

prudent man of business would have done in managing similar affairs of his own.

If knowledge of the receipt of the £5,000 by Grey in August, 1897, ought to be imputed to Bullivant, the defendants would be entitled to discharge themselves of their liability by showing that any steps which could then have been taken by Bullivant to recover the money from Grey would have been ineffectual: *Mucklow v. Fuller* (1).

So far as regards the £2,000, the plaintiffs' case rests on a different basis, namely, negligence in not ascertaining as executor that that sum had not, in Austin's lifetime, reached the hands of Ware's executors. This part of the case was not pressed before us, and we say nothing about it.

For these reasons we think that the appeal fails.

*Appeal dismissed with costs.*

Solicitor, for appellants, *C. J. McFarlane*.

Solicitors, for respondents, *McConkey*, Melbourne, for *Harwood & Pincott*, Geelong.

B. L.

[HIGH COURT OF AUSTRALIA.]

COUSINS . . . . . PLAINTIFF;  
AND  
THE COMMONWEALTH . . . . . DEFENDANT.

*The Constitution, secs. 52, 84—Commonwealth Public Service Act 1902 (No. 5 of 1902), secs. 2, 51, 60, 78, 80—Public Service Act 1900 (Victoria) (No. 1721), secs. 1, 3, 4, 8, 16, 19, 20—Public Service—Officer in transferred department—Salary, right of Commonwealth to reduce.*

Sec. 19 of the *Public Service Act 1900* (Victoria) was a merely temporary provision to fix the status of the officers therein referred to when they should be transferred with their departments to the Commonwealth.

(1) *Jac.*, 198 ; 23 *R.R.*, 29.

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That section, therefore, does not, notwithstanding sec. 84 of the Constitution, restrict the power of the Commonwealth Parliament to reduce the salaries of officers of Victorian Government departments transferred with those departments to the Commonwealth.

The provisions of the *Commonwealth Public Service Act* 1902, purporting to affect the salaries of officers in the Public Service of the Commonwealth, apply to officers transferred with their departments from the several States to the Commonwealth as well as to other officers in that service, even if the effect in particular cases is to reduce the salaries those officers were entitled to receive when such departments were so transferred.

#### REFERENCE by *Griffith* C.J.

James Cousins, a letter carrier in the Post and Telegraph Department, brought an action in the High Court against the Commonwealth claiming £1 arrears of salary for the month of November, 1905. The plaintiff alleged that he had been a letter carrier in the Post and Telegraph Department of Victoria, and that when that department was transferred to the Commonwealth he was entitled to a salary of £150 a year; that he received from the Commonwealth salary at that rate up to October 31st, 1905, but that for the month of November, 1905, he only received salary at the rate of £138 a year, although under the Constitution and the *Commonwealth Public Service Act* 1902 he was entitled to £150 a year. By its defence the defendant stated that under the *Commonwealth Public Service Act* 1902, the Public Service Commissioner had, after full inquiries, classified and graded the plaintiff; that a regulation had been made by the Governor-General fixing the maximum pay for the plaintiff's grade at £138 a year; and that on the Commissioner's recommendation the Governor-General had approved of the grading of the plaintiff and of his being paid £138 a year. Paragraph 11 of the defence was as follows:—"The defendant says that the statement of claim is bad in law for that it is not herein alleged that the Commonwealth Parliament has appropriated any sum out of the consolidated revenue to pay the alleged salary claimed by the plaintiff. The defendant will rely upon sec. 78 (1) of the *Commonwealth Public Service Act* 1902."

On a summons for directions, *Griffith* C.J. made an order as follows:—

"1. That the question whether it is competent for the Common-



wealth Government under the provisions of the Constitution and the *Commonwealth Public Service Act* 1902 to reduce the salary of the plaintiff to an amount less than that to which he was entitled under the Public Service Acts of the State of Victoria at the date of the transfer of the Post and Telegraph Department to the Commonwealth, and also the demurrer to the statement of claim, be decided before the trial of the issues of fact.

"2. That both the aforesaid matters be referred to the Full Court."

The matter now came on for argument.

*Duffy* K.C. and *Macfarlan*, for the plaintiff. The Commonwealth Parliament has no power to reduce the salary of the plaintiff below that which he was entitled to receive from the State of Victoria when the Post and Telegraph Department was taken over by the Commonwealth, viz., £150 a year. In *Bond v. The Commonwealth of Australia* (1), it was decided that under sec. 84 of the Constitution the plaintiff is entitled to that £150 a year until it is altered by some competent authority. That sum is an irreducible minimum. By sec. 19 of the *Public Service Act* 1900 (Victoria) the plaintiff was given a right to that salary, but it was a right which the Victorian Parliament could have taken away at any time before the Post and Telegraph Department was taken over by the Commonwealth. But a bargain was made which is embodied in sec. 84 of the Constitution, and its effect is that, when a department is transferred to the Commonwealth, the Commonwealth agrees not to take away the rights which officers in that department then have. One of those rights is that to a minimum salary of £150 a year. That bargain having been confirmed by the Constitution, the plaintiff's title became indefeasible, except by an Imperial Act, or by an amendment of the Constitution. Unless this view is correct, there is not a right, which sec. 84 says is to be preserved to every officer retained in the service of the Commonwealth, which the Parliament of the Commonwealth could not immediately take away from him. That section shows that there were two things in the minds of the parties, first, that the salary of a retained officer should never be reduced,

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and secondly, that the State should provide any pension or retiring allowance, to which the officer might be entitled under the State law, on the basis of that salary, because it never would be any less. Even if the Parliament of the Commonwealth has power to reduce the salaries of officers in transferred departments, it has not done so. Sec. 60 of the *Commonwealth Public Service Act* 1902 practically re-enacts sec. 84 of the Constitution, showing that the Parliament wished to endorse the bargain contained in sec. 84. Then by sec. 18 of the *Commonwealth Public Service Act* 1902, which provides for the payment of salaries and wages according to amounts and scales provided, a special exemption is made as to all officers paid at a specified rate by virtue of any Act. The word "Act" in that section would cover sec. 19 of the *Public Service Act* 1900 (Victoria), sec. 84 of the Constitution, and at any rate sec. 62 of the *Commonwealth Public Service Act* 1902. So that any fixing of salaries under sec. 18 of the last mentioned Act would not affect the plaintiff's salary. [They also referred to *Brown v. The Queen* (1).]

*Mitchell* K.C. and *Lewers*, for the defendant. The term "existing rights" in sec. 84 of the Constitution cannot be read literally, *i.e.*, the rights after transfer to the Commonwealth cannot be exactly the same as those which existed under the State. For instance, a officer in a Victorian department which was transferred could not claim to be employed only in Victoria. The intention of sec. 84 is that, so far as rights could be dealt with by the State Parliament or by the State Executive, they are to be capable of being dealt with by the Commonwealth Parliament or by the Commonwealth Executive. Sec. 107 of the Constitution deprives the State Parliament of the power it had to alter the salaries of these officers. Sec. 52 of the Constitution vests in the Commonwealth the power to deal with the salaries of transferred officers, including the power to reduce their salaries. The effect of sec. 84 of the Constitution is that officers of transferred departments have the same rights, subject to the control of the Commonwealth Parliament, that they had before the transfer subject to the control of the State Parliament. The function of sec. 19 of the



*Public Service Act* 1900 (Victoria) was exhausted when the salaries at the date of the passing of that Act were ascertained: *Miller v. The Commonwealth* (1). The Commonwealth Parliament having power to deal with the salaries of transferred officers, have exercised that power by the *Commonwealth Public Service Act* 1902. The fact that in sec. 60 of that Act the terms of sec. 84 of the Constitution are re-enacted, shows that the Parliament of the Commonwealth did not regard sec. 84 as interfering in any way with their right to legislate with regard to officers of transferred departments, for they did in terms legislate with regard to them by various sections of the *Commonwealth Public Service Act* 1902. [They referred to secs. 2, 8, 9, 17, 18, 46, 51, 58, 62, 65, 66, 67, 68, 78, 80.] The scheme of the Act would be unworkable if those sections did not refer to officers of transferred departments. As to sec. 18, the exception of "officers paid at a specified rate by virtue of any Act" cannot refer to the protection of their rights by sec. 60 or by sec. 84 of the Constitution. It cannot be said that the officers protected by those sections are by virtue of them paid at a "specified rate." The officers referred to by the exemption in sec. 18 are officers who by an Act have a fixed salary. Sec. 60 is a declaratory statement that, pending the adjustment of salaries, which could only be effected by regulations, the then existing rights, whatever they might be, of those officers were to be preserved.

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*Duffy* K.C. in reply. By virtue of secs. 52, 70, 107 and 108 of the Constitution an officer of a transferred department would, without the aid of sec. 84, have all the rights which according to the argument for the defendant he has with the aid of sec. 84. That section must have been intended to give something which was not given without it. Unless the intention were that the rights should be retained for the future undiminished, and not to be affected by anything the Commonwealth Parliament might do, then nothing was given by sec. 84 which was not given by other sections of the Constitution.

*Cur. adv. vult.*



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GRIFFITH C.J. This is an action brought by the plaintiff, who is an officer in the Post and Telegraph Department of the Commonwealth, against the Commonwealth to recover a sum of money which he claims is due to him for salary. At the time when the Commonwealth was established he was an officer in the Post and Telegraph Department of Victoria, and was receiving a salary of £150 a year; and he claims by virtue of the Victorian *Public Service Act* 1900 (No. 1721), sec. 19, that he is entitled to retain that salary undiminished as long as he retains office under the Commonwealth. The defendants, without admitting any of the facts, pleaded that under Commonwealth legislation the plaintiff's salary had been fixed at £138 a year, and that he has been paid at that rate; and further demurred to the statement of claim on the ground that it does not allege that any money has been appropriated by Parliament to satisfy his claim, if it is a good one.

The position taken by the plaintiff is that the Commonwealth Parliament cannot reduce his salary below £150 a year; and that question was directed to be argued before the trial of issues of fact, and that, with the demurrer, now comes on before us for the decision.

The plaintiff rests his claim upon the provisions of sec. 84 of the Constitution which provides (*inter alia*) that: "When any department of the public service of a State becomes transferred to the Commonwealth all officers of the department shall become subject to the control of the Executive Government of the Commonwealth." . . . "Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights and shall be entitled to retire from office at the time and on the pension or retiring allowance which would be permitted by the law of the State if his service with the Commonwealth were a continuation of the service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth: but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer." It is not necessary to criticize the words of the latter part of that section, but I



have read them for the purpose of pointing out that, while the Constitution preserves "all his existing and accruing rights," it goes on to make special provision in respect of pension rights and rights of retiring allowance, which are, of course, one sort of existing or accruing rights. As to rights other than pension rights or rights of retiring allowance, no special provisions are made. Upon that an argument has been founded in this case that the section was only intended to deal with pension rights and rights of that kind; but it was held by this Court in the case of *Bond v. The Commonwealth of Australia* (1), that one of the rights which a transferred officer took over with him was the right to receive the same salary until altered by some competent authority. The case I have referred to also established a principle which, applied to the present case, shows that the plaintiff, when he entered the service of the Commonwealth, upon the transfer of the Post and Telegraph Departments to the Commonwealth on 1st March, 1901, was entitled to receive a salary of £150 a year. In that case the question was left open how long he was entitled to continue to receive that sum; and that is the question we now have to determine.

The plaintiff founds his claim to receive this salary upon the provisions of sec. 19 of the Victorian *Public Service Act* 1900, which was passed on the 27th December, 1900, four days before the proclamation constituting the Commonwealth took effect. That section is as follows:—"From the commencement of this Act every officer of the Trade and Customs Defence and Post and Telegraph Departments shall be entitled to receive a salary equal to the highest salary then payable to an officer of corresponding position in any Australian Colony. Provided that this section shall not entitle any officer to receive more than One hundred and fifty-six pounds per annum." As I have said, it has been decided that that section entitled him to carry over his existing salary, and to claim it from the Commonwealth until altered by some competent authority. The plaintiff now contends that that section gives him an inalienable right to retain his salary; that it is, in effect, to be read as if it was inserted in the Constitution, and not only as being inserted, but with the addition that such salary was

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not to be diminished during his continuance in office. It appears to me that the real point to be determined in this case is: "What is the proper construction of sec. 19? What was the right the legislature conferred when it passed that section?" Having regard to constitutional usage and the powers of Parliament, we know that it is the practice of legislatures to fix the salaries of public servants from time to time. There is no doubt that a legislature of plenary power can, even if it has passed an act apparently conferring a vested right in the strongest language, repeal it; we also know that it is and has been in Australia a very common form of legislation to provide for fixing the salaries of civil servants by legislative enactment—the salary either being mentioned in the Act, or the maximum or minimum being mentioned in the Act, and provisions being made either for classifying or grading by regulations. That was a very familiar form of legislation, and it was followed in Victoria. In Victoria the Public Service was regulated by the *Public Service Act* 1890, with which the *Public Service Act* 1900 is to be read. Sec. 1 of the latter Act provides that:—"This Act may be cited as the *Public Service Act* 1900 and shall be read and construed as one with the *Public Service Act* 1890 and any Act amending the same." Without referring in detail to the provisions of the *Public Service Act* 1890 I refer to one, namely, sec. 24 which provides that:—"The Governor in Council may upon the recommendation of the Board from time to time notwithstanding anything contained in this Act fix the amount of salary to be paid to an officer at any sum within the maximum and minimum limits of the class of such office as determined under the provisions of this Act, and such sum shall be the salary attached to such office without annual increment." I merely refer to that to show that the legislature had in all their Acts for regulating the Public Service reserved the power to alter salaries. Sec. 19 then cannot be read by itself. The other provisions of the *Public Service Act* 1900 must be referred to to see what was the subject with which the legislature was dealing. The Act refers to a Report of the Reclassification Board which had then lately been presented to Parliament, and it provides in sec. 3 that:—"Where in the Fifth Schedule to the report the work performed by any



officer is determined to be of a different division or class or is assigned a different salary than the division or class or salary (as the case may be) of the officer named in the said Schedule as performing the duties of such office on the 31st day of December One thousand eight hundred and ninety-eight then such office shall without further or other authority than this Act be deemed and be taken to be of the division and the class and to have assigned thereto the salary as determined by the Reclassification Board."

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That section operated to fix a number of salaries, the salaries attached to offices which were to be taken to be of the division and class and to have assigned thereto a salary as determined by the Reclassification Board. That is the first enactment made in the Act, which is to be read "subject to the provisions of the Public Service Acts." The next section, sec. 4, provides that:— "(1.) Notwithstanding the provisions of any Act or regulation the Governor in Council on the recommendation of the Public Service Board within twelve months after the commencement of this Act may if he think fit but not otherwise appoint any officer whose work has been so determined to be of a higher division or class or has been so assigned a higher salary, or any officer performing such work at the time of the commencement of this Act, or any officer who has performed such work and who is in the opinion of the Board competent to perform such work, to the division and class as determined in such Schedule, and such officer so appointed shall from such date as may be specified by the Governor in Council be entitled to the salary assigned to such office as so determined in such Schedule."

Sec. 4 contains other provisions as to promotion &c.

Then sec. 8 provides that:—"Notwithstanding the provisions of any Act or regulation the Governor in Council on the recommendation of the Board may if he think fit appoint or promote any person at the commencement of this Act employed in the Trade and Customs Department the Defence Department or the Post & Telegraph Department," (the same three departments as are mentioned in sec. 19) "to any other position in such departments respectively without taking into consideration the qualifications and claims of any other officer." Then sec. 16 provides:—



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"Where in the Report the value of the work performed by any officer is determined at a salary less than the rate received by such officer, the rate as so determined shall apply only to any person hereafter appointed promoted or transferred to fill such office; and where pursuant to the provisions of the Public Service Acts any alteration is by regulation made in the emoluments salaries allowances and wages to be paid to officers in the Professional Division or General Division such regulations shall not prejudicially affect any officer appointed under or subject to any prior regulation so long as he remains in the office or position filled by him at the time of the commencement of this Act."

Then comes sec. 19 which I have already read. Then sec. 20 provides that:—"Notwithstanding anything contained in any Act or any regulation the Governor in Council may if he thinks fit on the recommendation of the Board appoint any person who at the commencement of this Act is temporarily employed in the Trade and Customs Defence or Post and Telegraph Departments and who during the last preceding eight years has been so employed for a period or periods amounting in the whole to four years or upwards to the General Division of the Public Service and such person shall thereupon be subject and entitled to all the provisions of the Public Service Acts and regulations applicable to such division." Reading those sections together, the apparent intention of the legislature was to deal with these departments, and to give the officers in them a certain standing in the Public Service of Victoria, which they would carry over with them when the departments were, as it was known they would be, (one within a week and the other within two or three months) taken over by the Commonwealth. Such provisions had always been subject to the power of the legislature to alter them, and it has been the practice to alter them from time to time, and to make other provisions, as in the instance quoted from the *Public Service Act* 1890. That is good reason for supposing that this section was not intended to create a right which the legislature of Victoria could not reasonably and fairly alter if it thought fit to do so. As to its power, there can be no doubt that the legislature could have altered these salaries if the occasion arose. It appears then that the fixing of a salary was always



treated as a temporary provision to last only until altered; but there was a well known formula used in legislation when the contrary was intended, that is to say, when it was intended to provide that such salaries should not be diminished during the continuance in office. That is the form of the provision in the Commonwealth Constitution as to the salaries of the Federal Judges, and a similar provision is made in the Constitution Acts of the States with respect to the salary of the Supreme Courts Judges. In some cases the words are "during the continuance in office": in other cases "during the existence of the patent" or "commission." When, then, we find an Act fixing a salary without these words, it may reasonably be inferred as a matter of construction that it was not intended by the legislature that these words should be read in.

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There is another reason, and I think a very cogent one, for coming to the same conclusion. This Act was passed in December, 1900, four days before the Commonwealth came into existence, and after the *Constitution Act* had been assented to by Her Majesty, and after the Proclamation had been published bringing it into operation. The Constitution was the result of a compact between the several Australian States, to which effect was given by Imperial legislation. One of the terms of the compact was that contained in sec. 84; and I think it must be taken that when the parties agreed to enter into that compact, they were aware of the laws of the several States by which the rights of officers in the departments of the several States were determined, and they were prepared to agree that all these rights were to be taken over by the Commonwealth when the departments were transferred to the Commonwealth. But it could not have been contemplated that, after that compact was made and ratified by the Imperial Parliament, and was shortly to come into operation, any of these States should create an entirely new right to be imposed upon the other parties to the compact without their consent. That is not to be supposed to have been the intention of the legislature of Victoria, and, even if the words were more cogent than they are, I think it ought to be attributed to the legislature that they did not intend to impose any greater obligation on the Commonwealth than they had previously imposed



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upon themselves. It was known to the Victorian legislature that they could not pass any law which the Commonwealth Parliament could not alter, unless prevented by sec. 84 of the Constitution from doing so. I think all these considerations point in the same direction, that sec. 19 of the *Public Service Act* 1900 ought to be construed as intended to be a merely temporary provision to fix the status of these officers when transferred to the Commonwealth Government, and the operation of which would then be exhausted. In the words of this Court in the case of *Miller v. The Commonwealth* (1), (a case arising under the same section) this section is to be construed just as if it had been recited in the Act that these departments were shortly about to be taken over by the Commonwealth Government, and that it was considered desirable definitely to determine what the status of the officers of those departments was to be when taken over. In my opinion, it did no more than fix their status in the Victorian Service as members of that Service, and gave them no greater privileges in any respect than other transferred civil servants possessed.

That being so, the only right which the plaintiff took over was the right to receive his existing salary until lawfully reduced, and it was competent for the Commonwealth Parliament to reduce it.

The next question is whether it has done so; and that depends upon the construction of the *Commonwealth Public Service Act* 1902. The term "officers" is defined in sec. 2 of that Act to mean:—"Any person employed in any capacity in the Public Service of the Commonwealth whether appointed or transferred thereto before or after the commencement of this Act." It is suggested that that may be limited to persons who were transferred individually and not with their departments under the provisions of sec. 8 (4); but I think it is clear that it refers to officers transferred with the departments, not only because otherwise almost all of the other provisions of the Act would be rendered futile, but also on account of the express words of sec. 51, which provides that:—"This part of this Act except the last section thereof shall not apply to any persons who at the time of the transfer to the Commonwealth of a Department of the Public

(1) 1 C.L.R., 668.



service of a State were officers of such Department," thus assuming that, but for this provision, the whole Act would have applied to the persons excepted. Sec. 8 contains provisions for grading the Public Service, which is to be divided into divisions, classes, subdivisions, and grades; and sub-sec. 5 provides that:—"For the purposes of this section an officer of a Department of the Public Service of a State which has become transferred to the Commonwealth shall be deemed to be an officer of the class or grade as determined by the Commissioner pursuant to this Act." In my opinion that section applies to the case of persons in the department in question, and provides that they may be graded in the way prescribed by the Act. Then sec. 80 provides that:—"The Governor in Council may make alter or repeal regulations for the carrying out of any of the provisions of this Act and in particular or all or any of the following purposes namely:—(a) For arranging the Professional Division into classes and the General Division into grades, and for determining the limits of salaries and wages to be paid to persons in such classes or grades in the different Departments or in any specified Department." In my opinion that provision applies to all these persons. It is alleged as a fact that the plaintiff has been graded in a class in which the maximum salary is £138 a year, which he has received. It is suggested that these provisions do not apply to his case by reason of the provisions of sec. 60 of the *Commonwealth Public Service Act* 1902, which are a re-enactment of the provisions in sec. 84 of the Constitution to the effect that every officer of a transferred department who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights. It is said that one of his "existing rights" is the right to retain his salary until otherwise dealt with by law. But the same Act which contains that provision, also contains provisions for dealing with the salaries of these officers, for putting them into divisions and grades, and for fixing their salaries according to such divisions and grades; and I think that sec. 60 cannot be construed as excepting these persons from the Act. I think that any such construction would be quite inconsistent with the first provision of sec. 84 of the Constitution that they shall be subject to the control of the Executive Government of the

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Commonwealth, and the provisions of sec. 52, which gives the Commonwealth Parliament exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to "matters relating to any department of the Public Service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth." They have exclusive power to make the laws, and they have made laws, dealing with all persons in the service; and the result is that, if regulations have been made, as is alleged fixing his salary at £138 a year, then the plaintiff is not entitled to a salary of more than £138 a year. That disposes of the first question referred to the Court.

The other question is whether the statement of claim is good. Sec. 78 of the *Commonwealth Public Service Act* 1902 provides in sub-sec. 1 that:—"Nothing in this Act shall authorize the expenditure of any greater sum out of the Consolidated Revenue Fund by way of payment of any salary than is from time to time appropriated by The Parliament for the purpose." In the statement of claim it is not alleged that any greater salary than that which the plaintiff has received was appropriated. If, therefore, his claim depends on that Act, it is a fatal objection that it does not appear that Parliament has provided any money for the payment of a greater salary. In the case of *Bond v. The Commonwealth* (1) quite different considerations arose. There the obligations which had been imposed upon the Commonwealth by the Constitution had not been altered: here the only claim of the plaintiff, if he claims under the *Commonwealth Public Service Act* 1902, is such a right as that Act gives him, and it is a defence that no greater sum of money has been voted by Parliament.

BARTON J. I am of the same opinion.

O'CONNOR J. I also am of the same opinion.

[It was agreed that the plaintiff should have leave to amend to raise the question whether his salary had been in fact reduced in accordance with the Act.]

(1) 1 C.L.R., 13.



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Insurance Ltd  
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(2001) 52  
NSWLR 193

Questions of law decided in favor of the  
defendant. Demurrer to stand over.  
Plaintiff to have liberty to amend.  
Costs reserved. Liberty to apply.

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Solicitors, for appellant, *Rigby & Fielding*, Melbourne.

Solicitor, for respondent, *Powers*, Crown Solicitor for Commonwealth.

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[HIGH COURT OF AUSTRALIA.]

METCALF . . . . . APPELLANT ;  
PLAINTIFF,

AND

THE GREAT BOULDER PROPRIETARY }  
GOLD MINES, LIMITED . . . . . } RESPONDENTS.  
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF  
WESTERN AUSTRALIA.

Appeal—Master and servant—Employers' liability—Negligence—Accident—Con-  
dition of ways—Defect—Person to whose orders or directions workman bound to  
conform—Shaft—Excavation—Employers' Liability Act 1894 (W.A.), (58  
Vict. No. 3), sec. 3 (1)—Mines Regulations Act 1895 (W.A.) (59 Vict. No. 37),  
secs. 4, 23, rr. 8, 20, 28.

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"Defect in condition," in sec. 3 (1) of the *Employers' Liability Act* (W.A.), means a defect in original construction or subsequent condition, rendering the appliance in question unfit for the purpose to which it was applied, when used with reasonable care and caution, and does not cover the negligent use of a properly constructed appliance.

The words "good order and condition," in the *Mines Regulation Act*, sec. 23, rule 20, and "securely protected and made safe" in rule 8 refer to the same qualities.

A person employed in a mine, whose duty it was to notify by signal when conditions were such that work, which the miners were bound to do, might