Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Main and others v. *Stark, from the Supreme Court of the Colony of Victoria; delivered May 15th,* 1890.

Present:

The Earl of Selborne.
Lord Watson.
Lord Field.
Sir Barnes Peacock.

[*Delivered by the Earl of Selborne.*]

UNDER the 49th section of the Public Service Act, 1883, it is provided that "every school "teacher employed in a state school at the time "of the passing of this Act shall be classified as "in this Act provided;" that is, not according to any arbitrary discretion of the classifiers, but in the exercise of such discretion as within definite limits is given them by the Act. When a class has been assigned the teacher is entitled to have his name recorded. Every school teacher therefore having a right to be classified, and to have his name recorded, if the provisions of the Act have not been followed in those points as to which rules are laid down for the government of the classifiers, there must in some way or other be a remedy.

No question has been raised here as to the form of the remedy, and probably that was taken for granted as a point not to be raised when special leave was given for this appeal. Therefore their Lordships will assume that, at all events in this case, no question exists as to the procedure by *mandamus* if the provisions were not duly followed.

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Taking that to be so, the point is a very short one. What the classifiers have done has been to put the lady who is the Respondent here into the category of "junior assistants," which, if it be wrong, is a serious matter to her; because as to junior assistants—at all events those who are so under the sixth schedule of the Act—it is expressly provided that they shall receive no increment to their stipends, which otherwise they would be entitled to receive. The Court below have thought that the classifiers have done wrong, and that she was not in point of fact a junior assistant; that they had no discretion to classify as a junior assistant any one who was not so in point of fact, but that, having had a definite status in a State school to which she had been appointed as far back as the 30th of October 1879, under a certificate of earlier date, which entitled her to fill the office of assistant teacher in any State school, and head or principal teacher where there was no assistant teacher, that was a status which gave her a right to be put into one of the three sub-classes of class 5. No question was raised as to the particular sub-class, because she was content to be placed in the lowest. The question for their Lordships is whether the Court was right in holding that she had not the status of a junior assistant, within the meaning of the Act.

Their Lordships are of opinion that the Court below was right. A junior assistant, unless expressly interpreted by the Act, which it is not, might, in the natural use of language, mean a known denomination of teacher existing at the time when the Act was passed. If that was its meaning, it is not pretended that this lady ever held an office designated by that denomination. Therefore, if it were a known denomination at the time, there is an end of the case, and the Court is right. But supposing it were not at that time

a known denomination, as to which the fact is not clear one way or the other, what, according to the ordinary use of language, might that description mean? It could only mean one of two things, either an assistant not the first in rank and order, in the school in which she was employed, or an assistant not possessing any fixed and definite status in the school, and therefore lower than those who were in a proper sense assistant teachers in the school. It cannot mean the first of those two things in this Act, for this reason, that the Act refers to the third schedule, and in the third schedule, which gives the skeleton classification, their Lordships find that the first class includes only head teachers; the second class, the third, and the fourth include only head teachers, and first male or female assistant teachers; and, that being so, the fifth class is to include "all other assistantships than those specified above." Therefore the fifth class must include assistantships lower than the first assistantships in some schools, and it is impossible, consistently with that, that everyone below the first can be held to be a junior assistant excluded from the increments which in the immediate context are mentioned; that sense is excluded. Well, then comes the other possible meaning, "a teacher without any fixed or definite status in the school." That may possibly be the meaning of it here; but if so, it clearly does not include the Respondent, because she had been appointed to a fixed or definite status in the school, namely, as fourth assistant in the school at Hotham, in the colony of Victoria. Therefore that seems, if the natural interpretation of the words be looked to, enough to settle the case. She is not brought, according to any natural interpretation of the words "junior assistant," within that class.

But it was argued that, taking the 52nd section of the Act and the sixth schedule of the Act together, the means of interpreting the words "junior assistant" in the third schedule are found; and that the conclusion is, that every one ought to be regarded as a junior assistant, who under the sixth schedule could not be employed in a school in any other capacity. Now the 52nd section certainly goes no way towards establishing that proposition, because it is in these words:— "The classifiers in preparing the first classified "roll shall place every teacher employed at the "time of the passing of this Act in the class "corresponding to the school in which he is "employed, and his position therein." That seems just. You are not to alter the position of the teacher. You are to classify him in the first roll as you find him. That does not go any way towards establishing the proposition, either that this lady was in any proper sense a junior assistant, or that she is to be deemed so, on account of something contained in the sixth schedule. The sixth schedule, when looked at, is on the face of it prospective. Their Lordships of course do not say that there might not be something in the context of an Act of Parliament, or to be collected from its language, which might give to words *primâ facie* prospective a larger operation; but they ought not to receive a larger operation unless you find some reason for giving it, and their Lordships are unable to find any such reason here. On the contrary, it seems to them that the reasons to be collected from the Act are quite the other way. The schedule begins thus:—Sixth schedule. Staff of schools. Assistant "teachers in State schools shall be appointed as "under." Then come clauses which regulate the number of assistant teachers to be employed in each school, and add that anything beyond

those are to be junior assistant teachers. Those clauses are introduced by the words: "The assistant teachers appointed shall be of the following rank," which clearly have reference to the introductory words of the whole—"Assistant teachers in state schools shall be appointed as under." That schedule is referred to and introduced in the Act by the 61st clause:—"Every school of each "class shall, except as in this Act provided, be "under the charge of a head teacher of "the corresponding class;" and then follow the words:—"Assistant teachers, pupil teachers, and "sewing mistresses shall be allotted as provided "in the sixth schedule hereto." That is prospective, as clearly—possibly even more clearly—than the schedule itself, and relates to the future organisation and management of the schools. But it was not meant to take away vested rights and interests as they existed at the time of the Act. To give such a schedule, referred to in such a clause, that operation, would in the first place be contrary to general principles. Even if there were not on the face of the Act something affirming those principles, words not requiring a retrospective operation, so as to affect an existing status prejudicially, ought not to be so construed. But the present case does not depend upon general principles. The 68th section is express, that "All teachers shall retain "the positions they hold on the passing of this "Act, and shall be classified as in this Act "provided;" and their Lordships find in the seventh schedule provisions for the gradual reduction of any excess in the existing staff, so as to meet the intended future arrangements. It is evident, therefore, that you cannot alter the position of this lady, or create for her a new position which she did not fill before, by any retrospective application of the sixth schedule.

Then when we look at the third schedule, containing skeleton forms of classification, everything which appears there seems to be the reverse of favourable to the Appellant's argument. Sir Horace Davey more than once laid stress upon the general heading of Part II. of the third schedule—"Classification "and payment of head teachers and assistant "teachers;" but that proves no more than that head teachers and assistant teachers were both to be classified; how they were to be classified depends in the first place upon their existing status, and secondly upon the manner in which that is recognised and provided for by the schedule in detail. The only part material for that purpose is in the heading to the fifth class—"Teachers who are licensed to teach, and also "are in charge of fifth-class schools"—that would be head teachers—"or hold other assistantships than those specified above,"—which would clearly include this lady in some way or other—"or act as relieving teachers"—which seems to distinguish relieving teachers from those other assistantships, properly so called.—"Minimum fixed salary for males, 80*l.* per annum, "rising by three annual increments of 8*l.* to a "maximum of 104*l.*, but teachers employed as "junior assistants under sixth schedule will "receive no increment." Upon the last words, which are the most material ones, two observations arise. First of all, the word "employed" might leave one to find out, from the nature of the employment, whether they were junior assistants or not; but if there is something else lower down, as there is, which indicates that it should be defined by the terms of their engagement that they are to be junior assistants, the wording is perfectly consistent with that. But then it goes on, "under sixth schedule." Now this lady unquestionably when

the Act passed had never been employed under the sixth schedule, for the sixth schedule was a prospective arrangement made by the Act. Therefore it would not appear that it could apply to her. And when their Lordships look at the structure of the skeleton classification, it is perfectly true, as Sir Horace Davey said, that it is divided under two heads, the first being thus described:—"Head teachers and assistants other than junior assistants," who are subdivided in accordance with the 53rd clause of the Act, which provides for the subdivision of all classes except the first into three sub-classes, and the subdivision into three sub-classes applies only to that first head. So far there is a deviation in the form of this schedule from what seems to be contemplated on the face of the 53rd section of the Act; still it is in the Act, and it not difficult to understand what is to be subdivided. The subdivisible class consists of head teachers and assistants other than junior assistants: but it was thought convenient to put in also, under a separate division, the excluded class of junior assistants. How is that done? It is done in a section, not subdivided at all, and headed by these words: "Names to be entered in order of "seniority of appointment as junior assistants." According to the natural meaning of those words it contemplates an appointment as junior assistant expressly, either by that denomination, or in some way which, when you have ascertained it, naturally separates them from the others, and puts them into a junior class. That may or may not have been a thing known before the passing of the Act; but whatever other indications are found there, they are all against the notion that it could be meant to apply to such a teacher as the present Respondent was. The last column, under the head of "Remarks," speaks of "Registered for position of relieving teacher," which plainly

means a sort of supernumerary, as the Court below said. And in the column before that are the words :—"Order of precedence for appoint-" ment to fifth-class schools, and for relieving " teacher." What is there expressed indicates a class of lower grade, certainly, than that which this lady belonged to.

Their Lordships do not think it necessary to go further into the matter. It seems to them that the conclusion of the Court below was right, and ought to be affirmed, and they will so advise Her Majesty.

The question of the costs has been provided for expressly by Her Majesty's Order in Council granting leave to appeal.