

BETWEEN:

DONALD MARGACH SUPPLIANT;

AND

HIS MAJESTY THE KING RESPONDENT.

1932
Sept. 20.
1933
Mar. 14.

Petition of Right—Jurisdiction—Exchequer Court Act—Soldier Settlement Act

Held, that as the Soldier Settlement Act (R.S.C., 1927, c. 188) specifies the matters in which jurisdiction is given the Exchequer Court, the powers of the Court are restricted to those matters, and the Court has no jurisdiction under ss. "d," section 19, of the Exchequer Court Act (R.S.C., 1927, c. 34) in any matter not so specified, the maxim *expressio unius est exclusio alterius*, applying.

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PETITION OF RIGHT to have suppliant granted a credit under the Soldier Settlement Act (R.S.C., 1927, c. 188) as amended by 20-21 Geo. V, c. 42.

The action was tried before the Honourable Mr. Justice Angers, at Calgary, Alberta.

S. R. Vallance for Suppliant.

J. W. Crawford for Respondent.

The facts are stated in the reasons for judgment.

ANGERS J., now (March 14, 1933) delivered the following judgment:

By an agreement in writing dated the 24th day of June, 1921, a duplicate whereof was filed as exhibit 1, the suppliant agreed to purchase from the Soldier Settlement Board of Canada the southeast quarter of section nineteen (19), in Township Twenty-nine (29), Range Twenty-one (21), West of the Fourth Meridian, in the province of Alberta, for the sum of \$3,700, payable \$320 at the time of execution of the agreement and the balance with interest by yearly instalments as therein set forth.

By clause 3 of the deed, the purchaser agreed within two months from the date of execution of the agreement to enter into occupation of the said land and to reside with his family during the continuance of said agreement on the said land.

Clause 4 of the deed stipulates that the purchaser will in each farming season during the continuance of the agreement break and cultivate the said land or such portion thereof as may from time to time be expedient in good farming operation of the said land.

By an agreement bearing date the 27th day of June, 1929, a duplicate whereof was filed as exhibit 2, the suppliant agreed to sell to Hilda Ann Walker, wife of William Edwin Walker, all his right and interest in the land hereinabove described for the price or sum of \$7,920, payable \$1,500 on the execution of the agreement and the balance by the delivery to the vendor of one-half share of all crops grown upon the said land in each year during the currency of the agreement until the whole of the purchase price and interest thereon at 7 per cent per annum has been fully paid, provided that if in any year such one-half share shall be insufficient to realize the sum of \$458.63, being the amount of the annual payment due by the vendor to the Soldier

Settlement Board under his title deed, then the purchaser will pay any such deficiency in cash.

It is agreed that the purchaser, on and after the date of the agreement, shall have the right to the possession of said land and premises.

The agreement exhibit 2 contains the following provision:

IT IS DECLARED agreed and understood by and between the parties hereto that notwithstanding anything herein contained the share of crops to be delivered to the Vendor as aforesaid and any cash deficiency to be paid to the Vendor as hereinbefore provided shall be delivered or paid by the Purchaser to the Soldier Settlement Board of Canada at its office in the City of Calgary or as the Board may demand, until the whole of the indebtedness of the Vendor to the Board hereinbefore recited has been fully paid and satisfied, and all payments made to the said Board hereunder by the Purchaser shall be credited on the said Purchase price.

By an agreement made in triplicate on the 9th day of September, 1929, filed as exhibit 3, the suppliant leased to the said Hilda Ann Walker the parcel of land hereinabove described, from the date of said agreement "as long as the lessee shall perform the provisions" therein contained, for and in consideration of the following rent, namely:

The full one-half share or portion of the whole of the crops of the different kinds and qualities which shall be grown upon the said demised premises during the said term without any deduction, defalcation or abatement whatsoever, such share of grain to be delivered in the name of the Board immediately after the threshing thereof in the elevator nearest the said land, or as may otherwise be designated by the Board at the time of or prior to the date of delivery; and the said threshing shall be on or before the first of November in each and every year. The whole of the crop of hay and green feed to be properly stacked upon the said land for inspection and measurement by the Board's Field Representative, and the tonnage as estimated by the said Representative shall be accepted as final and conclusive, and the Board's share of such crop of hay and green feed shall be delivered immediately after such inspection and measurement.

The deed exhibit 3 contains the following clause:

3. And the Lessee Covenants and Agrees that he will at his own cost and expense in a good workmanlike and proper manner during the proper season of each and every year put into crop, harvest and thresh to the satisfaction of the Board's Field Representative all of the said land suitable for crop.

The Soldier Settlement Board of Canada is a party to the agreement exhibit 3; clause (13c) contains the following provision:

(13c) The Board joins in the making of this Agreement solely for the purpose of concurring in the Lease of the said lands to and the occupation of same by the Party of the Second Part, and do not undertake

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to approve of any assignment of the said Agreement, but the Board shall have the right at any time to accept this instrument as an assignment of the interest of the Party of the First Part in and to the said lands to the Party of the Second Part, and for this purpose the Party of the First Part assigns, transfers, sets over and quit claims unto the Board all his right, title and interest in and to the said land and in the Agreement for Sale of the said lands from the Board to himself hereinbefore referred to, subject however to the payment of his equity as provided in the said agreement.

In his petition of right the suppliant alleges that by the agreement of June 24, 1921 (exhibit 1) he purchased from the Soldier Settlement Board the tract of land hereinbefore described; that in or about the month of July, 1929, he made application to the Board for leave to assign his agreement to one Walker, but that permission was refused; that an agreement for sale covering the said land was entered into between suppliant and said Walker and that a lease was entered into between suppliant, said Walker and the Board; that suppliant is a settler qualified and established upon the said land in accordance with the provisions of the Soldier Settlement Act; that he has not abandoned his land; that his agreement with the Board has not been terminated, rescinded or assigned; that on December 15, 1930, he made an application to the Board for a credit of 30 per cent of the amount of his indebtedness to the Board, pursuant to the amendment to the Soldier Settlement Act assented to on May 30, 1930; that the Board has refused to credit suppliant with the sum of 30 per cent of his indebtedness.

Suppliant accordingly prays that an order be granted directing that his account with the Soldier Settlement Board of Canada be credited with the sum of 30 per cent of his indebtedness as provided in the aforesaid amendment to the Soldier Settlement Act.

In his statement of defence the respondent denies the allegations of the petition of right, admitting however that suppliant made an application to the Board for a credit of 30 per cent and that said application was refused, and, referring to the several agreements of record, which after all speak for themselves, pleads: that during 1921 consonant with the agreement exhibit 1 the Board placed the suppliant in possession of the land hereinabove described with the purpose of assisting him to become there established; that the suppliant, late in 1926 or early in 1927, ceased to

possess or occupy the said land and permitted one W. G. Walker, husband of Hilda Ann Walker, to possess and occupy the same and that said Walkers, husband and wife, have since remained and are now in possession and occupation thereof; that the provisions of section 70 of the Soldier Settlement Act do not apply to suppliant because he is not and was not, upon the coming into force of said section or at any time, a settler established upon the land in accordance with the provisions of said Act, because he abandoned the said land and because he assigned his agreement with the Board; that moreover the prayer of the suppliant is not within the jurisdiction of this Court to grant upon petition of right.

The suppliant was the only witness examined. He stated *inter alia* that he resided on the land until February, 1927. In the fall of 1926, he had been approached by Walker, who wanted to rent his farm. As suppliant was in arrears with the Board, he thought that this was the best thing to do to get rid of his indebtedness to the Board and he accordingly decided to lease the farm to Mrs. Walker.

The first question for me to determine is whether the Exchequer Court has jurisdiction to entertain the present petition.

Section 70 of the Soldier Settlement Act, as amended by 20-21 Geo. V, chap. 42, upon which the suppliant's claim for a credit of 30 per cent is based, reads as follows:

70. Notwithstanding anything in this Act, in the case of any settler qualified and established upon the land in accordance with the provisions of this Act and regulations thereunder, who has not abandoned his land and whose agreement with the Board has not been terminated, rescinded or assigned, the Board shall credit the settler's account as on the standard date in 1929 with an amount equal to thirty per cent of the settler's indebtedness to the Board as on that date; provided that in the case of any such settler whose application for revaluation under section sixty-eight of this Act has not been finally disposed of, the settler's indebtedness as on the said standard date shall for the purposes of this section be deemed to be the amount owing by him to the Board as on the said standard date less the amount of the depreciation in the value of the land, if any, determined as provided by section sixty-eight of this Act; provided further that the maximum amount which may be so credited to any settler in accordance with the provisions of this section shall in no case exceed the settler's total indebtedness to the Board.

The Board declined to allow the credit of 30 per cent apparently for the reason that, at the time section 70 came into force, namely on May 30, 1930, the suppliant was not a settler qualified and established upon the land, having

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abandoned it and having assigned his agreement with the Board.

It was submitted on behalf of suppliant that the claim herein is one of the class of claims defined in clause (d) of section 19 of the Exchequer Court Act (R.S.C., 1927, chap. 34); this clause is as follows:

19. The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:—

(d) Every claim against the Crown arising under any law of Canada or any regulation made by the Governor in Council.

This subsection is very broad. It lays down a general rule applicable in all cases where there is no limit or exception, either express or implicit.

The Soldier Settlement Act contains no general clause conferring jurisdiction on the Exchequer Court. There are however matters, under the Act, which are expressly referred to the Court: section 13 (parag. 2 and 3) empowering the Court to appoint a guardian to represent for the purposes of the Act a person under disability and to give directions as to the disposal, application or investment of the compensation money; section 41 authorizing the Board, in cases of compulsory purchase by the Board where the owner claims that the compensation tendered is inadequate, to lay an information before the Court and determining the procedure to be followed in such cases; section 45 dealing with the discretion of the Court regarding the costs incidental to any compulsory purchase; section 47 regarding interest and the refusal of interest by the Court in certain cases; section 48, giving authority to a judge of the Exchequer Court or to a judge of any superior court to issue a warrant to a sheriff to put the Board in possession of any land, in case of opposition being made by the owner; section 58 authorizing the appointment by the Governor in Council, at the request of a judge of the Exchequer Court, of duly qualified persons to be judges *ad hoc* of said Court for the purpose of assisting in the performance of the duties imposed by the act; section 68 giving power to the Court to hear an appeal from a decision of the Board in a case of revaluation of land.

The Soldier Settlement Act, as we have seen, was amended by 20-21 Geo. V, chap. 42, which added sections 69, 70 and 71 thereto.

Section 69 enacts that, on and after July 1, 1930, in any case where the Board, before exercising as against the land the right of rescission of the agreement with any settler in default, gives to the settler the statutory notice of its intention so to do, no rescission shall take place where the settler advises the Board in writing of his opposition to the proposed action or where the Board has otherwise reasons to believe that a dispute may arise, unless an order of a County or District Court Judge is issued declaring the rescission of the agreement warranted. The section adds that the Governor in Council may make such regulations as he deems fit for the procedure in applications to a District or County Court Judge for an order under this section.

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Section 70, in virtue whereof the suppliant claims a credit of 30 per cent, bestows no power upon the Court. Had the legislators intended to empower a judge of this or any other Court to deal with this question of credit, it seems to me that they would have mentioned it, as they did in other matters, for instance in connection with the rescission of an agreement, as provided for in the immediately preceding section, namely section 69.

The legislators have deemed it expedient, notwithstanding subsection (d) of section 19 of the Exchequer Court Act, to specify in the Soldier Settlement Act the matters in which they intended to give jurisdiction to the Court. In so doing it seems to me that they restricted the powers of the Court to the matters specifically indicated in the statute. The intention of the legislators appears to me to have been to give to the Board exclusive and final jurisdiction on all questions which are not expressly referred to the Court or a judge thereof for adjudication. This is a case, in my opinion, in which the maxim *Expressio unius est exclusio alterius* would apply.

On this ground I believe that the action must fail.

I may say that I feel all the more at ease to arrive at this conclusion as I would not have felt disposed to grant the suppliant's prayer, had I reached the conclusion that I had jurisdiction to take cognizance of the case. I do not think that the suppliant at the time chapter 42 of 20-21 Geo. V came into force was, or that at any time thereafter he has ever been, in the words of the statute, a settler estab-

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lished upon land, he having abandoned it in or about the month of February, 1927, and assigned his agreement.

There will be judgment declaring that the suppliant is not entitled to the relief sought by his petition of right and dismissing said petition with costs.

Judgment accordingly.