

CARTWRIGHT, MASTER.

FEBRUARY 1ST, 1905.

CHAMBERS.

SLEMIN v. TORONTO POLICE BENEFIT FUND.

*Pleading—Statement of Claim—Motion to Strike out Parts
—Allegations of Material Facts.*

Plaintiff alleges that for over 27 years he was a member of the Toronto Police force, and as such a contributor to the benefit fund; that under the rules of the fund he was *prima facie* entitled to a retiring pension; that in pursuance of the rules he made application for such pension to the committee, who reported on it favourably; but that defendants the board of police commissioners were of a different opinion, and refused the application. By sec. 12 of the rules, if the committee and the commissioners fail to concur, in such a case as the present, the judgment or decision of the police commissioners is final.

Plaintiff claimed: (1) a declaration that he was entitled to a half-pay pension for life, being half of the pay or of the average pay received by him in his 20th year of service, equal to \$500 per annum, payable monthly, or at the rate of \$1.37 a day; (2) payment of arrears of such pension; (3) or, in the alternative, a mandatory order upon defendants the board of police commissioners to sanction the recommendation of the committee; (4) an injunction restraining defendants from refusing or neglecting to recognize plaintiff's right to a pension; (5) in the alternative, repayment of all premiums paid by plaintiff into the fund; (6) a declaration that the police commissioners wrongfully, illegally, and improperly assumed to dismiss plaintiff after his term of service had expired.

The defendants the police commissioners moved to strike out the last clause of paragraph 7 and the whole of paragraphs 11, 18, 20, 24, and 25 of the statement of claim:—

7. The payment required to be made by sec. 15 of the rules for premiums or contributions . . . were deducted monthly from plaintiff's pay, and never came into his hands. Plaintiff was bound to allow such deduction for the said purpose or lose his position on the police force.

11. The action of the committee in approving the application of plaintiff for said pension was approved by the members of the police force at their annual meeting on 10th December, 1904, when all the members of the committee were re-elected for 1905 by acclamation.