

Re KENNEDY AND OTHERS.

[Appellate Jurisdiction (Major, C.J.) February 24, 1911.]

Letters Patent, 1904—registration of electors—Clause 16—persons in receipt of salary out of Public Revenue incapable of being an elector—Carpenters on parol agreement at daily wage—whether in the circumstances they are in receipt of a salary.

Eleven carpenters employed on parol agreement at daily wages by the Commissioner of Works were refused registration as electors as being in receipt of salary out of Public Revenue. The evidence showed that they were not in receipt of a fixed annual sum as recompense for their services, that their employment was liable to periodic stoppage at the will of their employer and was mutually determinable at an hour's notice, that deductions were made for any absence due to sickness, etc.

HELD.—Wages received out of Public Revenue under the particular circumstances disclosed are not "salary" such as involves disablement from exercise of the franchise.

[**EDITORIAL NOTE.**—For the procedure on appeal see now Electoral Regulations. The qualifications of electors are now governed by Letters Patent of 2nd April, 1937 (F.R.G. 167/37). Clauses 32 and 33, where the phrase "no person who is in receipt of salary," etc. is replaced by the phrase "no person holding any office of emolument under the Crown in the Colony").]

APPEAL by way of case stated under the provisions of the Electoral Regulations Amendment Ordinance, 1910, from the decision of the Registration Officer of the Electoral Division of Suva. The facts appear from the judgment.

H. M. Scott for the appellant.

The Attorney-General, *A. Ehrhardt, K.C.*, for the registration officer.

MAJOR, C.J.—This is an appeal by way of stated case under the provisions of the Electoral Regulations Amendment Ordinance, 1910, from the decision of the Registration Officer for the Electoral Division of Suva disallowing the claim of the appellants to be registered as voters for that division. The facts of the cases as found by the Registration Officer are that the appellants eleven in number, are and have been for periods varying from twelve years to three months employed as carpenters on parol agreement by the Commissioner for Works in this Colony on a daily wage paid to them from public revenue in monthly aggregate, their employment being terminable by an hour's notice on either side. It is also undisputed that the appellants are liable for divers reasons to their employer seeming good to be stopped in the performance of any work whereon they may from time to time happen to be engaged and bidden—as the expression goes—to stand by: that as bystanders, although no instance of its having occurred has been given, there is nothing to prevent their undertaking other work for other employers and that if, during the employment in public work they are absent from sickness, or other cause a proportion of their wages is deducted for each hour of that absence.

The law applicable to the case is contained in Clauses 13 and 16 of the Letters Patent from the Sovereign dated the 21st March, 1904, as

amended in particulars not affecting this appeal by Letters Patent of the 31st October, 1910, providing for the administration of the Government of Fiji.

Clause 13 reads thus :—“ Every male person shall be entitled to be registered as an elector and when registered to vote at the election of elected members of the Council who—

(1) Is the son of parents of European descent, or being the son or lineal descendant of a European father, can read, write, and speak the English language.

(2) Is a British subject by birth or naturalization having effect in the Colony.

(3) Is of the age of 21 years or upwards.

(4) Has been continually resident in the Colony for twelve months ; and

(5) Is possessed either—(a) of freehold or leasehold property, or both, within the Colony, of the total yearly value of £20 over and above all charges and incumbrances affecting the same : or (b) of a nett annual income from all sources of not less than £120.”

Clause 16 runs as follows :—“ No person who is in receipt of salary payable out of the Public Revenue of the Colony shall be capable of being an elector or of being elected a member of the Legislative Council or having been elected shall sit or vote in the said Council. If any elected member of the Legislative Council shall after his election become subject to the disqualification aforesaid his seat in the said Council shall thereupon become vacant.”

The Registration Officer has decided that the applicants are within the class of persons disabled by Clause 16 from the exercise of the franchise, holding that in the circumstances above detailed they are “ in receipt of salary paid out of the public revenue of the Colony ” he has also found that if their remuneration from their employment in the Public Works Department is not “ salary ” they are under the provisions of Clause 13 duly qualified to be registered as voters “ provided ”—so runs the judgment—“ that the appellants’ wages are income within the meaning of sub-clause 5 (b) of clause 13.” I dismiss that proviso from consideration : it is unnecessary and I do not agree with it.

The question I am asked is, was the Registration Officer’s decision right ?

The appellants are undoubtedly paid from public revenue. Is their remuneration “ salary ? ” Various definitions of that word have been quoted by learned counsel. Some constructions given to it by the Courts, as employed in the Imperial Bankruptcy Acts, have been cited. Without doubting the correctness of those definitions, and unreservedly accepting those constructions, it must be remembered on the one hand that definitions are general and cases before the Courts are particular, and, on the other hands, that the constructions of the term “ salary ” which have been cited were given under the particular class of legislation, and with reference to a particular concatenation of circumstances in each case, none of which is directly or, in fact, indirectly present in that now under consideration. I conceive myself, therefore, not only free, but, on the same principle, compelled to consider the meaning of the word “ salary ” in the Letters Patent with reference to all the circumstances of this case, and this case only, unless—which has not

been done—those of any other on all fours with the present were shown to have received judicial consideration and determination, by which I am bound.

Looking at the words of Clause 16—and whether the expression be “in receipt of salary” and “in receipt of a salary” seems to me, notwithstanding the learned Attorney-General’s contention, to be immaterial, seeing that the disability therein created extends not only to the persons otherwise entitled to be voters but also to candidates for membership itself of the Legislative Council. Taking the ordinary acceptation of the term “salary” as meaning the remuneration of those in receipt of a fixed annual sum in return for exclusive service in a permanent office, separate provision for the emoluments whereof is made in the annual budget, as correct and contrasting the admitted facts of the appellant’s employment already detailed with that acceptation, I have no hesitation in saying that the appellants are not in receipt of salary as that term is used in the Letters Patent payable out of the public revenue. They have been, it is true, some of them employed for a number of years, and that employment has been continuous, but that is purely fortuitous, it has no element of permanence about it. They are not in the receipt of a fixed annual sum as recompense for their services. Their service is not contractually exclusive. Their employment is liable and often made subject to periodical stoppage at the will of their employer when they may, if they choose, seek employment at the hands of others. Their agreement is mutually determinable at an hour’s notice. To say that these men are salaried servants of the Crown is to strain unduly the ordinary interpretation of the word “salary”, to disregard its context in the Letters Patent, to violate, in fact, the recognized canons of construction. I have no reason to suppose that Letters Patent are drawn with less meticulous care (particularly in a matter like that with which the Letters Patent of 1904 deal) than other legal documents, and for the achievement of the purpose which, it is contended, has been effected by Clause 16 one would expect to read some such provision as—“No person who is in receipt of any salary, wages, remuneration, or recompense for services which is or are, howsoever and whensoever, paid from the public revenue of the Colony,” etc., etc. There is no provision of this kind.

I lay down no hard and fast rules for application to persons who although paid for their services from public revenue are or may be claimed to be not in receipt of salary; I am dealing with the facts disclosed in this appeal only, which for the reasons given above must be allowed. If it be desired to exclude persons in like case with the appellants from the register of voters the Letters Patent must be altered accordingly. The decision of the Registration Officer was wrong. The appellants are entitled to be, and must be, registered as voters for the Electoral Division of Suva, and I so order.
