[HIGH COURT OF AUSTRALIA.]

STOCKWELL . . . . . APPELLANT;
PLAINTIFF,

AND

RYDER . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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BRISBANE, *Oct.* 1, 2, 3.

Griffith C.J., Barton and O'Connor JJ.

Public servant—Wrongful dismissal—Enforced resignation—Charge—Vagueness—Inquiry by Board—Unfairness—Action by Governor in Council—Neglect of duty—Maladministration—Public Service Act 1896 (*Queensland*) (60 *Vict. No.* 15), *secs.* 40, 41, 42.

The *Public Service Act* 1896 (Queensland), secs. 40-42, provides that an officer in the Government service shall only be dismissed in the manner provided by the Act, which is as follows :—The Minister or permanent head of his department may suspend him ; the Public Service Board then hold, either by themselves or some person appointed by them for the purpose, an inquiry into the charge made against him, and report to the Governor in Council, who may take such action as is prescribed by the Act.

The plaintiff sued the Government for wrongful dismissal, alleging that no proper inquiry had been held, because the charges made against him were not sufficiently specific ; that detailed particulars of the charges were refused until some time after the opening of the inquiry ; that he was refused access to witnesses and documents until after the inquiry began, and was otherwise harassed in the conduct of his defence ; and that the Home Secretary, his departmental head by whom he had been suspended, sat as a member of the Public Service Board to consider the evidence taken by the person appointed to hold the inquiry, thus sitting as a judge in his own cause. Plaintiff recovered a verdict from the Government, which was set aside by the Full Court.

Held : In making a formal charge against an officer, for the purposes of an inquiry, it is not necessary at the outset to use more particularity than is prescribed by the Act. It is sufficient for the validity of the inquiry under

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the Act if the officer charged is made acquainted with the particulars of the charge in time to afford him a fair opportunity of meeting it.

Principles laid down in *Osgood* v. *Nelson*, L.R. 5 H.L., 636, and in *Leeson* v. *General Council of Medical Education and Registration*, 43 Ch. D., 366, applied.

Sec. 42 of the *Public Service Act* 1896 provides that an inquiry shall not be made by the person by whom the officer was suspended, or by whom the charge was made.

Held, that such provision does not render the Minister who has suspended the officer incapable afterwards of acting as a member of the Board to consider the evidence taken upon the charge.

Judgment of the Supreme Court, *Stockwell* v. *Ryder*, (1906) St. R. Qd., 274), affirmed.

APPEAL from the Supreme Court of Queensland.

The plaintiff was a medical practitioner, employed in the Public Service of Queensland as medical superintendent of a large benevolent institution and hospital situated at Dunwich, on Stradboke Island, about thirty miles from Brisbane. A general departmental inquiry was held into the administration of the institution, and as a result of the report made by the board of inquiry plaintiff was called on to resign his appointment as medical superintendent. He declined to do so, and demanded specific charges to be made and proved at a special inquiry under the *Public Service Act* 1896. The departmental Minister, the Home Secretary, suspended him pending the special inquiry, which was immediately held at Dunwich before a magistrate appointed by the Public Service Board. The charges made were of "neglect of duty" and "maladministration of the affairs of the Dunwich Benevolent Asylum"; these charges were notified to plaintiff, who objected to the lack of particularity in the charges, and also asked for access to all documents and reports connected with his administration of the institution since his appointment. He was refused access to the official records and forbidden to interview the officers or inmates at the institution. This prohibition was continued until a few hours after the inquiry had been opened, in the case of witnesses, and some days later in the case of documents. An adjournment of the inquiry to Brisbane was refused; and the Board also refused to subpœna some persons,

including the Home Secretary, whom the plaintiff desired to call as witnesses at Dunwich; the Board alone had power under the Act to subpœna witnesses. The magistrate reported the evidence taken at the inquiry to the Public Service Board, which, under the *Public Service Act Amendment Act* 1901, sec. 5, consisted of members of the Executive Council, including the Home Secretary himself. The Board, after considering the evidence and hearing counsel on the plaintiff's behalf, reported in favour of plaintiff's dismissal, and the Deputy Governor called on him to resign. He refused, and his enforced resignation was then gazetted. Plaintiff then brought an action against the Government for wrongful dismissal, the respondent being appointed nominal defendant. The Judge, upon the findings of the jury, directed judgment to be entered for the plaintiff for £2,212 10s.; this was set aside by the Full Court, and judgment was entered for the defendant: *Stockwell* v. *Ryder* (1). The plaintiff appealed to the High Court.

Stumm and *Wassell* (*Hobbs* with them), for the appellant. The plaintiff was wrongfully dismissed. The inquiry was never a proper inquiry within the meaning of the *Public Service Act* 1896, under which alone he could be dismissed. No "charges" were made against him as required by the Act; he knew nothing of the charges he was called upon to meet. He was hampered and harassed by the Public Service Board in the preparation of his defence; and the inquiry was contrary to natural justice, because the Home Secretary, who was his departmental head, was his accuser, and also his judge as a member of the Public Service Board.

Under the *Public Service Act* 1896, sec. 40, an officer shall not be dismissed from the service except in the manner prescribed by the Act; and under sec. 41, an officer charged with conduct showing unfitness to continue in the service, or with incompetency, or neglect of duty may be suspended by his departmental head pending an inquiry, which, under sec. 42, shall be held by the Board into any charge made against him, when he shall be entitled to be heard personally or by his representative.

Plaintiff was never informed of any specific "charges." The

(1) (1906) St. R. Qd., 274.

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charges made, upon which the inquiry is based, must state the specific acts of "incompetence" or "neglect of duty" or "maladministration"; otherwise there is no jurisdiction to hold an inquiry. No vague indefinite accusation can constitute a proper charge: *Reg.* v. *Mayor of Doncaster* (1); *Reg.* v. *Mayor of Doncaster* (2); *Capel* v. *Child* (3); *City of Exeter* v. *Glide* (4). The statement of the charge merely repeats the words of sec. 41; that has been held an insufficient statement of the particulars of a charge. *Smith* v. *Moody* (5); *In re Phillips's Charity; Ex parte Newman* (6); *In re Fremington School*; *Ex parte Ward* (7); *Saunders* v. *Jones* (8); *Fisher* v. *Jackson* (9); *Leeson* v. *General Council of Medical Education and Registration* (10); are further instances of insufficient charges.

[GRIFFITH C.J.—You would make proceedings at these departmental inquiries more strict than those held in the ordinary Courts.

O'CONNOR J.—At what stage do you claim he need be informed of the charge with particulars? And can we inquire into the conduct of the procedure of this lower tribunal, as to the time when particulars were furnished?]

This does not concern the procedure, but the jurisdiction, of the inquiry. It is established that there is no natural justice unless the person accused is furnished with a definite charge stated in language clear enough to let him know what he has to meet. Even in a police court you cannot charge a man with "stealing the property of B." Similarly before courts-martial: *Simmons on Courts-martial* (pp. 161, 172-3), and committees of clubs: *Fisher* v. *Keane* (11). The facts in *Osgood* v. *Nelson* (12) are different from this case, because there the plaintiff had expressed himself satisfied with the statement of a charge of neglect of duty as set forth by his accuser. Under the *Public Service Act Amendment Act* 1901, sec. 5, the members of the Executive Council were substituted for the Public Service Board. Thus the Home Secretary, who

(1) 2 Ld. Raym., 1564.
(2) Say, 37.
(3) 2 C. & J., 558, at p. 572.
(4) 4 Mod. Rep., 33.
(5) (1903) 1 K.B., 56.
(6) 9 Jur., 959.
(7) 10 Jur., 512.
(8) 7 Ch. D., 435.
(9) (1891) 2 Ch., 84.
(10) 43 Ch. D., 366, at p. 383.
(11) 11 Ch. D., 353.
(12) L.R. 5 H.L., 636.

was the plaintiff's accuser, directed the inquiry, appointed the magistrate to take the evidence, and himself sat with the Board to decide on the evidence taken, to recommend the plaintiff's dismissal, and to send on the report to himself as Home Secretary. No man may be both accuser and judge in his own cause. Further, even if the inquiry was a properly instituted inquiry, and even if the Home Secretary could act in a double character therein, the inquiry was unjustly and improperly conducted. The Home Secretary, having control both of the inquiry and of the departmental records, refused to allow the plaintiff any particulars of the charges and any access to witnesses or documents necessary to the preparation of his defence. He was unfairly harassed and impeded both before and during the inquiry. The evidence on this branch of his case amply warranted the findings of the jury in his favour, which should not be disturbed: *Hill* v. *Ziymack* (1).

Feez (*Lukin* and *Macleod* with him), for the respondent, were not called upon.

GRIFFITH C.J. This is an appeal from a decision of the Full Court, setting aside a verdict for the appellant in an action for wrongful dismissal brought by him against the Government; *Stockwell* v. *Ryder* (2). The defence is that in accordance with the provisions of the *Public Service Act* 1896 a charge was made against the plaintiff; that an inquiry was held by the Public Service Board, and that, acting upon the recommendation of that Board, the Governor in Council awarded what is called the enforced resignation of the plaintiff, which is one of the forms of punishment enumerated in sec. 42 of the Act of 1896. Sec. 40 of that Act provides: "An officer shall not be dismissed or suffer any detriment in respect of his office except in the manner set forth in this Act," and sec. 41 provides: "If an officer is charged with conduct showing his unfitness to continue in the service, or with incompetency, or neglect of duty, or with a breach of this Act or of the regulations, the Minister or permanent head of his department may suspend him, pending an inquiry." Sec. 42 provides that the Board shall inquire into the charge made against the

(1) 3 C.L.R., 726.

(2) (1906) St. R., Qd., 274.

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officer, whether such officer is under suspension or not; that every such inquiry shall be made by the Board, or a member of the Board, or by some person appointed by the Board with the sanction of the Governor in Council for that purpose, and not being the person by whom the officer was suspended, or by whom the charge was made against him; that the officer shall be entitled to be heard personally or by his representative at the inquiry; that if the inquiry is not made by the Board collectively the evidence shall be taken in writing, and shall be forwarded to the Board for consideration; that the Board shall transmit their report and recommendation, together with the evidence to the Minister; and that upon the consideration of the report and recommendation of the Board the Governor in Council may deal with the matter, and, among other things, may award enforced resignation. The essential conditions, therefore, of the award of this punishment—that is, the removal of an officer from the Public Service or from office—are that a charge shall have been made against him, that the charge shall have been inquired into by the Board, and that the Governor in Council shall have acted upon it.

It is objected in this case, for the plaintiff, that although a charge was made against him, and although that charge was in fact inquired into by the Board, yet the finding of the Board was a nullity. Now, that proposition can only be supported on one of two grounds:—first, that there was no charge made within the meaning of the Act; or secondly, that there was no inquiry within the meaning of the Act. The objection taken to the charge in the present case is that it was too vague. The objection to the validity of the inquiry is that it was unfairly conducted—so unfairly conducted as to be contrary to the principles of natural justice, and, therefore, to be regarded as no inquiry at all.

On the first point, in my opinion, the question is concluded by authority. The charge was contained in a letter dated 15th February 1906, written by the secretary of the Public Service Board to the plaintiff in these words:—"I have the honor by direction to inform you that the Public Service Board has delegated Mr. Charles Augustus Mayne Morris, police magistrate, &c.,

Ipswich, to hold an inquiry into the following charges preferred against you by the Hon. the Home Secretary—namely:—(1) Neglect of duty, and (2) Maladministration of the affairs of the Dunwich Benevolent Asylum." The objection taken is that that charge was vague—that the charge ought to have contained specific details of the acts or omissions intended to be relied upon as constituting neglect, and of all the positive facts intended to be relied upon as constituting maladministration. I should observe, perhaps, at this stage, that the office which the appellant held was that of medical superintendent of the Benevolent Asylum at Dunwich, an institution which contains considerably more than a thousand inmates, a great number of them old and infirm. He also had charge of the lazarette, a leper hospital in the neighbourhood, and had other duties to perform.

The question of the particularity required in the charge in an analogous proceeding was considered by the House of Lords in the case of *Osgood* v. *Nelson* (1). In that case the officer in question was an officer of the Corporation of the City of London, and he had been charged in general terms with neglect in the performance of his duty as Registrar of the Sheriffs' Court. The case came before the House of Lords on appeal from the Court of Exchequer Chamber, and with respect to the point taken that the charge was insufficiently stated, Lord *Colonsay* made some observations, which I will read (2):—"Then it is said that the charge against him was too general in its character, it being merely that he had not performed his duties satisfactorily. I quite agree that if that had been the original charge against Mr. Osgood, and if he was called before this tribunal upon an allegation that he had not properly discharged the duties of his office, he was entitled to ask, and to require, that he should be told in what respect it was supposed that he had not properly discharged the duties of his office. But the matters in which it was said that he had neglected his duties, or that he had improperly performed them, were stated, to a certain extent, at the outset, and the rest were evolved in the course of the inquiry, and Mr. Osgood was afforded an opportunity of meeting them, and he did meet them. Whether he met them satisfactorily or

(1) L.R. 5 H.L., 636.

(2) L.R. 5 H.L., 636, at p. 653.

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not is a different question." Again, on the following page:— "Now, if there had never been any specific statement, either made by Mr. Aikman or evolved in the course of the inquiry, I should have thought that that finding of the Common Council was very similar to what occurred in one of the cases which has been cited at the Bar, and that it would have been too vague for such a case. But when we see that there had been charges made, and matters particularly evolved in the course of the inquiry, I think the general finding must be referred to those matters, and taken as being a general conclusion derived from the inquiry into those matters."

I think that that is a statement of the law applicable to such matters, as will appear from another authority, which I will refer to briefly, though it deals with the matter from a slightly different point of view. But, apart from that, I am at a loss to see why a Minister or an officer of the Government, exercising the power of suspension, and making a charge under sec. 41 of this Act, is required at the outset to use more particularity than the Statute has prescribed. If the result is that the person charged is not aware of the nature of the charge made against him, and has, therefore, no fair opportunity of defending himself, then it may well be that the inquiry would not have been a real inquiry. Again, I cannot help regarding particulars of a charge of this sort as more in the nature of particulars in a pleading. Now, the charge being general neglect and maladministration as applied to an office such as the plaintiff held, it might be almost impossible, I must confess I should think it most unreasonable, at any rate, to require the Minister, when he exercises the power of suspension, which is conferred in the same terms as the power to order an inquiry, to specify all the particular acts or omissions which induced him to take that course. On that point some observations by Baron *Martin*, who delivered the opinion of the Judges in the case of *Osgood* v. *Nelson* (1), are very relevant. He said:—"As regards the cause alleged in the first place, it is said that Mr. Osgood was habitually absenting himself. I do not see how it can be stated otherwise than by stating habitual non-attendance. How could habitual non-

(1) L.R. 5 H.L., 636, at p. 647.

attendance be proved, except by a man not performing his duty, and not going from day to day to the duties that were imposed upon him, and of course making excuses for his absence?"

I am, therefore, of opinion that the objection to the want of particularity in the formal charge fails. I will refer afterwards to the manner in which those charges were developed in the course of the inquiry. With respect to the conduct of the inquiry and what is necessary to be done to make an inquiry a valid one, it is sufficient to read the statement of the law made by *Bowen* L.J. in *Leeson* v. *General Council of Medical Education and Registration* (1). In that case a medical gentleman had been removed from the registry in pursuance of a power to remove for what was called infamous conduct. One of the duties of the General Council was to regulate the registration of medical practitioners; and the 29th section of the Statute under which it was constituted provided:—"If any registered medical practitioner shall be convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or shall after due inquiry be judged by the General Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they think fit, direct the registrar to erase the name of such medical practitioner from the register." *Bowen* L.J. says:—"These proceedings were in the nature of judicial proceedings, although the forum is a domestic one, and although the evidence taken before such forum differs in many respects from evidence which is adduced in a Court of Law, and in particular in the all-important respect that it is not given on oath. The only thing which the Courts can investigate when proceedings of the *General Medical Council* of this character are brought before them is whether the domestic forum has acted honestly within its jurisdiction. The jurisdiction is defined by the Statute. There must be an allegation before the *General Medical Council* of infamous conduct in some professional respect, and adjudication must be arrived at after due inquiry. The Statute says nothing more, but in saying so much it certainly imports that the substantial elements of natural justice must be found to have been present at the inquiry. There must

(1) 43 Ch. D., 366, at p. 383.

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be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at after he has had a full opportunity of being heard. With respect to the charge made, the charge of which he has notice, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all. We have seen that those conditions have been fulfilled by the inquiry and by the tribunal which institutes it. The functions of the Court of Law are at an end. It appears to me that we have no power to review the evidence any more than we have a power to say whether the tribunal came to the right conclusion. If, indeed, it could be shown that nothing was brought before the tribunal which would raise in the minds of honest persons the inference that infamous conduct had been established, that would go to show that the inquiry had not been a due inquiry; but if there is no blot of that kind upon the proceedings, the jurisdiction of the domestic tribunal which has been clothed by the legislature with the duty of discipline in respect of a great profession must be left untouched by Courts of Law."

In my opinion those doctrines are exactly applicable to the present case. I will proceed now to apply them to the facts of this case. The charge was made in the terms I have already stated. The inquiry was begun on 19th February by Mr. Morris, and plaintiff was represented by counsel. His counsel began by asking for certain documents, which were not produced then, but almost immediately afterwards. These documents having been put in evidence, further particulars were asked for, and after a short time—apparently on the same day—plaintiff was informed that the charges were of neglect of duty with respect to Regulations 10, 11, 12 and 13, and maladministration. Those regulations are as follows:—

"10. He (the medical superintendent) will have the entire control and management of the asylum, subject to such directions as he may from time to time receive from the Colonial Secretary;

and will be held responsible for its due control and general economy, and for the proper medical and general treatment of all the inmates.

"11. He will be required to visit every part of the Institution daily, and the sick as often as necessary. He will inspect the wards and dining-rooms from time to time, and see that the food is properly cooked and according to the dietary scale allowed.

"12. He will be required to enforce the due observance of all the Regulations and By-laws respecting the personal cleanliness of the inmates, the appointed hours for their meals and for their recreations, occupations, retiring to rest, rising and bathing, and also all By-laws respecting the cleanliness and proper ventilation of the wards, building, beds, and bedding.

"It is his duty to see that all inmates are employed according to their ability.

"13. He will be held responsible for the accurate keeping of the records relating to the admission and discharge of inmates, and the books of receipts, expenditure, and distribution of supplies."

Besides the information which he received by being told that he was charged with general neglect of those duties, for so I read the charge, there is another circumstance not at all immaterial. Shortly before this time a Departmental Committee had been appointed to inquire into the general administration of the Asylum, at which the plaintiff had been examined as a witness, and at which a great number of witnesses were called, who gave evidence as to various alleged defects in the proper administration of the institution. The chairman of that committee gave evidence at the trial of this case, and said that plaintiff had been called to give evidence, and his (plaintiff's) attention was called to any evidence which had been given, and which appeared to reflect on the administration of the institution. He says:—"I read parts of the evidence of various witnesses. Dr. Stockwell then proceeded to give his explanation on the subject. He was called three different times. We sent in a report to the Public Service Board. It was unanimous. Plaintiff was called upon to resign . . . I called Dr. Stockwell's attention to the expressed ignorance of the witnesses of their respective duties and responsibilities. I called his attention to the question of his

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visitations of the hospital wards. I also drew his attention to the case of the deceased Chinaman named Sam Lip. I also drew his attention to the allegations as to intemperance on the part of the ex-matron, also to the general cleanliness of the wards. I also drew his attention to the question of the inspection of wards and messes, also to the manner in which he occupied his own time as superintendent, also to the question of the food supply, general and medical comforts. I also drew his attention to the question as to the manner in which the clinical records were kept and the medicine administered, also as to the classification of inmates, as to the duties of the various wardsmen, as to reporting of occurrences. I also called his attention to the question of enforcing cleanliness by bathing of the inmates, as to the various complaints made by the inmates of the lazarette, about visiting, as to the supply of meat, as to the keys of the dispensary, as to the enforcement of regulation 58 (examining parcels), as to the system under which extra rations were allowed to the inmates, as to the distribution of medical comforts, as to the dismissed dispenser, as to the clinical staff, as to question of the seniority of the various wardsmen, and the positions of the various officers of the institution, as to the provision for the storage of the supply of fish, as to the supply of rations to the men at Peel Island. On all these points Dr. Stockwell gave evidence in response to invitation." That was not contradicted. It is quite clear, then, that plaintiff at this time was aware that various complaints had been made in respect of these matters, and that they had been inquired into by a Board appointed by the Government. Moreover, it was proved that that Board having made its report, the Government had called upon him to resign, and that he had refused to do so. Thereupon he was suspended upon the charge of neglect of duty and mal-administration now in question. Is it not a mockery to say that the plaintiff under those circumstances did not know what was the nature of the charge against him, even if he had received no further information? So that, unless there is some technical rule of pleading applicable to proceedings under the Act which requires the Court to hold that a charge made in general terms under those circumstances is bad in law, that objection fails. I know of no such rule.

The other point taken is that the inquiry was not a sufficient and fair one, and one objection is that the plaintiff had not specific information of the nature of the charge made against him. Well, to that, we have his own evidence. He said:—"I was present at the second inquiry, and was represented by counsel, and called witnesses. Mr. Morris was scrupulously fair on the whole. I had an opportunity of meeting all matters deposed to by witnesses against me. I gave evidence at length." And in re-examination he said:—"I did not know what matters were to be brought up against me until the witness gave his evidence. Sometimes a new witness would depose about some new matter. I was not told the names of any witnesses that would be called until they were called. I was never informed which part of the evidence against me was to form the basis of the charge." It is abundantly clear that he knew all the time the inquiry was going on exactly what was the charge against him, and that he had an opportunity of meeting it. Another point taken is that he was not allowed access to certain documents, or that he was not allowed access as soon as he wanted it, and that he was harassed in getting up his case. Suppose he was, unless the Board acted in such a way as to make the inquiry a mere farce, and practically denied him substantial justice, that would not be a ground justifying a Court of law in saying that the inquiry was a nullity. His legal representative—he had counsel at the inquiry—after detailing these alleged harassings, which, in my opinion, are of a somewhat trivial character, added:—"I remember plaintiff's counsel mentioning this matter to Mr. Morris, who was holding the inquiry, and then an arrangement was made that I should inspect the documents in the presence of Mr. Watson, and after that there was no more trouble."

So that the inquiry was shown to be brought clearly within the rule laid down by *Bowen* L.J., in *Leeson's Case* (1), and also within the rule laid down in almost similar terms in the House of Lords in the case of *Osgood* v. *Nelson* (2). Those being the facts, what happened at the trial? The jury found a special verdict in answer to specific questions. The first question was:—"(1) Was plaintiff at any time during or before the second inquiry charged

(1) 43 Ch. D., 366. (2) L.R. 5 H.L., 636.

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with or informed of—(*a*) Any specific act or acts of neglect of duty on his part? (*b*) Any particular act or acts of maladministration of the affairs of Dunwich Benevolent Asylum on his part?"

The jury answered the first part of that question in the negative. Either they did not understand the question, or the finding was absolutely contrary to the plaintiff's own evidence, and no attention can be paid to it. I think that they could not have understood the question. The second branch of that question as to any particular acts of maladministration on his part they answered "No." Again, on the evidence it is clear that either they did not understand the question or their finding was contrary to the evidence. It is not an answer such as any reasonable men could give. It was in the teeth of the evidence, because the evidence shows that all necessary information was given to him during the inquiry.

The second question was:—"Was the plaintiff aware during the course of the second inquiry of the matters forming the basis of the charges of neglect and maladministration, and did he have an opportunity of meeting the same?" and to that they answered "No." It was shown by uncontradicted evidence that he knew before the inquiry was held what was the nature of the charges, and that he had full opportunity during the course of the inquiry to meet every one of them.

The third question was:—"Did plaintiff have a full opportunity to meet and defend himself against the charges preferred against him?" The answer to that was "No." Again, unless the jury misunderstood that question, they went in the teeth of the facts. I suppose they referred to the suggestion that he was harassed by not getting some documents as soon as he wanted them, or not getting something that would be in the nature of legal particulars delivered in an action for negligence.

The next question was:—"Was plaintiff prejudicially impeded by defendant in the preparation of his defence against the charges preferred against him?" The jury answered that question "Yes," and to the further inquiry—"And if so, how?" they found:—"(*a*) By not being informed of any specific act or acts of neglect or maladministration. (*b*) By not being allowed access to official

documents and not being allowed to interview officials or inmates. (*c*) By the inquiry being restricted to Dunwich and by documents not being produced when required."

I would remark that that question appears to assume that something that is called prejudicial impediment in the progress of the inquiry would render the inquiry void. It would not render it void unless the nature of the impediment was such as to amount to a substantial denial of justice. I have already dealt with head (*a*). The prejudicial impediment complained of under head (*b*) was delay for a few days in getting information which the plaintiff said he wanted. There was no impediment at all except in the sense that he was not allowed access at the moment that he asked. One document he did not get, but it was a document that he was not entitled to receive, and, according to his evidence, he was apparently aware of its contents. As to head (*c*) it would be a singular thing, indeed, if it were held to be a substantial denial of justice, that the inquiry was held at Dunwich instead of Brisbane. Those findings of the jury are entirely unwarranted by the evidence. In my opinion there was absolutely no evidence to go to the jury, and the decision of the Full Court was quite right.

There is another point which was pressed strongly by Mr *Stumm*, namely, that the inquiry was unfair, because the Home Secretary, the Minister who suspended the plaintiff, was also a member of the Public Service Board who met to consider the report, that is to say, to consider the evidence taken by the Commissioner appointed to take it. The Board before they came to a conclusion heard counsel for the plaintiff at great length, and gave him the fullest opportunity of adding anything that he desired, and after full consideration they made a report and recommendation to the Governor, that the charge had been established. The objection taken is that the Home Secretary, being the officer who suspended the plaintiff, could not sit as a member of the Board to consider that report. I see nothing in the Statute to prohibit him. The Statute prohibits the officer, *i.e.*, the permanent head of the department who suspends an officer, from being appointed to be the person to conduct the inquiry, and there it stops. As to the suggestion that the

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Minister who has suspended the officer is incapable afterwards of acting as a member of the Board, of which he is by law a member, to consider the evidence taken upon the charge, I know of no principle of law to support it. It is not a question of a man being judge in his own cause, because the later Statute of 1901 made the individual Ministers members of the Board, and it is the duty of the Home Secretary, as of other Ministers, to sit upon it. And the controversy is not between the Minister and the plaintiff; the controversy is between the employers of the plaintiff—the Crown—and the plaintiff. The Minister is one of the persons whose duty it is to consider whether the circumstances are such as to warrant his removal from the service. It could not be for a moment contended that the Minister who suspended the officer could not form a member of the Executive Council to deal with his dismissal. Why then, the additional duty of acting as a member of the Public Service Board being imposed by the Statute, should there be any such disability? If there were anything in the argument, it is disposed of by the case of *Leeson* v. *General Council of Medical Education and Registration* (1), to which I have referred. A precisely similar point was taken there, and it was overruled, but I should be sorry to think that without the authority of that case there could be anything in it. It cannot be supposed for a moment that a doctrine of that sort applies to the administration of public affairs of a State by Ministers. I am of opinion, therefore, that the decision of the Supreme Court is right, and that the appeal should be dismissed.

BARTON J. His Honor's judgment has expressed the substance of the views which I had formed during the argument, and under the circumstances I do not consider myself justified in adding anything. I think that the appeal should be dismissed.

O'CONNOR J. I am of the same opinion, and I have very little to add. The defence of the Government in this case is that a charge was made against the plaintiff by the Minister of his department of neglect of duty and maladministration of the

(1) 43 Ch. D., 366.

affairs of the Asylum of which he was in charge; that the charge was inquired into duly by an Inquiry Board under the Public Service Act, and action taken by the Government upon the report and findings of the Board so constituted. If the inquiry of the Board is valid, that is a complete answer to the action, and the question really for consideration is whether or not the inquiry was an inquiry within the meaning of the Act. Courts of law do not sit as Courts of Appeal from the decisions of this kind of tribunals—sometimes called domestic tribunals—appointed specially for the consideration of matters entrusted to their care. One important object of the appointment of such tribunals is that their decision shall be final. Their inquiries are to be conducted in the way which is most proper and convenient for arriving at a conclusion just and fair to all parties in the circumstances in which they are placed, and the law is not very exacting in its requirements as to their form of procedure. It would be impossible, considering their variety, and the different circumstances under which they have to act, to lay down any very definite rules as to what will, and what will not, in all such cases, constitute a due inquiry. But the law lays down certain broad definite principles for their guidance, and if the inquiry complies with those principles, a Court of justice cannot interfere with the decision. Those principles have been laid down very concisely by *Bowen* L.J. in *Leeson's Case* (1), referred to by my learned brother the Chief Justice. They are also stated in the case of *Osgood* v. *Nelson* (2) on the hearing in the Court below by *Cockburn* C.J. where His Lordship says:—"*Mr. Montague Chambers* made several objections to the proceedings. In the first place, he said that there was no definite charge before the Common Council upon which the plaintiff had been removed. No doubt the charge which eventually came before them was in general terms, viz., that the duties of registrar had not been properly discharged; and upon that they resolved that there was reasonable cause for his dismissal. I agree that a charge in that vague character would not be such as justice requires; but if the plaintiff was made acquainted in the course of the inquiry with the heads of the accusation which were the foundation of the

(1) 43 Ch. D., 366. (2) 10 B. & S., 119, at p. 163.

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general charge, that satisfies the rule that a man must know what he is charged with in order to answer it." That case went on appeal first of all to the Exchequer Chamber and afterwards to the House of Lords. In the judgment of *Kelly* C.B. in the Exchequer Chamber, and this judgment was upheld in the House of Lords, the learned Chief Baron says (1):—"It is part and parcel of the law of England, and one of the first principles of public justice, that no man shall be convicted of any offence or of any misconduct whatever by any judicial body constituted by law without being heard in his defence. And if we had found in any stage of these proceedings, but above all before judgment was pronounced against the plaintiff, that he had been refused a hearing, or had not had a full, free, fair and ample hearing, and every opportunity to defend himself against the charges preferred against him, we should have been quite ready to support that fundamental principle, and should have treated the proceedings as illegal and void. But there being nothing in the proceedings contrary to law or opposed to natural justice, we are all of opinion that it is not competent to us to review the decision of the Court of Common Council, and consequently the judgment of the Court of Queen's Bench must be affirmed." Applying these principles to the inquiry in this case, the principal objection made by Mr. Stumm was as to the form of the charge. Now, the tribunal which is constituted to inquire into charges against a public servant arising out of his administration in a public department must take as the subject for their investigation charges as they are made in the ordinary course of the administration of the department. The charge against an officer may be made by his immediate superior; it may be made in very full, particular terms, it may be made in general terms; the form of it may be infinitely varied according to the circumstances, but the Court of inquiry or Board of inquiry which is appointed under this Act, must deal with that charge whatever it is, and whatever its form may be. There is no doubt that before an inquiry is held there must be a definite charge against the officer, and that definite charge must be the subject of inquiry, whatever particulars may afterwards be furnished for

(1) 10 B. & S., 119, at p. 174.

the information of the person charged. But, it appears to me that, having regard to the nature of this tribunal and the circumstances under which it carried on its deliberations, it was unnecessary that the charge should have been set out in the beginning with more particularity of form than that actually used. Now, the charge here was contained in a telegram from the Minister in charge of the plaintiff's department. It is a telegram of 15th February 1906, and is in these words:—"You are suspended for neglect of duty and maladministration of the affairs of Dunwich Benevolent Asylum pending an inquiry, which will be held at Dunwich, Monday 19th inst." There can be no doubt that that was a quite sufficiently definite charge for the institution of the inquiry. The incidents and facts upon which that charge was based it was, of course, necessary to bring before the plaintiff. It was necessary also that he should have every opportunity of answering it, and I think in the words used by *Cockburn* C.J., in the case of *Osgood* v. *Nelson* (1), that, if he was made acquainted in the course of the inquiry with the heads of the accusation and the foundation of the general charge, the specific rule, that a man must know what he is charged with in order to answer it, is complied with. It is clear that during the inquiry, and very early in the inquiry, the plaintiff had every possible information, not only as to the general nature of the charges, but as to the incidents upon which those charges were founded, and had abundant opportunity of answering them. I do not intend to deal with the facts of the case, which have been very fully referred to by my learned brother the Chief Justice. All I think it necessary to say about them is this: that the findings of the jury, in so far as they are material, are entirely unjustified by the evidence. They are not only findings which reasonable men could not have come to upon the evidence, but they are findings which they could not arrive at as a matter of law, and where findings are against the evidence, and are not supported by the law, they are certainly immaterial. Under these circumstances I agree that there is nothing to show that the tribunal in question did not comply with the requirements of substantial justice, both in its procedure and in its findings.

(1) 10 B. & S., 119.

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That being so, it is impossible for this Court to interfere with those findings. As the findings stand, there was every justification for the action which was taken by the Government. I therefore agree that the appeal must be dismissed.

Appeal dismissed with costs.

Solicitors, for the appellant, *Foxton & Hobbs.*

Solicitor, for the respondent, *Hellicar (Crown Solicitor).*

N. G. P.

[HIGH COURT OF AUSTRALIA.]

THE FEDERATED AMALGAMATED GOVERNMENT RAILWAY AND TRAMWAY SERVICE ASSOCIATION . APPELLANTS;

AND

THE NEW SOUTH WALES RAILWAY TRAFFIC EMPLOYES ASSOCIATION . RESPONDENTS.

H. C. OF A. 1906.

SYDNEY, *Aug.* 13, 20, 29, 30, 31.

MELBOURNE, *Sept.* 4, 5, 7, 10, 11, 12, 13, 14.

SYDNEY, *Dec.* 17.

Griffith C.J., Barton and O'Connor JJ.

The Constitution (63 & 64 *Vict.*, *c.* 12), *secs.* 51, 98, 101, 102, 104—*Validity of Commonwealth legislation — Interference with State instrumentality — Limited power— Validity of Act going beyond power—State railways—Regulation of wages and conditions of employment—Jurisdiction of President of Commonwealth Court of Conciliation and Arbitration—Appeal from registrar—Stating case—Commonwealth Conciliation and Arbitration Act* 1904 (*No.* 13 *of* 1904), *secs.* 2, 4, 6, 17, 18, 19, 23, 24, 28-31, 40, 48.

The rule, laid down in *D'Emden* v. *Pedder*, 1 C.L.R., 91, at p. 111, viz., that when a State attempts to give to its legislative or executive authority an operation, which, if valid, would fetter, control, or interfere with the free exercise of the legislative or executive power of the Commonwealth, the attempt, unless expressly authorized by the Constitution, is to that extent invalid and inoperative, is reciprocal. It is equally true of attempted interference by the Commonwealth with State instrumentalities. The application of the rule is not limited to taxation.

Sec. 51 (xxxv.) of the Constitution does not either expressly or by necessary implication authorize such an attempt.