

HER MAJESTY THE QUEEN (RE- } APPELLANT;
 SPONDENT) }

1897

*Oct. 19.

AND

GEORGE B. BRADLEY (CLAIMANT).....RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

*Statute, construction of—51 V. c. 12, s. 51—Civil service—Extra salary
 —Additional remuneration—Permanent employees.*

The Civil Service Amendment Act, 1888 (51 Vict. ch. 12), by section 51, provides that "No extra salary or additional remuneration of any kind whatever 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 of Canada."

Held, that reporters employed on the Hansard staff of the House of Commons of Canada, are persons subject to the operation of the statute quoted.

Held, further, that in the section referred to, the words "no extra salary or additional remuneration" apply only to payments which, if made, would be extra or additional to the salary or remuneration payable to an officer for services which, at the time of his acceptance of the appointment, could legitimately have been intended or expected to be within the scope of the ordinary duties of his office, although additional to them.

*PRESENT :—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

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APPEAL from the judgment of the Exchequer Court of Canada (1), declaring that the claimant was entitled to recover \$1,366.10 and costs of suit from the Crown.

A statement of the case is given in the judgment reported. It may be mentioned, however, that the claimant's office was established by resolution of the House of Commons of Canada, on the 28th April, 1880 (2), which is as follows:—

“*Resolved*, That as greater permanency in the personnel of the reporting staff would ensure a higher state of efficiency, the committee would recommend that six reporters be engaged and recognized as officers of the House, subject to such regulations as may from time to time be enacted by the Commissioners for the Internal Economy of the House, or by the Select Committee appointed to supervise the Official Report of the Debates of the House.”

“That the staff so to be employed shall rank and be paid as follows:—

1 Chief reporter, at a salary of.	\$1,500 00
5 Assistants, one of whom to be qualified to report in both languages..	5,000 00

Total.....\$6,500 00”

“That the reporting staff be organized, and tenders issued for the necessary translation, printing and binding, forthwith; so that the several contracts may be entered into, and submitted for the approval of the House, during the present session.”

The claimant was appointed chief reporter by resolution of the House of Commons on 6th May, 1880.

The respondent contended that the 51st section of the Civil Service Act did not apply to him as he was not a civil servant but an employee of the House of

(1) 5 Ex. C. R. 409.

(2) Jour. H. of C. of Can. vol. xiv, [1880], p. 268 & 281.

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Commons, and his employment and service were regulated by the Act respecting the House of Commons (1); that he was not under the control of the Crown, but appointed by the House of Commons, and subject to be suspended or removed by the House through the agency of the Speaker; that (in the Civil Service Act, sec. 51,) the words "or to any other person permanently employed in the public service," should be read *ejusdem generis* with the preceding words of the section and meant some one of a like class with "a deputy-head, officer or employee in the Civil Service of Canada," that is, persons in the employ of the executive government, not included in schedules "A" and "B" of the Civil Service Act, but permanently employed in the public service and entitled to superannuation under the Civil Service Superannuation Act (2),—permanent public servants of the same grade, class or kind as those specifically enumerated in the section.

He asserted that he was not permanently employed in the public service but stood in the same relation to the House of Commons as the persons temporarily employed continuously in the Government service, referred to in section 11, and did not come within the definition of a permanent officer or servant of the Senate and the House of Commons entitled to the benefits of the Civil Service Superannuation Act (3), or entitled to contribute to the superannuation fund.

It appeared that the Hansard reporters made an effort at one time to be placed on the permanent list, and for a few months deductions were made from their salaries for the superannuation fund; but the decision of the Speaker of the House being that this could not be done, the deductions made were refunded to them.

(1) R. S. C. c. 13.

(2) R. S. C. c. 18.

(3) R. S. C. ch. 18, s. 2.

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The claimant also contended that the words "no extra salary or additional remuneration," in the section in question, have reference only to extra payments within the scope of the officer's duty or employment, and not for work and services done outside of his duties or to other charges; that he had not been required to take the oath in schedule "C" to the Civil Service Act (1), as an employee of Parliament, and that there was nothing in the section or oath of office making it illegal for a civil servant to receive payment from the Government for services done outside of the duties of his office for the Government, nor for the Government to pay for such services.

Newcombe Q.C. for the appellant. The claimant was at the time of his employment, and when he performed the services in question, a person permanently employed in the public service, and he is absolutely precluded from recovering anything by the terms of the section quoted.

Hogg Q.C. for the respondent was not called upon by the court.

The judgment of the court was delivered by:

TASCHEREAU J.—This is an appeal by the Crown from a judgment of the Exchequer Court of Canada, by which the Crown was ordered to pay to the respondent the sum of \$1,366.10 and costs of suit.

The action was brought by the respondent under a reference from the Department of Finance, to recover from Her Majesty the Queen the sum of \$3,235.35, being the balance for work and services performed by the respondent and accepted by Her Majesty, which work and services consisted of the shorthand reporting during the years 1892, 1893 and 1894, of 13,599

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folios of evidence in connection with the Royal Commission upon the liquor traffic in Canada, and for editing and preparing for the press the evidence so taken.

During the progress of the work under the commission, the respondent was paid on account from time to time considerable sums of money, and at the close of the commission there was due and unpaid, as claimed by the respondent, for reporting work, the sum of \$2,029.50, and for other work and services the sum of \$1,484.35, making together the amount claimed.

The respondent was at the time in the employment of Her Majesty, as chief of the Hansard staff of reporters of the House of Commons of Canada, and his engagement to do the work above mentioned on the said commission was secured by the late Sir Joseph Hickson, who was the chairman of the commission. The payments made to the respondent on account of the work performed by him, were by the cheques of the chairman, but the accounts were from time to time returned to the Department of Finance in the usual course for audit, the money for the payments being supplied by the Government of Canada.

The Crown did not and do not deny that the work was done by the respondent and accepted by the Crown, but contended that if the Crown was legally liable for any sum, the respondent should be paid at lower rates, viz :

For 10 copies.....	25 cents per folio.
“ 8 “	20 “ “ “
“ 4 “	15 “ “ “

His Lordship, the Judge of the Exchequer Court, decided upon the evidence at the trial, that the claimant was entitled to be paid at the rates claimed by him, and with respect to the other sums claimed, he allowed \$105, and \$93.60 for editing work, but disallowed

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	To total account for reporting..... \$3,780 50 “ amount for editing 105 00 “ “ “ “ 93 60 “ amount claimed for living allowance in paragraph 6 statement of claim . 1,036 00 <hr style="width: 10%; margin-left: auto; margin-right: 0;"/> \$5,015 10 By amount paid on account of reporting work \$1,751 00 “ amount of living allowance disallowed 1,036 00 “ cash from Finance Department 28 75 “ deduction of amount payable to other reporters 833 25 <hr style="width: 10%; margin-left: auto; margin-right: 0;"/> 3,649 00 <hr style="width: 10%; margin-left: auto; margin-right: 0;"/> <u>\$1,366 10</u>

for which balance judgment was given.

As the judge of the court below has found upon the evidence that the respondent had been duly employed by Her Majesty to do the work aforesaid, and also held that the prices charged for the work done and accepted by Her Majesty were those claimed by the respondent, no question as to these matters arises on this appeal.

The Crown, at the trial sought to be relieved from liability to the respondent upon legal grounds, and urged that the respondent was not entitled to recover against Her Majesty, for the reason that he was barred in his action by the provisions of the 51st section of the Civil Service Amendment Act of 1888, 51 Vic. ch. 12. That section is as follows:—

No extra salary or additional remuneration of any kind whatever, 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.

His Lordship the Judge of the Exchequer Court held against this contention of the Crown. That is the only point on this appeal.

The respondent's contention that he does not, as an officer of the House of Commons, fall under that enactment, is unfounded. But we hold, with the Exchequer Court, that the words "No *extra* salary, or *additional remuneration*," have reference only to payments which, if made, would be *extra* of those that an officer receives for his services within the scope of his ordinary duties, and additional to them. The Act intends that a civil servant who accepts an office at a fixed salary must not be paid anything *extra* for the duties of his office; nothing *extra* for that, nothing additional to that. But if he is employed anywhere else or for any other purpose than what can legitimately have been expected or intended when he accepted office, the Act does not say that he will not be paid for it. These are *other* duties, requiring *other* pay, *other* remuneration, not *extra* duties, not *extra* or *additional* pay. It is not an extra or an addition to his salary as an officer of the House of Commons that the respondent claims. And that is the only kind of claim that the Act prohibits.

The appeal must be dismissed with costs.

Appeal dismissed with costs.

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

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

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