every claim against the Crown arising under any law of Canada or any regulation made by the Governor in Council.” Now I do not doubt that by virtue of that provision the court would have jurisdiction, if, as contended by Mr. Hogg, the statute itself determined the amount of the retiring allowance and the allowance had not been paid. But the statute does not itself determine the amount of the superannuation allowance; it prescribes the rule by which the amount is to be ascertained and empowers His Excellency in Council to determine it.

That raises then two questions: First, is the authority given to the Governor in Council to grant the retiring allowance in accordance with the statute, coupled with a duty in a proper case to exercise that authority? and, secondly, if it is, and the duty has not been performed as prescribed by the Act, has this court jurisdiction to enforce the performance of such duty?

As to the first question, it is not, in the view I take of the second, necessary to express any opinion. It is unnecessary to decide whether or not it is the duty of the Governor in Council in the particular case to grant any retiring allowance, or in granting it to add

one or two, or ten years to the term of the suppliant's service. Of this I am well satisfied that this court has no authority either to enforce the performance of any such duty, or when the Governor in Council has exercised his discretion to grant a retiring allowance (1), to review the exercise of such discretion. It is clear, I think, that this court has no jurisdiction to control or review the exercise of the authority or discretion vested in His Excellency in Council by the statute. Therefore, I think the petition will not lie, and I am of opinion to dismiss it with costs against the suppliant.

I may add that I expressed much the same view as I do here in the case of *Matton v. The Queen* (2), and having had an opportunity of considering the question before giving judgment in that case I feel that there is no good reason for me to take any time before coming to a conclusion on the present petition.

*Judgment accordingly.*

Solicitors for the suppliant: *O'Connor, Hogg & Magee.*

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

1897  
 ~~~~~  
 BALDERSON  
 v.  
 THE  
 QUEEN.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

(1) 1 R. S. C. c. 18, s. 11.

(2) 5 Ex. C. R. 401.