

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
James Leslie Williams v. The Curator of
Intestate Estates (substituted for Henry
James Greville, deceased), from the High
Court of Australia; delivered the 31st
March, 1909.*

Present at the Hearing :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

LORD GORELL.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from an Order of the High Court of Australia, which reversed the decision of the Full Court of New South Wales and directed a verdict to be entered for the Plaintiff in the action.

The Plaintiff, Henry James Greville, was a member of the Civil Service of New South Wales. His services were dispensed with as from the 30th of June, 1896, by the Public Service Board, established under the Public Service Act, 1895. At the date of his retirement he was fifty-eight years of age and had forty-one years of service to his credit. On retirement he received such benefits as he appeared to be entitled to under the Act of 1895, in the shape of a refund of his contributions to

the Superannuation Account, established by the Public Service Act, 1884, and a gratuity as provided by Section 60 sub-section (1) of the Act of 1895. On the passing of the Public Service (Superannuation) Act, 1899, he received, in addition, a pension, calculated in accordance with the provisions of that Act. In June, 1905, he brought this action against the Government claiming an increased pension on the ground that his services had, in fact, been dispensed with in consequence of the abolition of his office, and that consequently he was entitled to the benefits in that case provided by the Act of 1884. He failed in the Courts in New South Wales, but succeeded in the High Court. Special leave to appeal against the Order of the High Court was applied for and granted. The amount in dispute was not large, but it appeared that other cases depended on the result of the action, and the Order of the High Court seriously affected the construction of the Act of 1895. Shortly after leave was granted the Plaintiff died, and the Appeal has been revived against the Curator of Intestate Estates as the Plaintiff's legal personal representative. The case was heard *ex parte*, although the Order granting leave to appeal provided for the Respondent's costs in any event.

The judgments of the learned Judges of the High Court seem to turn almost entirely on the question whether the Plaintiff's retirement was or was not "in consequence of the abolition of his office" within the meaning of that expression in the Act of 1884. That, no doubt, is a question of some difficulty. Their Lordships are disposed to think that the judgment of the High Court is right on the point, assuming the point to be open. But, with the utmost respect, it appears to their Lordships that that was not the real question.

There is the preliminary question which, in the argument before the High Court, does not seem to have received so much attention as, in their Lordships' opinion, it deserves. The question is:—Was it competent for the Plaintiff, having regard to the express provisions of the Act of 1895, to fall back on the Act of 1884?

In the opinion of their Lordships, the question at issue between the parties must depend on the provisions of the Act of 1895 and the action of the Public Service Board. But it will be convenient, in the first place, to refer briefly to the Act of 1884 and to explain the position of the members of the Civil Service at the time of the passing of the Act of 1895.

Now, the Act of 1884 seems to have been the first attempt in the Colony to regulate the Civil Service by statute, and to provide pensions and gratuities on a large and liberal scale for Civil Servants on retirement. The Act which came into operation on the 1st of January, 1885, recites in the preamble that "it is expedient that officers of the Civil Service should be classified and that a scale of salaries and a system of appointments, promotions, and retiring allowances should be established and that other provisions for the regulation of the Service should be made," and then, after an interpretation clause, which throws no light on the question under consideration in the High Court, comes the body of the Act. It is divided into six parts. Part I., headed "CLASSIFICATION," contains the following clause, which was much discussed in the argument in connection with the meaning of the expression "abolition of office":—

10. If the services of any officer shall be dispensed with in consequence of the abolition of his office or any departmental change, and not from any fault on his part, such officer may be required at the rate of

salary last received by him to perform any duty for which he is considered competent in any public department and, should he refuse such change of duty, he shall not be entitled to receive any compensation.

Then the Act provides for the appointment of a Civil Service Board to carry out the purposes mentioned in the preamble.

Part V. contains clauses numbered 42-52. Clause 43 allows officers to retire at the age of 60. Clause 44 allows retirement under that age in case of ill-health. Clause 46 is in these terms:—

“46. When the services of any officer are dispensed with in consequence of the abolition of his office and no other office can be offered to him at the same salary as hereinbefore provided” [referring evidently to Clause 10] “or at a salary not less than five-sixths of the same, he shall be entitled to retire upon the superannuation allowance hereinafter provided.”

Clause 48 lays down the scale of superannuation allowances.

Part VI., headed “CIVIL SERVICE SUPERANNUATION ACCOUNT, MISCELLANEOUS,” provides for setting up an account called “the Civil Service Superannuation Account.” It was to be maintained by a grant from the Consolidated Revenue Fund and the transfer of a grant from that fund limited to £3,500 per annum, under the Imperial Act 18 and 19 Vic., c. 54, subject to existing and future claims thereon, and also by a levy of 4 per cent. per annum on the salaries of all members of the Civil Service to whom the Act applied.

The Act of 1895, passed on the 23rd of December, 1895, was more drastic in its operation. It repealed the whole of the Act of 1884 except Clauses 1 and 2 (short title and interpretation) and except Part V. and the provisions in Part VI. relating to the Civil Service Superannuation Account. It established a Board called “the Public Service Board,” and

conferred on that Board far larger powers than those enjoyed by the Civil Service Board. It provided (Section 7) that the permanent head of each Ministerial Department of the Public Service should furnish the Board with a return shewing the number of officers in his department, their respective salaries, emoluments, and duties and other particulars specified in the section, including the date of each officer's appointment and the length of his service. Section 8 required the Board to inspect every department and investigate the character of the work performed by every officer therein, and the efficiency, economy and general working of such department both separately and in its relation to other departments. Then the section goes on to declare that

“ If the Board shall at any time find that a
 “ greater number of persons is employed in any
 “ department than it may determine to be necessary
 “ for the efficient working thereof, such persons as are
 “ in excess may, if practicable, be transferred to any
 “ other department which in the opinion of the Board
 “ requires additional assistance, and if the persons so
 “ found to be in excess cannot be usefully and profitably
 “ employed in any other department, their services
 “ shall be dispensed with subject to the provisions of
 “ Section 60 hereof.”

Section 60, so far as material, is in the following words:—

60. If the services of any person permanently employed in the Public Service shall be dispensed with by the Board . . . otherwise than for an offence, then—

(1) If such person shall have been employed in the Public Service before and at the date of the commencement of this Act and shall be a contributor to the Superannuation Account under the provisions of the Civil Service Act of 1884, but shall not be entitled to retire under Sections 43 and 44 of that Act, such person shall receive a refund of the amount of his contributions to such Account calculated to the date on which his

services shall have been dispensed with, together with a gratuity not exceeding one month's pay for each year of service from the date of his permanent appointment and a fortnight's pay in respect of each year of temporary service, such gratuity to be calculated on the average of his salary during the whole term of his employment and to be payable only in respect to service prior to the commencement of this Act.

The only other material section in the Act of 1895 is Section 67, which is in the following terms :—

67. Except as in this Act provided no officer in the Public Service shall be deemed to be entitled to any compensation by reason of any reduction of his salary or in consequence of his services being dispensed with.

At the trial the Chairman of the Public Service Board deposed that in 1896 the Board went through the Bankruptcy Department. "We dealt with it," he said, "and graded it. "It appeared that a greater number of persons "were employed than was necessary. Plaintiff "was one of the number in excess, and could not "be usefully and profitably employed in any "other department. His services were then "dispensed with by the Board."

In the New South Wales Government Special Gazette of the 4th of July, 1896, a notice appeared stating that His Excellency the Governor, with the advice of the Executive Council and upon the recommendation of the Public Service Board, had approved of the retirement of the under-mentioned officers from the Public Service under the provisions of the Public Service Act of 1895 as from the 30th ultimo. Then follows a list of names; among them appears "Mr. Henry "James Greville, Accountant and Cashier, "Bankruptcy Office." Section 70 of the Act of

1895 enacts that all notices of retirements and removals of officers under the Act shall be published in the Special Gazette, and that "every such notice shall be deemed and taken to be conclusive evidence of every such . . . retirement or removal."

As already stated, the Plaintiff on his retirement received a refund and gratuity in accordance with the provisions of Section 60. His services were dispensed with under the Public Service Act, 1895. The Public Service Board had no power to deal with his case under any other Act. He received the compensation provided by Section 60. Section 67 excluded him from any other compensation.

It is quite true that the office of Accountant and Cashier in Bankruptcy was not filled up on the Plaintiff's retirement by the appointment of a successor with the same title. The duties were performed by a gentleman who was graded as "Clerk," and continued to be officially described by that designation. Assuming, however, that the change of designation amounted in the case of the Plaintiff to the "abolition of his office" within the meaning of Section 46 of the Act of 1884, their Lordships are unable to understand upon what grounds the Plaintiff could claim the right to resort to that Act when no such right was reserved or granted to him by the Act of 1895. Sections 43 and 44 of the Act of 1884 do not depend on any action by the Civil Service Board. But Section 46 only comes into operation on the abolition of an office by the Civil Service Board, which is now defunct, or under the provisions of Section 62 of the Act of 1895 in the case of an officer continued by the Public Service Board in the service after the passing of the Act for 12 months and then removed without any

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or at the instance of,*

fault on his part. Then it is made applicable, though otherwise it would not apply.

Their Lordships will therefore humbly advise His Majesty that the Order of the High Court should be reversed, but without costs, and that the Order of the Full Court of New South Wales and the Judgment of Pring J., dismissing the Plaintiff's action, should be restored.

There will be no costs of this Appeal.