1955

A.G. FOR ONTARIO v. SCOTT

Locke J.

to a treaty. The short answer to this contention is that there is no evidence to suggest that any such agreement existed, and that the legislation may be repealed at any time by the legislature which enacted it. No agreement to the contrary by the province, even if it could be suggested that any such agreement had been made, would have any legal effect.

I would allow this appeal. The respondent should be allowed his costs to the extent provided in the order of the Court of Appeal of September 14, 1954, and there should be no other order as to costs.

*Appeal allowed; costs as per terms.*

Solicitor for the A.G. of Ontario: *C. R. Magone.*

Solicitor for the A.G. of Canada: *F. P. Varcoe.*

Solicitors for the respondent: *Wright & McTaggart.*

1955

*Oct. 24, 25, 26
*Dec. 22

HER MAJESTY THE QUEEN AND G. J. ARCHER (*Defendants*) .... } APPELLANTS;

AND

J. R. C. WHITE (*Plaintiff*) .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

*Certiorari—Disciplinary measures against member of R.C.M.P.—Whether writ available to review proceedings—R.C.M.P. Act, R.S.C. 1952, c. 241.*

This was an application by the respondent, a former member of the R.C.M.P., for certiorari to remove into the Supreme Court of British Columbia a record of convictions under the hand of the appellant Archer, a Superintendent of the R.C.M.P., whereby the respondent was convicted of four disciplinary charges laid under s. 30 of the *R.C.M.P. Act*. The trial judge held that certiorari did not lie since the principles denying review of disciplinary decisions of military tribunals applied in the present case. The Court of Appeal reversed this judgment on the ground that the military cases were not applicable.

*Held:* The appeal should be allowed and the judgment at trial restored.

*PRESENT: Kerwin C.J., Taschereau, Rand, Kellock, Estey, Locke and Abbott JJ. Estey J. did not take part in the judgment on account of illness.

*Per* Kerwin C.J., Taschereau, Rand and Kellock JJ.: Parliament has specified the punishable breaches of discipline and has equipped the R.C.M.P. with its own courts for dealing with them. Unless the powers given those courts to deal with domestic discipline are abused to such a degree as puts action taken beyond the purview of the statute or unless the action is itself unauthorized, that internal management is not to be interfered with by any superior court. Nothing has been alleged here and supported by evidence to show that the proceedings infringed or were outside the authority of either the statute or those underlying principles of judicial process deemed annexed to legislation unless impliedly excluded. Little assistance is to be received from the decisions in matters arising out of the disciplinary or other administration of other bodies.

*Per* Locke J.: The proper determination of this matter does not depend on whether or not the decisions as to the right of certiorari in courts martial proceedings are applicable. The right of the civil courts to intervene by way of certiorari is undoubted where it is shown that there has been either a want of or an excess of jurisdiction in proceedings taken under ss. 30 and 31 of the *R.C.M.P. Act*. The proceedings authorized under these two sections are of a judicial and not executive or administrative character, and the officer conducting them is obligated to act judicially.

The authority to impose the penalties provided by the Act for offences defined by the Act does not rest on the agreement of the member made at the time of his enlistment, but upon the terms of the statute itself, and it is only those powers authorized to be exercised by that statute that may be invoked against him. There was nothing in the material filed on the application to sustain the charges of fraud, bias or excess of or want of jurisdiction. (*In re Mansergh* (1861 1 B. & S. 400), *Rex* v. *Army Council: ex parte Ravenscroft* (86 L.J.K.B. 1087) and *Heddon* v. *Evans* (35 T.L.R. 642) referred to).

*Per* Abbott J.: The necessity for maintaining high standards of conduct and discipline in the R.C.M.P. is just as great as it is for the armed forces, and in this respect there is no distinction in principle between the two bodies. Therefore, the authorities which hold that the courts have no power to interfere with matters of military conduct and military discipline generally are applicable to matters involving the conduct and discipline of a force such as the R.C.M.P. The appellant Archer was not acting as a court or judge, but was an officer dealing summarily with breaches of conduct and discipline and was administering discipline in accordance with the statute and regulations to which the respondent voluntarily submitted when he joined the Force.

APPEAL from the judgment of the Court of Appeal for British Columbia (1), reversing the judgment of the trial judge on an application for a writ of certiorari.

*D. H. W. Henry, Q.C.* and *E. R. Olson* for the appellants.

*A. Bull, Q.C.* for the respondent.

(1) [1954] 12 W.W.R. (N.S.) 315.

1955

THE QUEEN AND ARCHER v. WHITE

The judgment of Kerwin C.J., Taschereau, Rand and Kellock JJ. was delivered by:—

RAND J.:—This is an appeal from a judgment of the Court of Appeal for British Columbia (1) reversing an order of Wood J. in the Supreme Court refusing certiorari to bring up a conviction made in a proceeding under the *Royal Canadian Mounted Police Act,* R.S.C. 1952, c. 241. The respondent White was a constable of that Force and the appellant Archer a superintendent by whom the conviction was made.

The complaint against White contained four charges, the substance of which was that on November 24, 1952 he conducted himself in a manner unbecoming a member of the Force by condoning the consumption of intoxicating liquor by a female juvenile, by occupying a room in a hotel with such a person, by associating with a female of questionable character, by counseling another constable, his junior in rank, to register at the hotel under an assumed name, and by being intoxicated, however slightly, contrary to paragraphs (*t*), (*v*) and (*c*) of s. 30 of the Police Act. These charges were heard by the superintendent on the 19th and 20th of January, 1953 and the respondent was convicted of all except that of counseling his junior to do the act mentioned. A penalty of $100 and a reduction in rank from corporal to constable was imposed. The fine was reduced by the Commissioner to $50. Subsequently as of March 31, 1953 White was dismissed from the Force.

The application set forth fifteen grounds. In substance they embraced fraud in obtaining the conviction; want and excess of jurisdiction in procedural irregularities, by the improper admission of and want of sufficient evidence, in the disqualification of the superintendent through bias, through being an "advocate or partisan or in collusion with the prosecution" and in that two of the charges were not triable by such a tribunal; that the applicant was not advised of the superintendent's authority to compel witnesses to appear on behalf of the defence; that a full answer and defence were not allowed, that the charge "did not in fact constitute any offence as shown in the evidence pur-

(1) [1954] 12 W.W.R. (N.S.) 315.

porting to substantiate the offence"; and by the acceptance of evidence "pertaining to five separate offences" and adjudicating thereon.

S. 30 of the Act, describing 24 police offences, provides that

every member of the Force, other than a commissioned officer, who is charged with . . .

. . . . . .

(*c*) intoxication, however slight;

. . . . . .

(*t*) scandalous or infamous behaviour;

. . . . . .

(*v*) conduct unbecoming a member of the Force . . . may be forthwith placed under arrest and detained in custody, to be dealt with under the provisions of this Part.

By s. 31,

(1) The Commissioner, the Deputy Commissioner and Assistant Commissioner, a superintendent or other commissioned officer at any post or in any district may, forthwith, on a charge in writing of any one or more of the offences mentioned in this Act or any regulation made under the authority hereof being preferred against any member of the Force, other than a commissioned officer, cause the person so charged to be brought before him and he shall then and there, in a summary way, investigate the said charge, and, if proved on oath to his satisfaction, shall thereof convict the offender; every commissioned officer for the purpose of this section is empowered to administer the necessary oaths in dealing with a charge in a summary way.

(2) Any such offender is liable to a penalty not exceeding one month's pay, or to imprisonment, with hard labour, for a term, not exceeding one year, or to both fine and imprisonment, and also to reduction in rank, in addition in any case to any punishment to which the offender is liable, with respect to such offence, under any other law in force in the Northwest Territories or the Yukon Territory, or in the province in which the offence is committed.

S-s. (3) deals with stoppage of pay when the offender is convicted of absence without leave; s-s. (4) provides for the case of damage to or loss of Government or other property, for which the offender may be required to pay, and in the case of rendering himself unfit for duty, hospital and medical bills incurred; s-s. (6) permits lesser punishments to be imposed, such as confinement to barracks, reduction in seniority, extra fatigues or other similar duties, or being reprimanded, admonished or warned. S. 33 directs that the penalties exacted shall form a fund applicable to the payment of rewards for good conduct or meritorious service, the establishment of libraries and recreation rooms

1955

THE QUEEN AND ARCHER v. WHITE

Rand J.

and for other objects beneficial to the members of the Force. By s. 43 all fines and sentences of imprisonment with the record of investigation are to be forthwith reported to the Commissioner by whom, in his discretion, they may be mitigated or reversed.

In addition to this internal procedure, for desertion, abstention from duties without leave, refusal to do duty, refusal to deliver up clothing, arms and accoutrements on discharge or dismissal, the offender is liable, on summary conviction, to fine and imprisonment. The demarcation between the two classes seems significant and its explanation appears to be this: the delinquencies in s. 30 are strictly of domestic discipline, that is, the member, by joining the Force, has agreed to enter into a body of special relations, to accept certain duties and responsibilities, to submit to certain restrictions upon his freedom of action and conduct and to certain coercive and punitive measures prescribed for enforcing fulfillment of what he has undertaken. These terms are essential elements of a status voluntarily entered into which affect what, by the general law, are civil rights, that is, action and behaviour which is not forbidden him as a citizen.

As gathered from the statute, what is set up is a police force for the whole of Canada to be used in the enforcement of the laws of the Dominion, but at the same time available for the enforcement of law generally in such provinces as may desire to employ its services. From the beginning it has been stamped with characteristics of the Army: the mode of organization, its barrack life, the uniform, address and bearing of the members, esprit de corps and discipline. On joining the Force he engages for a term of service not exceeding five years, an engagement which he may be compelled to fulfil, and oaths of allegiance and of office are taken. That character, essential in the early days of police functioning in the unsettled territories of the West, has become the badge of the Force and its record is a matter of common knowledge throughout the country. It is significant to this feature that by s. 10(2) of the Act it is declared that

> Notwithstanding the provisions of any Act inconsistent herewith, the Governor in Council has power to prescribe the rank and seniority in the militia that officers of the Force shall hold for the purpose of seniority and command when they are serving with the militia.

and that by s. 41 of the *Militia Act*, R.S.C. 1927, c. 132 it was provided that

> Commissions of officers of the Royal Canadian Mounted Police Force serving with the Militia by order of the Governor in Council shall for the purpose of seniority and command be considered equivalent to commissions issued to the officers of the Militia of corresponding rank from their respective dates according to the following scale, that is to say:—
>
> Commissioner—as lieutenant-colonel;
>
> Assistant commissioner—on appointment, as major,—after three years' service, as lieutenant-colonel;
>
> Senior superintendent—as major;
>
> Other superintendents—as captains; . . .

Parliament has specified the punishable breaches of discipline and has equipped the Force with its own courts for dealing with them and it needs no amplification to demonstrate the object of that investment. Such a code is prima facie to be looked upon as being the exclusive means by which this particular purpose is to be attained. Unless, therefore, the powers given are abused to such a degree as puts action taken beyond the purview of the statute or unless the action is itself unauthorized, that internal management is not to be interfered with by any superior court in exercise of its long established supervisory jurisdiction over inferior tribunals. The question, therefore, is whether or not in the application made before Wood J., including the materials furnished by affidavit, anything has been alleged and supported by evidence to show that the proceedings infringed or were outside the authority of either the statute or those underlying principles of judicial process to be deemed annexed to legislation unless excluded by its implications.

S. 31 directs and authorizes a superintendent in a summary way to "investigate" the charge and if proved "on oath to his satisfaction" to convict. What is being carried out is not a trial in the ordinary sense but an enquiry for the purpose of administration and the mere fact that Parliament has authorized fines and imprisonment does not affect that fact: the contemplated standards of conduct and behaviour of members of the Force are being maintained.

Many of the grounds taken are the usual objections to an ordinary conviction, but that mistakes the nature of what is challenged. On fraud there is not a semblance of evidence offered: and as for the others I put all of them aside except that alleging bias in the superintendent. If,

1955

THE QUEEN AND ARCHER v. WHITE

Rand J.

taking into account the statutory provisions and the principles mentioned, the officer sitting in judgment on the constable is biased, then he would be disqualified unless, having regard to the character of the Force and to the persons upon whom the function of discipline has been conferred, that conclusion is negatived.

Like an army group, the rank and file are in close association with officers; there is a daily interchange of orders, instructions and reports, and the general conduct and performance of the men comes under continuous and close observation. All are in duty bound to see that in every respect the standards of efficiency and obedience are preserved, and this is the special obligation of officers. In such a self-contained establishment the governing traditions gradually evolved become the instinctive inheritance of one generation of members from another. When s. 31 authorizes a superintendent "or other commissioned officer at any post or in any district" to investigate charges and on proof to his satisfaction to convict the offender, it contemplates an administration of discipline by men sharing a special life in which those who are to be judged participate.

It was said that the superintendent had been furnished with statements of what had taken place and had edited or formulated the charges, but such steps in disciplinary administration, if only for the purpose of formal accuracy, are inevitable. He was said, during the course of the hearing, to have had dinner with the prosecutor, an inspector of the Force, and one of the witnesses: but whatever the purpose and however questionable the judgment exercised by the superintendent, it could not on what is before the Court nullify the proceedings. Parliament has placed reliance for the proper execution of this important function in the responsibility and integrity of these officers. The very existence of the Force as it is conceived depends upon this administration by men of high character, and the Act contemplates the proceedings of discipline to be what may be called as of domestic government. If, within the scope of authority granted, wrongs are done individuals, and that is not beyond possibility, the appeal must be to others than to civil tribunals, or, as in the case of the Army, they must be looked upon as a necessary price paid for the vital purposes of the Force.

Most of the offences enumerated in s. 30 call for judgment based on long experience in the service. The daily round of duty of the superintendent and other officers and the knowledge and information of the experience and vicissitudes of the Force inevitably reaching them were known to Parliament which gave to them the power of disciplinary adjudication; and if the circumstances objected to here were to be held to invalidate such investigations the intendment of the statute would, in large degree, be frustrated. The Commissioner and his staff preserve and create the standards and they are best able to appreciate departures from them.

We were referred to a great many decisions in matters arising out of the disciplinary or other administration of such bodies as ordinary police forces, fire departments, licensing and local boards, but from these I receive little assistance. The nearest analogy is the law of the Army. In *Sutton* v. *Johnstone* (1), although the reasons of Gould J., delivering the opinion of the judges, are not available, the House of Lords seems to have held that no action lay for malicious prosecution in a court-martial and in *Dawkins* v. *Lord Rokeby* (2), that judgment was treated generally to have been to that effect by Willes J. in a dictum which remitted to the military law itself the only remedy for such a wrong; in *Dawkins* v. *Lord Rokeby* (3), an action for libel, the absolute privilege of those engaged in legal proceedings of common law courts, judges, counsel, witnesses, was declared for military courts of enquiry; and in *Dawkins* v. *Paulet* (4), in an action for libel in a letter written to a superior officer in the course of military duty a replication that the letter had been written maliciously was held bad.

What the expression "disciplinary powers" means includes at least sanctions wielded within a group executing a function of a public or quasi-public nature where obedience to orders and dependability in carrying them out are, for the safety and security of the public, essential and their maintenance of standards the immediate duty of every member. This distinguishes the case from such bodies as legal or medical societies of which the members carry on

(1) 1 E.R. 427.
(2) 176 E.R. 800.
(3) (1873) L.R. 8 Q.B. 255.
(4) (1869) L.R. 5 Q.B. 94 at 120.

1955

THE QUEEN AND ARCHER v. WHITE

Rand J.

their profession independently of the governing body which, in this respect, is concerned only with the investigation of complaints placed before it.

It was argued by the Attorney General of Canada that the disciplinary jurisdiction in the case before us was within the scope of criminal law as committed to the Dominion by the Confederation Act and that, therefore, no appeal lay to the Court of Appeal from the refusal of Wood J. to issue the order, but in the view I take of the case, I find it unnecessary to pass upon that contention.

I would, therefore, allow the appeal, set aside the judgment of the Court of Appeal and restore the order of the court of first instance. There will be no costs in this Court or in the Court of Appeal.

LOCKE J.:—Upon the application of the respondent, a summons was issued out of the Vancouver Registry of the Supreme Court of British Columbia on July 4, 1953, directed to the appellant Archer, a Superintendent of the Royal Canadian Mounted Police, to the Attorney General of British Columbia and two other named officers of the Force, giving notice that the appellant would on July 20, 1953, move for a writ of *certiorari* to remove into that court a certain record of convictions under the hand of the said Archer, as Superintendent, made on January 22, 1953, whereby the respondent was found guilty of four charges laid under the provisions of the *Royal Canadian Mounted Police Act*.

In support of the application, the respondent filed his own affidavit and those of eight other persons containing statements which, it was apparently thought, supported the right of the applicant to claim the issue of such a writ.

The summons came on for hearing before Wood J. and was dismissed. That learned Judge was of the opinion that the Royal Canadian Mounted Police Force was constituted on a military basis, that the principles applicable to the issuance of writs of *certiorari* in relation to the proceedings of military tribunals applied to disciplinary measures such as this, taken against constables of the Force, and that *certiorari* did not lie. Holding this view, he did not discuss the facts disclosed in the various supporting affidavits or the question as to whether they disclosed any want of jurisdiction on the part of the Superintendent to find the

respondent guilty of the charges, or as to whether there had been any act done by him in excess of his jurisdiction.

The respondent appealed to the Court of Appeal (1) and, by the unanimous judgment of that court, the appeal was allowed. The formal order of the Court adjudges:—

> That the said appeal be and the same is hereby allowed and this matter be and it is hereby remitted to the Supreme Court of British Columbia for hearing and determination.

It would appear from the reasons for judgment delivered by the learned Chief Justice of British Columbia, speaking on behalf of the Court, that the only question considered was as to whether *certiorari* would lie to remove into court convictions under the hand of a Superintendent of the Royal Canadian Mounted Police Force. Differing from the view expressed by Wood J., the Court expressed the opinion that the cases dealing with writ of *certiorari* in the case of convictions by Army Courts Martial, of which *Rex* v. *Army Council: ex parte Ravenscroft* (2) is an example, were inapplicable to proceedings of the nature referred to under the *Royal Canadian Mounted Police Act* (c. 160, R.S.C. 1927; c. 241, R.S.C. 1952). No opinion was expressed as to whether the affidavits filed on the application before Wood J. justified the granting of the writ and that question has, accordingly, been neither considered or determined in either court.

The procedure for obtaining the issue of writs of *certiorari* in British Columbia is to be found in the Crown Office Rules (civil), which are simply a transcript of the English Rules of 1886 and, for convenience of reference, the English numbering was adopted in British Columbia. Rule 28 provides that the application shall, except in vacation, be made for an order *nisi* to show cause. It has been held in England that, while the writ is demandable as of absolute right by the Crown, it is granted to the subject at the discretion of the court (*Short and Mellor Crown Practice,* 2nd Ed. 15). The cases cited support this statement.

While cause was shown against an order *nisi,* no material was filed by those to whom the summons was directed.

Had the dismissal of the application been made by Wood J. in the exercise of his judicial discretion, or had

(1) [1954] 12 W.W.R. (N.S.) 315. (2) (1917) 86 L.J.K.B. 1087.

1955

THE QUEEN AND ARCHER v. WHITE

Locke J.

the Court of Appeal done more than to determine as a matter of law that the principles which have been enunciated in dealing with applications for writs of *certiorari* directed to proceedings before courts martial were inapplicable, it would be necessary for us to consider whether any appeal lay to this Court, by reason of the provisions of s. 44 of the *Supreme Court Act*. In these circumstances, the question does not arise.

The charges laid against the respondent, of which he was found guilty, were declared to be offences by s. 30 of the *Royal Canadian Mounted Police Act* (c. 160 R.S.C. 1927) and punishable under the provisions of s. 31. The punishment imposed was a penalty of $100 and reduction in rank from Acting Corporal to First Class Constable. The Superintendent also recommended, though not as part of the punishment, that the respondent be dismissed from the Force.

Under the Rules and Regulations for the government of the Force approved by the Governor General in Council, any member of the Force other than a Commissioned Officer, feeling himself aggrieved by a recommendation made for his dismissal or by a conviction and punishment awarded him under the provisions of s. 31 of the Act, may appeal to the Commissioner in writing. The respondent availed himself of this privilege and, in the result, the Commissioner reduced the penalty to $50. He, however, exercising the powers vested in him by the Act, dismissed the respondent from the Force.

I do not think that the proper determination of this matter depends on whether or not the decisions as to the right of members of the Armed Forces to invoke the aid of a writ of *certiorari* in proceedings held before courts martial are applicable. A consideration of c. 35 of the Statutes of 1873, by which the Police Force in the Northwest Territories which subsequently became known as the Northwest Mounted Police, and later, by virtue of c. 28 of the Statutes of 1919, the Royal Canadian Mounted Police, was constituted, and of the subsequent statutes dealing with the matter, with their provisions patterned upon those to be found in Acts relating to armies, both in Canada and England, in relation to organization and discipline, lends strong support, in my opinion, to the view that there is

no sound reason why the principles which have been adopted as to the manner in which proceedings before courts martial may be examined and, if found to be in excess of jurisdiction, quashed in proceedings taken in civil courts, should not apply to proceedings of the nature in question here under the *Royal Canadian Mounted Police Act*. It was, apparently, considered necessary at the very outset, when the Force was originally constituted and sent into the unsettled areas of the Northwest Territories, that discipline should be maintained in the same manner as had been found necessary in Military Forces. While conditions have changed, the same plan has been followed in the various Acts by which the original legislation has been amended and extended and which have culminated in the Act which appears as c. 241 of R.S.C. 1952. There may well be circumstances in time of war when the application of these principles to proceedings taken by Armed Forces on active service might be governed by different principles upon grounds of public policy, but this need not be considered in dealing with the present case.

It is unnecessary, in my opinion, to say more than this, that, where it is shown upon an application for a writ under the Crown Office Rules and the proceedings thereafter taken, there has been either a want of jurisdiction or an excess of jurisdiction in proceedings taken under ss. 30 and 31 of the Act, the right of the court to intervene by way of writ of *certiorari* is undoubted. That this is equally so in the case of the proceedings of courts martial in the Army appears to me equally undoubted.

In the present matter, s. 31 of the Act authorizes a Superintendent or other Commissioned Officer, on a charge in writing of any one or more of the offences mentioned in the Act or in any regulation made under its authority being preferred against any member of the Force, to cause the person charged to be brought before him:—

> and there, in a summary way, investigate the said charge and, if proved on oath to his satisfaction, shall thereof convict the offender.

While the offences mentioned in s. 30 are mainly of a character which, in Army parlance, would be described as contrary to good order and military discipline, and the purpose of penalizing them is clearly for the maintenance of discipline in the Force, the proceedings authorized are

1955

THE QUEEN AND ARCHER v. WHITE

Locke J.

none the less, in my opinion, of a judicial and not executive or administrative character, and the officer conducting the proceedings is obligated to act judicially.

In *Re Mansergh* (1), Cockburn C.J. said in part (p. 406):—

> I quite agree that where the civil rights of a person in military service are affected by the judgment of a military tribunal, in pronouncing which the tribunal has either acted without jurisdiction or has exceeded its jurisdiction, this Court ought to interfere to protect those civil rights: e.g. where the rights of life, liberty or property are involved, . . .

The decision in *Rex* v. *Army Council: ex parte Ravenscroft* is not, in my opinion, an authority to the contrary. In that case, the application was for a rule *nisi* for a *mandamus* to the Army Council, commanding them to cause a court of inquiry to reassemble and determine, according to law, the case against Colonel Ravenscroft on the grounds that, by a court of inquiry which had been held in France, he had been condemned on certain charges properly classified as breaches of discipline without his defence being fully heard, and that the statutory rules of procedure governing courts of inquiry had not been complied with. The statement of Viscount Reading C.J. (p. 508) that he had:—

> no doubt that this Court has no power to interfere with matters of military conduct and purely military law affecting military rules for the guidance of officers or discipline generally.

cannot be taken as a statement that, where in proceedings directed to the maintenance of good order and military discipline there is an excess of jurisdiction or convictions are rendered in matters beyond the jurisdiction, the courts are powerless to intervene. To so hold would be contrary to long established authority. Thus, in the case of *Humphrey Wade* in 1784, referred to in a note to *Richard Blake's Case* (2), Lord Mansfield C.J. granted a rule directed to General John Bell, to show cause why Wade, a sergeant of Marines then in military custody, should not be discharged. In *Blake's Case,* before Lord Ellenborough C.J. the Attorney General did not oppose the granting of the rule *nisi.* As was pointed out by Lord Mansfield in *Burdett* v. *Abbott* (3), by becoming a soldier a man does not cease to be a citizen. The cases are reviewed by McCardie J. in

(1) (1861) 1 B. & S. 400. (2) (1814) 2 M. & S. 432.
(3) (1812) 4 Taunt. 401 at 449.

*Heddon* v. *Evans* (1). The following passage from the judgment in that case appears to me to accurately state the position of a member of the Armed Fores (p. 643):—

> The compact or burden of a man who entered the Army, whether voluntarily or not, was that he would submit to military law, not that he would submit to military illegality. He must accept the Army Act and Rules and Regulations and Orders and all that they involved. These expressed his obligations; they announced his military rights. To the extent permitted by them his person and liberty might be affected and his property touched. But save to that extent, neither his liberty nor his person or property might be lawfully infringed. Where, indeed, the actual rights he sought to assert were given not by the common law, but only by military law, then it might well be that in military law alone could he seek his remedy. For if a code at once provided the right and also the remedy, it might rightly be said that he must look to the code alike for the remedy and its method of enforcement. If, however, the rights which he sought to assert were fundamental common law rights, such as immunity of person or liberty, save in so far as taken away by military law, then the common law right might be asserted in the ordinary Courts.

This statement applies, in my opinion, equally to a member of the Royal Canadian Mounted Police, the rights of its members, in this respect, being at least not less than those of members of the Armed Forces. The authority of the Superintendent and the Commissioner of the Force to impose the penalties provided by the Act for offences defined by the Act does not rest on the agreement of the member made at the time of his enlistment, but upon the terms of the statute itself, and it is the powers authorized to be exercised by that statute, and none other, that may be invoked against him.

I do not find in the material filed on the application before Wood J. any evidence to warrant the issue of the writ. There is nothing to sustain the charges of fraud, bias or excess or want of jurisdiction, either in the affidavit of the respondent or in the supporting affidavits. The complaints that there was an absence of legal evidence to support the findings or of evidence as to the age of the Witness Moraes are not matters that go to the jurisdiction (11 Hals. (Simonds Ed.) 62).

While, with respect, I am unable to agree with the reasons which led the learned Judge to dismiss the application, I think it should have been dismissed for the reasons I have stated. I would, accordingly, allow this appeal and set aside the judgment appealed from. I think there should be no costs, either in this Court or in the Court of Appeal.

(1) (1919) 35 T.L.R. 642.

1955

THE QUEEN AND ARCHER v. WHITE

Locke J.

In view of my conclusion, I refrain from expressing an opinion as to whether an appeal properly lay to the Court of Appeal.

ABBOTT J.:—The principal question in issue in this appeal is whether or not Orderly Room proceedings held under the *Royal Canadian Mounted Police Act*, R.S.C. 1952, c. 241, are subject to review by way of *certiorari*.

The respondent White, a non-commissioned member of the Royal Canadian Mounted Police, was charged with intoxication, scandalous behaviour and conduct unbecoming a member of the Force in breach of s. 30, sub-ss. (*c*), (*t*) and (*v*) of the said Act.

Following an orderly room hearing before the appellant Archer, a superintendent of the Royal Canadian Mounted Police, held under s. 31 of the Act, respondent was found guilty of the conduct complained of, demoted to the rank of constable, and fined $100.

Upon appeal to the Commissioner, in accordance with the Act, the pecuniary penalty was reduced to $50 and respondent was subsequently dismissed from the Force. Respondent then applied to the Supreme Court of British Columbia for a writ of *certiorari* to remove into that Court the record of the proceedings before the appellant Archer, for the purpose of having the same quashed on the ground *inter alia* that the said appellant acted without or in excess of jurisdiction and was biased. The application was dismissed by Wood J. on the ground that the proceedings in question were not subject to review on *certiorari*. The merits were not considered. On appeal (1), this judgment was reversed and the matter referred back to the Supreme Court for hearing and determination.

This appeal is by special leave from the judgment of the Court of Appeal for British Columbia.

The *Royal Canadian Mounted Police Act* and the regulations made thereunder constitute a code of law regulating the recruitment, administration and discipline of the Force.

Although not part of Canada's armed forces, the Royal Canadian Mounted Police are in many respects organized on a military basis, and the terms of recruitment and the provisions made for uniforms, quarters, rations, discipline

(1) [1954] 12 W.W.R. (N.S.) 315.

1955

THE QUEEN AND ARCHER v. WHITE

Abbott J.

and pensions closely resemble those of the Army, Navy and Air Force. The necessity for maintaining high standards of conduct and of discipline in the Royal Canadian Mounted Police is just as great as it is for the armed forces, and in this respect I can see no distinction in principle between the two bodies.

In my opinion, therefore, the authorities which hold that the Courts have no power to interfere with matters of military conduct and military discipline generally are applicable to matters involving the conduct and discipline of a force such as the Royal Canadian Mounted Police. See *Rex* v. *Army Council ex parte Ravenscroft* (1) and the authorities discussed and approved therein.

In every application for *certiorari* the real test must be the nature and character of the proceedings which are the subject of such application. That nature and character can be ascertained by an examination of the results to which such proceedings may lead. Applying that test to the present case, in my opinion the appellant Archer was an officer dealing summarily with breaches of conduct and discipline and was administering discipline in accordance with the statute and regulations to which the respondent voluntarily submitted when he joined the Force.

No doubt commanding officers, in hearing charges involving breaches of discipline, should act in a judicial manner. In the Royal Canadian Mounted Police, as in the Army, Navy and Air Force, under the regulations and in the interest of the prisoner, Orderly Room proceedings involving breaches of discipline may and often do follow the forms of law. Nevertheless in such proceedings, in my view, a commanding officer is acting not as a court or judge but as an officer administering discipline.

In the result, therefore, in my opinion the proceedings before Superintendent Archer were not subject to review by way of *certiorari* and I would allow the appeal and set aside the judgment of the Court below. There should be no costs.

*Appeal allowed; no costs.*

Solicitor for the appellants: *F. P. Varcoe.*

Solicitors for the respondent: *White & Shore.*

(1) [1917] 2 K.B. 504.