

BETWEEN:

RUSSELL T. STACKHOUSESUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

1940
March 15
—
Aug. 2.

Crown—Petition of Right—Courts of Justice Act, 1925, R.S.P.Q., c. 145 and amendment by 2 Geo. VI, P.Q., c. 72—“Senior Judge” of Circuit Court of the District of Montreal—Senior Judge must receive title as such by his Commission.

The Circuit Court of the District of Montreal consists of three Judges of whom one is senior as provided for by c. 30 of the Statutes of Quebec for 1899. C. 72 of the statutes of the Province of Quebec for the year 1938 amending the Courts of Justice Act, R.S., P.Q., 1925, c. 145, provides:

“The senior Judge, within the meaning of this section means and has always meant the Circuit Court Judge who, by his Commission, has received the title of senior Judge of such Court.”

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Suppliant was appointed a Judge of the Circuit Court in 1925. In November, 1937, Mr. Justice Archambault died, he having been appointed a Judge of the Circuit Court in 1913, and the Senior Judge of that Court in September, 1934. Suppliant contends that upon the death of Mr. Justice Archambault he became the senior Judge of the Circuit Court by operation of law because he then became the senior of the Judges of the Circuit Court in point of service.

Held: That the senior Judge provided for by the statute means the one to be appointed by the competent authority, the Government of Canada, and not the Judge whose appointment to the Circuit Court was anterior to that of all the other Judges of that Court.

2. That the Act of 1938 defining the expression "senior judge" is retroactive.

PETITION OF RIGHT by suppliant claiming a declaration that he is entitled to a salary of \$8,000 per annum, since November, 1937, from the Crown.

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

T. R. Ker, K.C. and *W. G. Pugsley, K.C.* for suppliant.
F. P. Varcoe, K.C. and *C. Stein* for respondent.

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

THE PRESIDENT, now (August 2, 1940) delivered the following judgment:

The suppliant here is a judge of the Circuit Court of the District of Montreal (hereafter to be called "the Circuit Court") and he claims in his petition that he is entitled to receive and be paid the salary of \$8,000 per annum, since November, 1937, instead of the annual salary of \$7,000 which he has been receiving since that date. The ground of the suppliant's claim is that upon the death, in November, 1937, of Mr. Justice Archambault, one of the judges of the Circuit Court, appointed in November, 1913, and later appointed "the senior judge" of that Court, he, the suppliant, became the "senior judge" because of the date of his commission, that is to say, his entrance upon office being anterior to that of any other judge of that court, after the death of Mr. Justice Archambault, he, by reason of his period of service, and by operation of the relevant statute of the Province of Quebec referable to the constitution of the Circuit Court, became the "senior judge" of the

Circuit Court, and under the Judges Act, Chap. 105, R.S.C., 1927, became entitled to the salary therein specified to be paid the senior judge of the Circuit Court. It will be convenient first to refer to the various statutes relating to the constitution of the Circuit Court.

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By Chap. 24 of the Statutes of the Province of Quebec for the year 1893 there was established the "Circuit Court of the District of Montreal." Sec. 2 of that Act provided that:

Such court shall be composed of two judges, called "Circuit Judges of the District of Montreal," who shall be advocates of ten years' practice, be chosen from among the members of the Bar of the Province and be appointed by the competent authorities.

By Chap. 31 of the Statutes of the Province of Quebec for the year 1897, s. 2 of the above mentioned Act was repealed and there was substituted therefor the following:

Such court shall be composed of three judges, called "Circuit Judges of the District of Montreal," who shall be advocates of ten years' practice, to be chosen from among the members of the Bar of the Province, and be appointed by the competent authorities.

In 1899, by Chap. 30 of the Statutes of the Province of Quebec, the last-mentioned section was replaced by the following:

Such court shall be composed of three judges, of whom one shall be senior, called "Circuit Judges of the District of Montreal," who shall be advocates of ten years' practice, chosen from among the members of the Bar of the Province, and be appointed by competent authority.

In 1900, by Chap. 18 of the Statutes of the Province of Quebec, the last above-mentioned section was amended by adding thereto the following clause:

The senior shall have, over such court, and the judges and officers thereof, all the powers *mutatis mutandis* which the chief justice of the Superior Court has over such latter court, its judges and its officers.

In 1938, by Chap. 72 of the Statutes of the Province of Quebec, the provisions respecting the Circuit Court, then found in Division IV of the Courts of Justice Act, Chapter 145 of the Revised Statutes of the Province of Quebec, 1925, were amended by adding to section 92 the following paragraph:

The senior judge, within the meaning of this section, means and has always meant the Circuit Court judge who, by his commission, has received the title of senior judge of such court.

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Sec. 20 of the Judges Act, Chap. 105 of the Revised

Statutes of Canada, 1927, provides:

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The salaries of the judges of the Circuit Court of the District Court of Montreal shall be as follows:

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The Senior Judge of the said Court, \$8,000 per annum; the three other judges of the said Court, each \$7,000 per annum.

The Quebec Courts of Justice Act now provides that the Circuit Court of the District of Montreal shall consist of five judges.

The suppliant was appointed a judge of the Circuit Court in 1925. In November, 1913, Mr. Justice Archambault was appointed a judge of the Circuit Court, and in September, 1934, he was appointed "the Senior Judge (doyen) of the Circuit Court of the District of Montreal," by the same authority. The suppliant pleads that Mr. Justice Archambault received the latter appointment by reason of the date of his commission, and that he was at that date of such appointment in fact the senior of the judges of the Circuit Court, in point of service. Mr. Justice Archambault died in November, 1937, and, as already stated, the suppliant claims that he thereupon became the senior judge of the Circuit Court, by the mere operation of the law, because on the death of Mr. Justice Archambault he became the senior of the judges of the Circuit Court in point of service,—and that is conceded—and therefore entitled to the salary of \$8,000 per annum. Such are the facts of the case, and they, together with the relevant statutes which I have recited, will reveal sufficiently the issue here to be determined.

The designation "senior" is perhaps not a happy one, but, I do not think it can be given the construction which the suppliant claims should be given it, nor do I think that such was the meaning intended by the legislature. It may be assumed that the designation "senior," was intended as a rank or title to be conferred upon one of the judges constituting the Circuit Court, and that one was to be the presiding judge, or head of the court. That has since been made clear by the Act of 1938, which declared that "the senior judge . . . means and has always meant the Circuit Court judge who, by his commission, has received the title of senior judge of such court." It was not, I think, intended that the judge whose appointment to the Circuit Court was anterior to

that of all the other judges was, by operation of the statute, to become the "senior judge" of that court, upon the death or resignation of a judge holding that rank or title. If that were the intention of the legislature it might very easily and clearly have been so expressed. The words "of whom one shall be senior" import the idea of the selection and appointment of one from a body of three judges, to be the "senior" judge, and not the idea of succession to that rank or title by virtue of seniority in point of service, and I think it was intended that the words, "and be appointed by competent authority," in Chap. 30 of the Quebec Statutes for 1899, should apply to the words "of whom one shall be the senior" as well as to the words, "such court shall be composed of three judges." Sec. 2 of that statute reads: "Such court shall be composed of three judges, of whom one shall be senior, . . . and be appointed by competent authority." If it were intended that the judge senior in years of service were to become the "senior" judge of the Circuit Court, there could be but one who was qualified for that rank or title, and the words "one of whom shall be senior" would then seem inappropriate, and besides those words seem to negative such an idea because they suggest that the senior judge shall not be a particular one, but one of three. I think the statute means that the judge who was to be "senior" was one to be appointed by the competent authority, the Government of Canada. I am of the opinion therefore that the word "senior" is not to be given the construction claimed for it by the suppliant.

Whatever doubt there may have been as to the true construction of the word "senior" as employed in the statute, that was clearly removed by the Act of 1938. That this Act was intended to have a retroactive operation appears in plain and unambiguous language, and that, I think, is the end of the question.

The declaration prayed for by the suppliant must therefore, in my opinion, be refused. There will be no order as to costs.

Judgment accordingly.

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