Special reference in the matter of certain questions relating to the payment of compensation to Civil Servants under Article X of the Articles of Agreement for a Treaty between Great Britain and Ireland.

REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH NOVEMBER, 1928.

Present at the Hearing:

MARQUESS OF READING.

LORD PHILLIMORE.

LORD HANWORTH.

LORD ALNESS.

CHIEF JUSTICE ANGLIN.

[*Delivered by* THE MARQUESS OF READING.]

This matter was referred to the Judicial Committee by an order of His Majesty in Council made under Section 4 of the Judicial Committee Act, 1833.

The questions in issue relate to the principles applicable to the determination of the compensation payable to those Civil Servants in the service of the Crown who were transferred to the Irish Free State after the 20th March, 1922, and were discharged or have retired in consequence of the change of Government, effected by the establishment of the Government of the Irish Free State in pursuance of the Articles of Agreement for a Treaty made between Great Britain and Ireland. The amount of the compensation payable was determined by the Government of the Irish Free State in accordance with the principles laid down in certain minutes of the British Treasury, and in particular the minute of the 20th March, 1922. The question referred to their Lordships is whether the payment of compensation so determined in respect of Civil Servants or other officials or public servants transferred to the service of the Provisional Government or of the Government of the Irish Free State after the 20th March, 1922 is a payment of compensation within the meaning and true intent of Article X of the Articles of Agreement.

Article X is as follows :—

> "The Government of the Irish Free State agrees to pay fair compensation on terms not less favourable than those accorded by the Act of 1920 to Judges, Officials, Members of the Police Forces and other Public Servants who are discharged or who retire in consequence of the change of Government effected in pursuance hereof."

This Act of 1920 is the Government of Ireland Act, 1920.

The arguments before their Lordships covered a wide range, and raised some problems difficult of solution which lay on the fringe of the question referred but which fortunately it is not necessary for their Lordships to solve.

Before proceeding to deal with the arguments at the hearing before the Board it is desirable to pass in brief review the facts and circumstances which have led to the present dispute.

In the year 1920 it was contemplated that changes should be made in the government and administration of Ireland, and accordingly the Government of Ireland Act, 1920, was passed. Power was given to establish Parliaments in Southern and Northern Ireland and executive authority within the limits reserved by the Act. It was further provided by Section 55 that existing Irish officers in the service of the Crown should continue to serve in Ireland and in the new Governments to be formed, and should hold their offices upon the same tenure and the same conditions as hitherto. In order to protect those officers who might be removed from office or might wish to retire in consequence of the change to be effected in the government of Ireland, provision was made for payment to them of compensation

to be calculated in like manner as the superannuation allowances or gratuities had been applicable to them, with certain additional concessions, on the terms and conditions contained in the Eighth Schedule of the Act and the Rules thereunder.

Under these provisions an officer in an established capacity in the service of the Crown who wished to retire under the statutory conditions would receive as compensation under this Act an annual allowance or pension calculated in like manner as the superannuation allowance he would be qualified to receive under the Superannuation Acts, 1834 to 1914, if he retired on the ground of ill-health, supplemented for the purpose of that calculation by certain additional years of service and certain notional increments of salary.

The annual allowance or pension payable under the Superannuation Acts, 1834–1914 to a Civil Servant who retires on the ground of ill-health after not less than ten years' service is one-sixtieth of the salary and emoluments of his office at the date of his retirement for each year of service. A new system was introduced under the Superannuation Act of 1909 for the benefit of those officers who elected to avail themselves of it. They became entitled to an annual allowance calculated upon one-eightieth instead of one-sixtieth per year of service, and in addition to a lump sum payment of one-thirtieth of the salary and emoluments for each year of service, such payment not to exceed one and a half times the amount of the salary and emoluments. During the War the remuneration was increased by what was termed a bonus. At first no part of the bonus was included for the purpose of the calculation of these allowances, but gradually it was recognised by the Treasury and particularly by the minute of 20th March, 1922, that the bonus had become a regular part of the Civil Servants' remuneration, and that it should be taken into account in computing the retiring allowances. The bonus is not a fixed sum like the salary, but is variable and is calculated on a sliding scale by reference to the official index figure of the cost of living.

The scheme of Government under the Act of 1920 was superseded in December, 1921 by the Articles of Agreement for a Treaty between Great Britain and Ireland, which by Article 17 provided for a provisional arrangement for the administration of Southern Ireland during the transitional period, pending the constitution of a Government of the Irish Free State. By the Irish Free State (Agreement) Act, 1922, passed on 31st March, 1922, force of law was given to these Articles, and provisions were made for carrying the Treaty into effect. In pursuance of this Act an order in Council of 1st April, 1922 was issued transferring the functions in connection with the administration of public services in Southern Ireland to the Provisional Government; in December, 1922, the Irish Free State was established, and the Constitution was enacted by Act No. 1 of the Dail Eireann. Article 77 of the Constitution (1st Schedule to the Act) provides

that every existing officer (subject to the exception therein mentioned) of the Provisional Government at the date of the coming into operation of this Constitution "shall on that date be transferred to and become an officer of the Irish Free State . . . and shall hold office by a tenure corresponding to his previous tenure." By Article 78 "every such existing officer who was transferred from the British Government by virtue of any transfer of services to the Provisional Government shall be entitled to the benefit of Article X of the Scheduled Treaty." This statute made the Articles of the Treaty part of the municipal law of the Irish Free State. In consequence of these enactments existing Irish officers transferred to the Provisional Government, and later to the Irish Free State, became entitled by Irish Free State law to the benefit of Article X of the Treaty.

The compensation payable by the Irish Free State Government to those officers who were discharged by the Government or who retired because of the change of Government effected in pursuance of the Articles for the Treaty, and who came within the provisions of Article X, was assessed by the Minister of Finance of the Irish Free State assisted by a Committee carefully selected for this purpose. It is not disputed that the Minister of Finance assessed the compensation in accordance with the principles set forth in the minutes of the British Treasury, including the minute of 20th March, 1922, but the Civil Servants were dissatisfied with a part of the award and claimed that the compensation so determined was not fair compensation within the meaning of Article X. They raised objections to the award in respect of, *inter alia*, the following two matters :—

(1) In regard to the portion of the annual allowance which is computed on the bonus, as distinguished from the fixed salary, it was made a condition of the award that this portion should be adjusted quarterly by reference to the official figure of cost of living, and should be reduced according to the sliding scale when the cost of living figure fell, but that it should not be increased beyond the amount ascertained at the date of retirement if the cost of living figure rose. This principle is known as the over-riding maximum.

(2) In regard to that portion of the lump sum payment which is computed on the bonus, the award was based upon 75 per cent., and not upon the whole of the bonus payable for the quarter preceding the date of retirement.

The meaning and intent of Article X and the principles upon which the compensation payable under it should be assessed, including the principles relating to the over-riding maximum and the 75 per cent. above-mentioned, were considered by the Judicial Committee on the hearing of the Appeal in the case of *Wigg* v. *The Attorney-General of the Irish Free State* [1927] A.C., p. 674. The plaintiffs in the action were two Civil Servants who sought to enforce their claims under Article X in the Courts of the Irish Free State. In expressing

their opinion allowing the appeal in favour of the two Civil Servants, the Board, when referring to the effect of the minute of the 20th March, 1922, upon the claims, assumed that these officers had at the date of the minute been transferred to the Government of the Free State, and held that the minute could not affect their rights. These officers were, in fact, not transferred to the Government of the Irish Free State until after the date of this minute, and it was contended that the advice tendered to His Majesty was tainted, if not vitiated, by this error of fact. It is because of this misapprehension by the previous Board (its effect upon the decision will be considered later) that the present reference was ordered.

At the outset of the hearing in this reference, Mr. Dickie, who attended their Lordships on behalf of the Council of the Transferred Officers' Protection Association, argued that the Board is bound in law, and without examination, to follow the decision in the appeal in *Wigg's* case, whether they considered it to be right or wrong. He maintained that if it was wrong, nothing short of an Act of Parliament could rectify it. Their Lordships are unable to hold that this proposition stated in such an extreme form is established. It may well be that the Board would hesitate long before disturbing a solemn decision by a previous Board, which raised an identical or even a similar issue for determination; but for the proposition that the Board is, in all circumstances, bound to follow a previous decision, as it were, blindfold, they are unable to discover any adequate authority. In other words, no inflexible rule, which falls in all circumstances to be applied, has been laid down.

Mr. Dickie based his argument mainly upon cases in which one of the parties to a suit which had been decided against him, or a person who was not a party to the suit, applied for a rehearing of it. Their Lordships must however point out, in considering these cases, that they have no direct application to the matter before the Board, as this Reference is not a rehearing of the claims in *Wigg's* case. Now there can be no doubt that, in the early cases, a rigid standard was applied to the competency of a rehearing. Thus, in *Rajundernarain Rae* v. *Bijai Govind Sing*, 1 Moore's P.C. Cases, p. 117 (1836) (also reported in 2 Moore's Indian Appeals, p. 181) Lord Brougham, in delivering the opinion of the Board, permitted himself to make some general observations, which seem, at first sight, to favour Mr. Dickie's contention. In that case an application was made for a rehearing. The decision in the earlier case had been given *ex parte*, and was pronounced by default. The earlier order was in these circumstances rescinded, and a re-hearing was allowed. Lord Brougham, in giving the opinion of the Board, however, said (p. 126) :—" It is unquestionably the strict rule, and ought to be distinctly understood as such, that no cause in this Court can be reheard, and that, an order once made—that is, a report submitted to

Her Majesty, and adopted, by being made an order in Council—is final, and cannot be altered. The same is the case of the judgments of the House of Lords. . . . Whatever therefore has been really determined in these Courts must stand, there being no power of rehearing for the purpose of changing the judgment pronounced." Lord Brougham then pointed out that trivial errors in drawing up the judgment of the Board might competently be corrected. He then proceeded to add: "With the exception of one case in 1669, of doubtful authority here, and another in Parliament of still less weight in 1642 (which was an appeal from the Privy Council to Parliament, and at a time when the Government was in an unsettled state), no instance, it is believed, can be produced of a rehearing upon the whole cause, and an entire alteration of the judgment once pronounced."

The case referred to by Lord Brougham as "of doubtful authority" was *Dumaresq* v. *Le Hardy*, 11*th March*, 1667–68, (p. 127 of the report *supra*). There it was alleged that a matter of fact had been misrepresented to the earlier Court, that consequently the point in question was mistaken, and that the cause had been determined against the petitioner's clear and undoubted right and contrary to law. An order for rehearing was there made and the case was reheard though, in the result, the Board adhered to the former decision.

The case of *Fenton* v. *Hampton* (1858), 11 *Moore's P.C. Cases*, p. 347, cited during the argument, related to another proposition which dealt with the binding character of an earlier decision upon the Board in a later case. The Board there said (*page* 396): "We think that we are bound by the decision in the case of *Kielley* v. *Carson* (1841), 4 Moore's P.C. Cases, p. 63. the greater authority of which, as compared with *Beaumont* v. *Barrett* (1836) 1 Moore's P.C. Cases, p. 59, it is quite unnecessary to enlarge upon." In *Kielley* v. *Carson* the Board had refused to follow the earlier decision of *Beaumont* v. *Barrett* for reasons which do not touch the argument in the present case. These decisions do not contribute to the solution of the problem in issue.

Reference may also be made to the case of the *Singapore* (1866) L.R. 1 *P.C.*, p. 378, which again related to rehearing. In refusing a petition for rehearing, the Board at p. 388 said: "We do not affirm that there is no competency in this Court to grant a rehearing in any case. . . . Although it is within the competency of the Court to grant a rehearing, according to the authorities cited above, still it must be a very strong case indeed, and coming within the class of cases there collected" (*i.e.*, in *Rajundernarain's* case, 1 *Moore's P.C.*, 117), "that would induce this Court so to interfere."

The case which in comparatively recent times comes nearest to formulating a general proposition with reference to the competency of a rehearing is *Hebbert* v. *Purchas L.R.* 3 *P.C.*, p. 664. The decision of the Board is thus set out at p. 671: "Their Lordships are of opinion, in respect of the two petitions addressed

to the Crown, that no further proceedings should be taken therein. Having carefully weighed the arguments, and considering the great public mischief which would arise on any doubt being thrown on the finality of the decisions of the Judicial Committee, their Lordships are of opinion that expediency requires that the prayer of the petitions should not be acceded to, and that they should be refused with costs." It will be observed that the decision turned on expediency, not on competency, and that the Board abstained from laying down any general rule which is applicable to all cases.

The case of *Hebbert* v. *Purchas* was considered in *Ridsdale* v. *Clifton*, *L.R.* 2 *P.D.*, p. 276. That was a case which raised the question of the finality of a previous decision, not *inter partes* but as against strangers. Having regard to the fact that the case was not concerned with questions of law affecting civil rights of property, but related to the public worship of the Established Church, and that in *Hebbert* v. *Purchas* the decision was pronounced *ex parte*, the Board stated that " these considerations have led their Lordships to the conclusion that, although very great weight ought to be given to the decision in *Hebbert* v. *Purchas*, yet they ought in the present case to hold themselves at liberty to examine the reasons upon which the decision was arrived at, and, if they should find themselves forced to dissent from these reasons, to decide upon their own view of the law " (p. 307). The Lord Chancellor, Lord Cairns, in giving the decision of the Board, added with reference to decisions relating to civil rights of property : " Even as to such decisions it would perhaps be difficult to say that they were, as to third parties, under all circumstances and in all cases, absolutely final, but they certainly ought not to be reopened without the very greatest hesitation " (p. 306). The door is thus not closed against a request for a rehearing at the instance of a stranger to an earlier decision, even in a case concerned with civil rights of property, although it is plainly indicated that the Board would be slow to accede to such a request.

The case of *Hebbert* v. *Purchas* was followed in *Venkata Narasimha Appa Row* v. *The Court of Wards*, 11 App. Cas. p. 660 (1886), in which again a petition for rehearing was refused. In delivering the judgment of the Board, however, Lord Watson said (p. 663) : " It is quite true that there may be exceptional circumstances which will warrant this Board, even after their advice has been acted upon by Her Majesty in Council, in allowing a case to be reheard at the instance of one of the parties." But, he added . . . " Even before report, whilst the decision of the Board is not yet *res judicata*, great caution has been observed in the rehearing of appeals " (p. 663).

Again, in the case of *Tooth* v. *Power* [1891] *A.C.* p. 284 in which a previous decision was urged upon the Board as binding upon it, the Judicial Committee said : " Their Lordships think it right to add that, although, for obvious reasons, the case of

Barton v. *Muir* was relied on as an authority absolutely binding upon them by both parties at the Bar, yet it would have been their duty, had the necessity arisen, to consider for themselves whether the decision is one which they ought to follow. It was given *ex parte;* and, that being the case, although great weight is due to the decision of this Board, their Lordships are at liberty to examine the reasons upon which that decision was arrived at, and if they should find themselves forced to dissent from these reasons, to decide upon their own view of the law. These are the words used by Lord Cairns when delivering the judgment of the Board in *Ridsdale* v. *Clifton*, which contains a full exposition of the law upon this point" (p. 292).

In *Read* v. *Bishop of Lincoln* [1892], *A.C.*, p. 644, their Lordships referred to *Hebbert* v. *Purchas* and *Ridsdale* v. *Clifton*, and quoted the relevant passages from these decisions to which reference has already been made. The Board proceeded to say: "In the present case their Lordships cannot but adopt the view expressed in *Ridsdale* v. *Clifton* as to the effect of previous decisions. Whilst fully sensible of the weight to be attached to such decisions, their Lordships are at the same time bound to examine the reasons upon which the decisions rest, and to give effect to their own view of the law" (p. 655).

The result of these decisions is (1) that there is no inherent incompetency in ordering a rehearing of a case already decided by the Board, even when a question of a right of property is involved, but (2) that such an indulgence will be granted in very exceptional circumstances only. It is of the nature of an *extraordinarium remedium*.

The matter now before their Lordships, however, presents features which are widely different from those presented in the cases cited.

In the first place, as has already been pointed out, this is not a petition for a rehearing. It is a reference to the Board under section 4 of the Judicial Committee Act of 1833. If, however, Mr. Dickie is right, the reference may be a futile and sterile proceeding, for, on his argument, one of the parties to it is foredoomed from the outset to failure because of the previous decision. If by that decision the matter of the present reference is *res judicata*, then the Board has been invited to take part in a solemn farce, involving the waste of judicial time.

In the second place, the reference was granted because of an alleged mistake of fact into which the previous Board was alleged to have fallen, and which is said to have been material to the issue determined by it. To suggest that, if that proposition be made out, this Board is constrained, blindfold, to adhere to a decision based on a material error in fact, appears to be repugnant to good sense, and to attribute to the Board, as a Court of final resort, an impotence which would be deplorable. None of the cases cited, unless it be the case of *Dumaresq*—which, *quantum valeat*, is inimical to Mr. Dickie's argument—deals with such a

situation ; and none of them appears to present an insuperable obstacle to a different decision being reached by the Board in this case from that pronounced in the case of *Wigg and Cochrane*.

In these circumstances their Lordships considered, after careful attention had been given to the argument on behalf of the Civil Servants, that it was ill-founded in law, and they accordingly informed the learned Attorney-General that they did not think it necessary to require him to reply on this topic.

The Transferred Officers Protection Association only challenge in this reference the award of the Government of the Irish Free State upon the two matters above mentioned, the one relating to the over-riding maximum, and the other to the calculation of 75 per cent. in assessing the lump sum payment.

Mr. Dickie, on behalf of the Transferred Officers, argued that the claim to fair compensation under the Article was not limited or restricted by limitations or restrictions in the Act of 1920, or in any British Treasury Minute, and that the award in respect of these two matters was not fair compensation within the meaning of Article X.

The Attorney-General, who attended their Lordships on behalf of His Majesty's Government, and Mr. Overend, on behalf of the Attorney-General of the Irish Free State, contended that the compensation awarded was fair compensation not less favourable than that accorded by the Government of Ireland Act, 1920, that it had been calculated on the principles laid down in the Treasury Minutes, including the Minute of the 20th March, 1922, and that the compensation so assessed was fair compensation within the meaning of the Article.

The solution of the problem depends in the first instance upon the meaning to be attributed to the language of the Article. The Articles are part of the statute law of the Irish Free State, and must be construed according to the principles of interpretation applicable to the language of a statute. Under the Article the Transferred Officers who come within the statutory conditions are entitled to compensation which is fair and on terms not less favourable than those accorded by the Act of 1920. In their Lordships' opinion, the language of the Article imports that the terms of the Act of 1920 are the minimum which should be receivable by the officers, but these terms are clearly not the maximum that may be awarded. The words are not *on* the terms accorded by the Act of 1920 but are " on terms not less favourable than those accorded," and imply by " not less than " that more may be awarded. The words " not less than " cannot be construed as if they were synonymous with " equivalent to " or " the same as." Their Lordships therefore cannot doubt that the compensation to be awarded is not limited by the terms under the Act of 1920, although these should be considered for the purpose of arriving at the proper award under the Article. It is indeed essential that regard should be had to them, for the

compensation would not in any event be fair which was less favourable than would be awarded under these terms.

Their Lordships have next to consider whether an award which imposes two conditions :—(1) the over-riding maximum, and (2) the limitation of 75 per cent. of the bonus in regard to the lump sum, is fair compensation under the Article as interpreted by the Board. It follows from the observations already made by their Lordships that the mere fact that the assessment was calculated in accordance with the principles contained in the Treasury minute of the 20th March, 1922, does not establish that the compensation awarded is the true measure of the compensation to which the transferred officers have a legal right under the Article and the constitution of the Free State. Theirs is a legal right, as was decided by the previous Board in *Wigg's* case, and the right is not questioned in this reference. The position of the transferred servants under the Article thus differs materially from that of servants of the Crown who have no such legal right. Section 30 of the Superannuation Act, 1834, expressly negatives it : " Nothing in this Act contained shall extend or be construed to extend to give any person an absolute right to compensation for past services, or to any superannuation or retiring allowance under this Act." Further, it is provided by Section 2 of the Superannuation Act, 1859, that " if any question should arise in any department of the public service as to the claim of any person or class of persons for superannuation under this clause, it shall be referred to the Commissioners of the Treasury, whose decision shall be final."

Their Lordships are not unmindful of Mr. Dickie's argument that the Treasury minute could be challenged in the Courts by a servant of the Crown, but their Lordships find no justification for this contention. Section 30 of the Superannuation Act of 1834 is unrepealed, and is still the enactment that governs the position. The law was clearly stated in *Cooper* v. *The Queen* (1880) (L.R., 14 C.D. 311) and *Yorke* v. *The King* (L.R. [1915], 1 K.B. 852), and was recognised by the House of Lords in *Considine* v. *McInerney* (L.R. [1916], 2 A.C. 162). In *Wigg's* case the previous Board approved these decisions, and affirmed the proposition that no action could be brought to set aside or vary a decision of the Commissioners of the Treasury. At the hearing in this reference their Lordships were in complete accord with this opinion of the previous Board, and intimated to the Attorney General that they would not require argument from him in reply. Although their Lordships hold that the Treasury minute of 20th March, 1922, is not binding upon the transferred officers who come within the statutory conditions, the minute requires most careful consideration in arriving at the amount that should be awarded under Article X. The minute was issued by the Commissioners of the Treasury in pursuance of the discretion entrusted to them. It was submitted to Parliament and is binding upon the servants of the Crown. It announces the

decisions of the Treasury on certain disputed matters regarding the calculation of the bonus for the purpose of computing the retiring allowances. After stating that the bonus had now become a regular part of the Civil Servant's remuneration, it recites that hitherto 75 per cent. of the bonus payable at the time of retirement had been included in the emoluments upon which, together with the salary, the retiring allowances had been computed. It directs that henceforward all awards of pension should be calculated on the salary and emoluments, together with an addition of the bonus calculated on a sliding scale, by reference to the average cost of living for the three preceding months, and subject to reassessment quarterly. It further directs that, as under the Superannuation Acts the retiring allowances could not exceed a prescribed proportion, appropriate to the retiring Civil Servant's length of service, of his salary and emoluments on the date of his retirement, the additional allowance or pension payable at any time will be subject to the over-riding maximum. This condition is imposed in relation to those Civil Servants whose rights are limited by the Superannuation Acts, but their Lordships cannot think that it should be applied to the annual allowance or pension payable to transferred Civil Servants, whose rights are governed by Article X and are not limited by the Superannuation Acts. It is difficult to understand why in such circumstances the annual allowance, which will be reduced according to the sliding scale when the cost of living figure falls, should not be increased if the cost of living figure rises. The amount of the bonus ascertained at the date of retirement is not conclusive, it may be made to vary and the annual allowance will vary accordingly, but, if it be capable of reduction, it should equally be capable of increase. If, notwithstanding the rise in the cost of living, the annual allowance was not increased, it would obviously be to the disadvantage of the officer who must submit to reduction should the cost of living fall, and there is no sufficient reason why such a condition should be imposed in regard to officers who are entitled to the compensation granted by the Article. Their Lordships are therefore of opinion that the condition known as the over-riding maximum attached to the award cannot be maintained.

In regard to the lump sum payment the Lords of the Treasury came to the conclusion, having regard to all the circumstances, that it was not possible to devise a more satisfactory plan than to base the award as hitherto upon 75 per cent. of the bonus, to be calculated by reference to the cost of living figure as in the case of annual allowances or pensions. It is to be noted that the proportion of 75 per cent. is retained in regard to the lump sum payment, although it is abandoned for the purpose of the calculation of the annual allowance. It does not purport to be based upon exact calculation; it is retained at 75 per cent. as a practical method of allowing for the variability factor. The lump sum is calculated (as provided in the Superannuation Act,

1909, Section I, Subsection 2) at a sum equal to one-thirtieth of the annual salary and emoluments multiplied by the number of completed years of service. It is stated in the minute that the adjustment of the lump sum according to this formula could only be based upon broad assumptions and could not be exact. Their Lordships find themselves in agreement with the reasoning in this respect of Meredith, J., who tried the case in the first instance. The calculation on 75 per cent. is an arbitrary rule, it is a rough and ready way of dealing with the difficulty. It was adopted by the Treasury in their discretion as a way out of a perplexing situation. It seems difficult to justify its application under Article X. The lump sum is intended to provide a sum for capital expenditure, it may be for the purchase of a house, or to make provision for dependants, or otherwise. It is a commutation, payable immediately, of part of the pension, which under the Act of 1909 is reduced from the one-sixtieth proportion to one-eightieth. In assessing compensation under the Article their Lordships think it fair and reasonable to arrive at the sum by calculating it on the pension payable at the first year of retirement. Their Lordships therefore agree with the opinion of the previous Board and of Meredith, J., in this respect, and hold that the calculation should be made upon the full amount of the bonus, and that the limitation to 75 per cent. cannot be sustained.

After careful consideration their Lordships have thus arrived at the same conclusions as the previous Board. In view of this result it becomes unnecessary to deal with the ingenious argument of Mr. Dickie, whereby he sought to establish that, although the two officers in *Wigg's* case had not at the date of the minute of 20th March, 1922, been transferred to the Irish Free State, they had on the 2nd March, 1922, that is before the date of the minute, been transferred *from* the service of the British Government and, according to his contention, *to* that of the Government of Southern Ireland, and consequently the minute could not be held to apply to them. No order in Council had been issued which effected this transfer, but Mr. Dickie argued that it must be taken as matter of law that the officers had been transferred on the 2nd March, 1922, because by virtue of section 73 of the Government of Ireland Act, 1920, this was the latest date at which an "appointed day" under the Act could be fixed. Further, he sought to prove by reference to various orders in Council that a Government of Southern Ireland had been set up before 2nd March, 1922, and that existing Irish officers had been transferred to it. He contended also that the Board in *Wigg's* case would have been fully justified in assuming that the officers had at the date of the minute been transferred to the Government of Southern Ireland instead of "to the Government of the Irish Free State," and the same decision would have been reached. The arguments were complicated and raised difficult questions. At the hearing their

Lordships were not convinced of the soundness of the propositions advanced, but, in view of the conclusions of the Board, it has become unnecessary to examine them more closely or to pronounce a final opinion upon them.

Their Lordships have given careful consideration to the decision of the previous Board in *Wigg's* case, and they are satisfied that the statement regarding the date of transfer of the two officers had no effect upon the advice tendered by that Board to His Majesty. The Lord Chancellor, when expressing the opinion of the Board upon the appeal said : " The question to be determined is whether and to what extent the disputed conditions are in accordance with the statutes," and his Lordship then proceeded to give the reasons of the Board for arriving at their conclusions. These are independent of the particular date of transfer, for they are based upon the view that when an existing Irish officer had been transferred to the Provisional Government or the Government of the Irish Free State he became entitled to the benefit of Article X.

Their Lordships are of opinion that the claims made in this reference on behalf of the Transferred Officers in relation to the award have been established and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

SPECIAL REFERENCE IN THE MATTER OF CERTAIN QUESTIONS RELATING TO THE PAYMENT OF COMPENSATION TO CIVIL SERVANTS UNDER ARTICLE X OF THE ARTICLES OF AGREEMENT FOR A TREATY BETWEEN GREAT BRITAIN AND IRELAND.

DELIVERED BY THE MARQUESS OF READING.

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