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O'Connor J.

Parliament left it perfectly open whether the deportation of the islander was to be to the island whence he came, or to some other place. However that may be, we have only to determine whether the power to deport does not in itself include the power of choosing the place of deportation and the means of deportation in order that the exercise of the power shall be effectual. Applying the principles that I have alluded to, it is clear to my mind that, the power to exclude and the power to deport being in the Commonwealth Parliament, the power of deciding what shall be an effective form of deportation must rest with them. They have the right, if they wish, to leave the question of the mode or place of deportation to the discretion of the government. For these reasons I am of opinion that the magistrate was right in his conclusion, and was justified in making the order that he made, and that it was within the power of the Commonwealth to pass the Act under which he adjudicated.

Appeal dismissed.

Solicitor, for the appellant, *A. W. Bale.*

Solicitors, for the respondent, *Chambers & McNab.*

N. G. P.

Appl *Holly v Director of Public Works* 16 ALD 43

Foll *Kaye v Attorney-General (Tas)* (1956) 94 CLR 193

[HIGH COURT OF AUSTRALIA.]

RYDER . . . . . APPELLANT;
(NOMINAL DEFENDANT),

AND

FOLEY . . . . . RESPONDENT.
PLAINTIFF.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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BRISBANE, *Oct.* 3, 4, 6.

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

Police officer—Tenure of office—Who may dismiss—"Government," meaning of—Wrongful dismissal.

By sec. 6 of the *Police Act* 1863 it is provided that the Commissioner of Police "shall appoint fit and proper persons to fill such vacancies as may hereafter occur among the sergeants and constables of the police force, and upon

sufficient proof of misconduct or unfitness to be submitted for the approval of the Government shall have power to dismiss any sergeants and constables, and all sergeants and constables of whatever grade shall, so long as they continue members of the force, have all such powers, privileges, and advantages, and be liable to all such duties or responsibility as any constable duly appointed now has or hereafter may have either by common law or by virtue of any Statute."

Held, that the word "Government" means the Executive Government acting through the Minister responsible for the carrying out of the provisions of the Act, and that the expression "submission to the approval of the Government" means submission to the approval of the Crown acting through the proper responsible Minister, whoever he may be.

Held further, that under the section a constable holds office during pleasure, and that, as his office is of that tenure, an action for wrongful dismissal will not lie against the Government.

Decision of the Supreme Court: *Foley* v. *Ryder*, (1906) St. R. Qd., 225, eversed.

APPEAL from an interlocutory judgment of the Supreme Court of Queensland.

The plaintiff sued the defendant (as nominal defendant on behalf of the State Government) for wrongful dismissal from his office as a constable of police at Charters Towers, claiming that the cause of the dismissal was the report of an inquiry held into the circumstances surrounding the death of a man, at which inquiry no charge was preferred against the plaintiff, nor was he ever heard in his own defence or given any opportunity to call witnesses. The Crown replied that he was dismissed by the Commissioner of Police upon sufficient proof of his misconduct and unfitness, approved by the Government; and gave as particulars: that the magistrate found at the inquiry that plaintiff had with other constables combined in insubordination and had given evidence on oath to support false charges against superior officers; and that this proof of his misconduct had been submitted to the Home Secretary and Commissioner of Police and approved as sufficient for dismissal. *Chubb J.* made an order to set down for hearing before the Full Court the questions of law: —(1) Whether the submission for the approval of the Home Secretary constituted a "submission for approval of the Government" within the meaning of sec. 6 of the *Police Act* 1863:

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(2) Whether "sufficient proof" within the meaning of sec. 6 of the *Police Act* 1863 affords a defence to the action unless a charge were first made against plaintiff and he were heard thereon. The Full Court answered both questions in the negative, holding that "Government" meant the Governor in Council, not the Home Secretary, and that the right to be heard was an essential incident of natural justice: *Foley* v. *Ryder* (1).

From this decision the defendant appealed to the High Court.

Feez and *Shand* (with them *Lukin*), for the appellant.

The questions submitted by *Chubb J.* for the Full Court were immaterial. The real questions are whether the Crown could dismiss the constable at will, and, if not, whether the Commissioner of Police could dismiss him. It would be futile to proceed with this case while these vital questions are left outstanding. The questions submitted were framed upon sec. 6 of the *Police Act* 1863; but the only real question arising thereunder is whether the Government approved the Commissioner's dismissal of the plaintiff. There was no necessity for the Commissioner to hold a judicial inquiry. The Crown can dismiss its servants at pleasure; this is an implied term understood in the contract of employment of all public servants: *Shenton* v. *Smith* (2); *Dunn* v. *The Queen* (3). The *Police Act* 1863 does not cut down this power. In *Gould* v. *Stuart* (4) it was held that the words of the *Civil Service Act* (N.S.W.), had expressly cut down this power. The police are expressly excluded from the Queensland *Civil Service Act* 1863, which has similar provisions. The power of dismissal in sec. 6 is only an additional power to dismiss constables, vested in the Commissioner. It would be absurd to find the Commissioner and inspectors and superintendents dismissable by the Crown at will, while constables could only be dismissed after a judicial inquiry and other strict formalities. The approval of the Home Secretary, the responsible Minister, was the approval of the Government; and further, the Government has ratified and adopted the act of the Home Secretary by supporting his decision and defending the present action.

(1) (1906) St. R. Qd., 225.
(2) (1895) A.C., 229, at p. 234.
(3) (1896) 1 Q.B., 116, at p. 118.
(4) (1896) A.C., 575.

The power, under sec. 6 of the *Police Act* 1863, to appoint includes also the power to remove or suspend: *Acts Shortening Act* 1867 (31 Vict. No. 6), sec. 17, which states the common law. The Crown's power to dispense with a constable's services at pleasure has not since been altered: *Police Act Amendment Act* 1891, secs. 11, 25, 26. It is true that every man, before a decision in a judicial proceeding is given against him, is entitled to be heard: *Bonaker* v. *Evans* (1). A public servant should perhaps not be dismissed with the brand of misconduct unless after inquiry: *Adams* v. *Young* (2); but mere dismissal is very different. If plaintiff's contention is right, Parliament could not dismiss policemen by cutting down the estimates and refusing to vote their salaries. No action can lie for damages for the loss of an office tenable only at will.

There is no right to be "heard and represented" at an inquiry held by a person who has full discretion to appoint and dismiss: *Marquis Abergavenny* v. *Bishop of Llandaff* (3); *Teather* v. *Poor Law Commissioners* (4); *Osgood* v. *Nelson* (5); *R. on the prosecution of Freeman* v. *Arndel* (6). There was sufficient evidence before the Commissioner to justify him in exercising his discretion to dismiss plaintiff; he need not hold a judicial inquiry, so long as he was reasonably satisfied in his mind that misconduct was shown. The contract of service between the constable and the Crown is unilateral, not mutual; it is binding only upon him—*Police Act* 1863, sec. 11, 12, 15—and may be cancelled at any time by dismissal: *Green* v. *The Queen* (7), following *Power* v. *The Queen* (8), decisions on similar sections in the Victorian *Police Act* 1864 (No. 257, secs. 9, 10, 11). There was no contract between plaintiff and the Crown binding the Crown only to dismiss him under the procedure of sec. 6. The discretion of dismissal given to the Commissioner was not to act as a judicial officer in conducting inquiries and hearing the proof of charges, but to act on emergencies to keep the service pure. Sec. 6 is a disciplinary section; it has none of the express words necessary to take away the Crown's prerogative right of dismissal.

(1) 16 Q.B., 162.
(2) 19 N.S.W.L.R., 37.
(3) 20 Q.B.D., 460.
(4) 19 L.J.M.C., 70.
(5) 10 B. & S., 119, at p. 155, *per Cockburn*, C.J.
(6) 3 C.L.R., 557.
(7) 17 V.L.R., 329; 13 A.L.T., 29, at p. 30.
(8) 4 A.J.R., 144.

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The "approval" by the Government of the Commissioner's conduct can be given by a ratification at any time before action is brought: *Buron* v. *Denman* (1). The person to approve on behalf of the Government is the Minister at the head of the department, the Colonial Secretary. The Court will not inquire into the inner workings of the Ministry and the administrative departments of Government, once the ministerial head of a department has conveyed the wishes of the Government: *R.* v. *Tooth* (2); *R.* v. *Davenport* (3). As it would be idle to proceed where plaintiff has no cause of action, we ask for a stay of proceedings.

[They referred to *Grant* v. *Secretary of State for India* (4).]

E. A. Douglas and *R. J. Douglas*, for the respondent. The questions are whether the prerogative has been exercised, and whether the constable has been properly dismissed under the Act.

[BARTON J.—Is this a question of prerogative? The question is one of contract, into which a right to dismiss at pleasure was always imported: *Shenton* v. *Smith* (5).]

That case depended on the position of a Crown Colony, not an independent Colony with representative government. The Crown cannot introduce this question of prerogative dismissal at this stage of the case; they set up no defence apart from a dismissal under the Act, and no dismissal by the Executive Government is set up, but only dismissal by the Home Secretary. Plaintiff is entitled at least to his salary until he is dismissed by the Executive Government, which has not yet been done. A constable can only be removed for just cause duly proved. His office is in the nature of a freehold: *Willcock's Office of Constable*, pp. 19-20; *Burns' Justice of the Peace* (1869 ed., I., 1033). Under the second part of sec. 6 of the *Police Act* 1863, constables are given all the old common law and statutory rights, as well as duties and liabilities.

[GRIFFITH C.J.—That only gave them the common law power of arrest, and immunity; not a freehold office.]

(1) 2 Ex., 167.
(2) 4 Qd. S.C.R., 96.
(3) 4 Qd. S.C.R., 99.
(4) 2 C.P.D., 445.
(5) (1895) A.C., 229.

A constable has at least the right to be heard in his defence before dismissal. Under the Queensland *Police Act* 1855 (19 Vict. No. 24), dismissal was by justices after inquiry, with an appeal to the Governor in Council. The power of dismissal under sec. 6 of the *Police Act* 1863, was clearly conditional upon a judicial proceeding: the Commissioner was placed in the position of the justices in holding the inquiry there prescribed. The *Civil Service Act* 1863, which provides for dismissal in sec. 14 in similar terms, was passed the same day as the *Police Act*. Under the *Civil Service Act* the power of dismissal was closely safeguarded: cf. *Gould* v. *Stuart* (1); s.c. *sub nom.*, *Stuart* v. *Gould* (2); yet the *Police Act*, passed the same day, is supposed to take away from the police their old safeguards against arbitrary dismissal, and conserve these rights to civil servants. The constable serves under a statutory contract that he will not be dismissed for misconduct without due inquiry.

The proceedings on the inquiry held by the magistrate were originated under sec. 25 of the *Police Act* 1891 (55 Vict. No. 32), and under the regulations governing such inquiries the Commissioner must receive the report from the officer conducting the inquiry, and, if satisfied that the constable charged with misconduct was guilty, may fine or dismiss him.

[GRIFFITH C.J.—That, like sec. 6, seems only to give an additional power of dismissal to the Commissioner; it does not limit the Crown's power.]

The proceedings were undoubtedly commenced under the Police Acts, and such proceedings must be a judicial inquiry if any charge of misconduct is to be considered. The words "sufficient proof" in sec. 6 postulate a proper quasi-judicial inquiry, at which natural justice required that plaintiff should not be condemned unheard: *R.* v. *Cheshire Lines Committee* (3); *Strachan* v. *Strachan* (4). Dismissal subjects the officer to a severe loss of property, including rights to superannuation and gratuities. No person should be subjected to a loss of property without being heard. There is a tenure of office as between the constable and the Crown, and there was always a right to be heard before dis-

(1) (1896) A.C., 575.
(2) 16 N.S.W. L.R., 132.
(3) L.R., 8 Q.B., 344.
(4) 5 Q.L.J., 45.

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missal; that right can only be taken away by express enactment, of which there is none. Especially there must be inquiry where inability and misbehaviour are charged as grounds of dismissal: *Ex parte Ramsay* (1).

[GRIFFITH C.J.—*Grant* v. *Secretary of State for India* (2) seems indistinguishable.]

That case turned upon regulations; it had nothing to do with statutory provisions. The *Police Act* 1863, took away the power to dismiss at will in the case of constables. Parliament could refuse to vote the pay for constables, and abolish their office; but this does not weaken their safeguard against arbitrary dismissal. Even where the misconduct occurred in the sight of the person dismissing a constable, he should be called on to show cause against charges preferred: *R.* v. *Smith* (3).

[GRIFFITH C.J.—No action can lie against the Crown for exercising its volition and effecting revocation of this office, which is at most a conditional fee.]

Such volition must be exercised in the terms laid down by the Act; misconduct must be satisfactorily proved to the Commissioner upon judicial inquiry, and the approval of the Crown must precede dismissal: *Browne* v. *The Queen* (4); *Foran* v. *The Queen* (5); *Public Service Act* (Vict.) 1883 (No. 773), secs. 81 82; *Smith* v. *The Queen* (6). The police do not serve on a semi-military tenure; that depends on War Office regulations, and is never similar to those tenures regulated by Statute *Mitchell* v. *The Queen* (7); *Dunn* v. *The Queen* (8). *Adams* v. *Young* (9) sums up the case for plaintiff.

"Government" in sec. 6 means the Governor in Council. The Home Secretary is not the Executive Government, and it was not pleaded that he exercised the Government's powers.

[GRIFFITH C.J.—The Governor is not consulted in every administrative act. The plea assumes the Home Secretary as the proper authority signifying the approval of the Government. How can you inquire into the inner workings of the Executive?]

(1) 18 Q.B., 173, at p. 190.
(2) 2 C.P.D., 445.
(3) 5 Q.B., 614.
(4) 12 V.L.R., 397; 8 A.L.T., 28.
(5) 16 V.L.R., 510; 12 A.L.T., 54.
(6) 3 App. Cas., 614.
(7) (1896) 1 Q.B., 121 (*n*).
(8) (1896) 1 Q.B., 116, at p. 119.
(9) 19 N.S.W.L.R., 325, at p. 327.

The Court cannot presume that the Home Secretary has an unlimited power to exercise the functions of the Executive. Under the *Police Act* 1850, the power of dismissal clearly rested with the Governor. Under the Act of 1852 the Governor in Council reviewed the orders of the justices. The 1863 Act therefore, in speaking of the "Government," intended to require the approval of the full Executive authority, and not that of the departmental head of the police force. Under the 1891 Act, sec. 5, the power to retire officers for old age is reserved to the Governor in Council; the power of dismissal is much greater than that of retirement, and was meant to be equally safeguarded, [They referred to: *Salkeld* v. *Johnson* (1); *Police Act* (N.S.W.) 1862, sec. 5; *Police Act* (Vict.) 1865, sec. 6; *Hardcastle on Interpretation of Statutes*, 3rd ed., 130).]

Feez, in reply.

Cur. adv. vult.

GRIFFITH C.J. The question for decision in this case arises in a somewhat unusual form. The action is brought by the plaintiff against the Government, the appellant being the nominal defendant, for damages for wrongful dismissal from the service of the Government in which he was employed in the capacity of a police constable. The statement of claim alleges that in accordance with the provisions of the *Police Act* 1863 the plaintiff was duly appointed a constable of police and so on, and that he was employed and served the Government as a constable of police until he was wrongfully dismissed as thereinafter set out. Then it is alleged that various proceedings took place, the result of which was that the Government on 3rd April 1905 wrongfully dismissed the plaintiff from the service. The plaintiff further alleges that he was dismissed without an opportunity of defending himself upon a charge of misconduct. The defence admits the employment under the *Police Act* 1863 and the *Police Amendment Act* 1901, but denies the wrongful dismissal, and pleads further that the Commissioner of Police upon sufficient proof of misconduct and unfitness of the plaintiff, which was submitted for the approval of the Government, dismissed the

(1) 2 Ex., 256, at p. 273.

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plaintiff from his service under and in pursuance of the provisions of the Act, and not otherwise. Particulars of that defence were asked for and given, from which it appeared that, at an inquiry held before the dismissal complained of, it was alleged that the plaintiff and other constables named had combined together for the purpose of supporting each other in acts of insubordination; that an inquiry was held into that matter; that the evidence taken before the Commission appointed to hold the inquiry was submitted to the Commissioner of Police; that he submitted it to the Home Secretary, who approved of the evidence as being sufficient proof of misconduct and unfitness on the part of the plaintiff; and that thereupon the plaintiff was dismissed. *Chubb* J. then under the provisions of Order XXXIV., Rule 2, directed two questions to be stated for the opinion of the Court. That rule provides :—" If it appear to the Court or a Judge either from the statement of claim or defence or reply or otherwise that there is in any action a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried or before any reference is made to a Referee or an Arbitrator, the Court or Judge may make an order accordingly and may direct such question of law to be raised for the opinion of the Court either by special case or in such other manner as the Court or Judge may deem expedient and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed." The questions were—(1) " Whether the submission for the approval of the Home Secretary (as alleged in the defence and particulars delivered in this action) constitutes a submission for the approval of the Government within the meaning of sec. 6 of *The Police Act* 1863; (2) Whether sufficient proof within the meaning of sec. 6 of *The Police Act* 1863 (as alleged in the said defence and particulars) affords a defence to the action unless a charge were first made against the plaintiff and the plaintiff heard thereon." These questions were argued before the Full Court, which was of opinion that a submission for the approval of the Home Secretary was not a submission for the approval of the Government within the meaning of sec. 6. They were also of opinion that there could be no sufficient proof within the

meaning of the section unless the plaintiff first had a charge made against him, and was heard afterwards upon it. That decision, of course, leaves the case as one merely for the assessment of damages. The defendant has now appealed to this Court, and before this Court a further point is taken that the statement of claim itself discloses no cause of action. It appears from the report in the *Queensland Law Journal* that that point was argued, apparently briefly, before the Full Court, but the Judges do not advert to it in their judgments. I apprehend that the proper way to deal with the present case is to treat it as if the facts alleged in the particulars of defence had been set out in the defence, and the defence had been demurred to. It is not disputed that, if on the argument of a demurrer to a defence it appears that the statement of claim discloses no cause of action, the Court must give judgment for the defendant, notwithstanding that it thinks the plea bad, and that is the rule which I think should be applied in dealing with this case. Before us the question whether the action will lie has been very fully discussed, and we are bound to express our opinion upon it.

Now, the plaintiff's case is founded upon the provisions of sec. 6 of the *Police Act* 1863, which has been already mentioned. That Act consolidated and amended the laws relating to the police force. It is a complete code of law for the police force. There are no other laws—all previous laws, all of which are enumerated, and all other regulations under previous Acts, being repealed. The Act authorizes the Governor in Council to appoint a Commissioner of Police, who is to have charge and superintendence of the police force, under the direction of the Colonial Secretary, who is now called the Home Secretary. The Governor in Council may appoint inspectors and sub-inspectors of police. Sec. 6 deals with the appointment of sergeants and constables, and provides :— "The Commissioner of Police shall appoint fit and proper persons to fill such vacancies as may hereafter occur among the sergeants and constables of the police force and upon sufficient proof of misconduct or unfitness to be submitted for the approval of the Government shall have power to dismiss any sergeants and constables and all sergeants and constables of whatever grade shall so long as they continue members of the said force have all such

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powers privileges and advantages and be liable to all such duties and responsibility as any constable duly appointed now has or hereafter may have either by the Common Law or by virtue of any Statute or Act of Council now or hereafter in force in the Colony." I will deal, first, very briefly, with the point taken that the submission of the proof of misconduct for the approval of the Government must be a submission to the Governor in Council. That was the view which commended itself to the learned Judges of the Supreme Court. This Statute clearly recognizes the existence of the Governor in Council, and makes provision that certain things shall be done by the Governor in Council. This particular act is to be a submission for the approval of "the Government," so that, if the contention for the plaintiff was right, it is obvious that the legislature used different words when they intended the same thing. The word "Government" is not a term of art, and I think it is difficult to hold it to be synonymous with Governor in Council, when one has regard to the manner in which the Executive Government of the country is carried on under the system which we call Constitutional Government. The Crown, that is, the head of the Executive Government, in whose name everything is done, does not act in person; it acts through responsible officers, to whom the powers of Government are delegated, and, as a matter of fact, ninety-nine hundredths of the work of the Executive Government is done by those responsible officers on their own individual responsibility without consulting the Governor in Council. In England it is well known to everyone who knows anything of the manner in which the English Government is conducted that a very small proportion of the matters is ever submitted, or required by law to be submitted, for the approval of the Sovereign with the advice of his Privy Council. Nearly all the ordinary matters of administration are dealt with by the responsible Ministers. Some matters are required by law to be done by the Sovereign in Council, just as in Australia under the Australian Constitutions certain matters are required to be done by the Governor with the advice of his Executive Council. As to those matters that are not expressly so required to be done it appears to me that the ordinary and proper inference to be drawn is that the system that was intended to be

introduced here on the establishment of responsible government was the English system, and that acts of government may be performed by the proper responsible Minister, whoever he may be. That is how the matter appears to me, apart from any argument that has been raised about the word "Government" being synonymous with Governor in Council. I do not see my way to hold that they are synonymous. The word "Government," as I said, is not a term of art. I think the expression "submission for the approval of the Government" merely means submission for the approval of the Crown acting through the proper responsible Minister, whoever he may be. In this Act it is expressly stated that the Home Secretary is to be the responsible Minister under whose direction the Commissioner of Police is to act. I think, therefore that there is nothing in that point.

With respect to the other point, that the Commissioner of Police shall have power to dismiss sergeants and constables upon sufficient proof of misconduct or unfitness, I agree with the learned Judges of the Supreme Court in thinking that, if that is a condition of the tenure of office of sergeants and constables, the person accused must have an opportunity of being heard before he can be deprived of his office. But the question remains whether that is a condition of the tenure of his office, in other words, whether this section is in reality a section relating to the tenure of office of sergeants and constables, or whether it is a provision standing by itself or enacted *alio intuitu*? In the *Constitution Act* 1867, which is a re-enactment of the original Constitution, sec. 14 provides:—"The appointment of all public offices under the Government of the Colony hereafter to become vacant or to be created whether such offices be salaried or not shall be vested in the Governor in Council with the exception of the appointment of the officers liable to retire from office on political grounds which appointments shall be vested in the Governor alone. Provided always that this enactment shall not extend to minor appointments which by Act of the legislature or by order of the Governor in Council may be vested in heads of departments or other officers or persons within the Colony."

The exercise of the sovereign power may therefore in any case be delegated by Statute or by Order-in-Council. I regard sec. 6,

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not as a section dealing with the tenure of office of constables, but as a section passed with reference to this provision in the Constitution, as vesting this power of appointment, with the correlative right of dismissal, in the Commissioner of Police, subject to the qualification that he shall not exercise the power of dismissal, which is only given to him in the case of misconduct or unfitness, without consultation nor without the approval of the Executive head of his department, and I regard the section as having nothing to do with the tenure of office of the constable as between himself and the Crown. It is necessary, therefore, to consider what is the nature of the tenure of office of a constable, irrespective of the section. With respect to the tenure of office of constables and officers in the Public Service, the general rule is stated in the case of *Shenton* v. *Smith* (1), to be that in the absence of a special contract, "servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law-suit, but by an appeal of an official or political kind" —that is by appeal to his superior officer, or to Parliament if necessary. The only other case that I think it necessary to refer to is that of *Dunn* v. *The Queen* (2). That was a case in which a man had been employed in the public service at a salary, and an officer of the Crown, who was Commissioner and Consul-General of the Niger Protectorate in Africa, had engaged him for three years certain. The service terminated before the expiration of that time, and he presented a petition of right. Lord *Esher* M.R. referred to the previous case of *De Dohsé* v. *The Queen*, which has not been reported, but which was decided in the House of Lords by Lords *Halsbury* L.C., *Blackburn*, *Watson* and *Fitzgerald*, and quoting from his own judgment in the Court of Appeal said (3):—"It is said that it was lawful to make such an engagement with him (the suppliant) for seven years, because the engagement offered and proposed was not an

(1) (1895) A.C., 229, at pp. 234, 235. (2) (1896) 1 Q.B., 116.
(3) (1896) 1 Q.B., 116, at p. 118.

engagement of military service, it being admitted in argument that, if the engagement was for military service as a soldier, whether as officer or private, it is contrary to public policy that any such contract should be made. Now, whether that doctrine with regard to the Crown is confined to military service or not need not be decided to-day, but I do not at all accept the suggestion that it is so confined. All service under the Crown itself is public service, and to my mind it is most likely that the doctrine which is said to be confined to military service applies to all public service under the Crown, because all public service under the Crown is for the public benefit." Then he goes on to say:—"That case came before the House of Lords; and it seems to me that Lord *Watson* in his judgment almost in terms decides that what I thought would probably turn out to be the right view on the subject is correct. He says:—'In the first place it appears to me that no concluded contract is disclosed in the statements contained in this petition of right; and in the second place I am of opinion that such a concluded contract, if it had been made, must have been held to have imported into it the condition that the Crown has the power to dismiss. Further, I am of opinion that, if any authority representing the Crown were to exclude such a power by express stipulation, that would be a violation of the public policy of the country and could not derogate from the power of the Crown.' Anything more distinct and general than that there could not be. It seems to me that the rule, as laid down by the House of Lords, is in consonance with what I suggested to be the true rule in the Court of Appeal. The case of *Shenton* v. *Smith* (1) appears to me to be really equally conclusive of the matter." Lord *Herschell* was of the same opinion. Lord Justice *Kay*, adverting to the contention that this was a doctrine which applied only to the military service, said (2):—"I do not concur in that view. It seems to me that the continued employment of a civil servant might in many cases be as detrimental to the interests of the State as the continued employment of a military officer."

It appears to me to result from these authorities that it is an implied term in the engagement of every person in the Public

(1) (1895) A.C., 229.

(2) (1896) 1 Q.B., 116, at p. 120.

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Service, that he holds office during pleasure, unless the contrary appears by Statute. It is not disputed in the present case that the Government could dismiss the plaintiff at pleasure. Indeed, that he holds office at pleasure is shown by the admitted fact, that if Parliament did not vote his salary he could be summarily deprived of office. As I have just said, it is not disputed that the Governor in Council, *i.e.*, the Executive Government, could dismiss him at a moment's notice, but it is contended that that cannot be done by the Commissioner of Police. I agree that the Commissioner of Police of his own motion cannot do it, but the plaintiff in this case complains that the Government have dismissed him, and, as it is conceded that the Government can dismiss him at will, how can it be said that the statement of claim discloses any cause of action? I do not know any instance in which a person who holds office during pleasure could bring an action for wrongful dismissal. The foundation of the wrongful dismissal is the wrongful refusal to retain him in the service, but the service is terminable at pleasure. How can the exercise of that pleasure be wrongful? It may be suggested perhaps that there would be something in the nature of a special action against the Commissioner of Police for doing something detrimental to the plaintiff's character, but when that question arises it will be time enough to determine it. I think it will be found that the attempt has been made once, and unsuccessfully.

For these reasons I am of opinion that the statement of claim discloses no cause of action. What then ought to be done? The formal position is that the questions submitted to the consideration of the Supreme Court were irrelevant, because, whichever way they are decided, the plaintiff is equally unable to succeed in the action. As I said before, I think the matter should be treated as if it were a demurrer to a bad plea. The statement of claim itself disclosing no cause of action, following the rule of practice laid down in Order XXXVIII. as to what is to happen upon the decision of a question of law, I think that the proper order to make will be that all proceedings in the action be stayed.

BARTON J. The judgment appealed from is in substance a decision with regard to questions of law stated by *Chubb* J. on

the pleadings. Those questions arise upon the interpretation of the *Police Act* 1863, and of the statement of claim, particularly in paragraph 3, which says :—"Under and in accordance with the provisions of *The Police Act* 1863 the plaintiff on or about the third day of December 1890 was duly appointed a constable of police and entered the service of the said Government and was employed by and served the said Government thereafter as a constable of police upon the terms and subject to the conditions *inter alia* that the said Government would pay to the plaintiff a certain yearly salary and that the plaintiff would pay to the said Government the sum of two pounds per centum per annum upon the said salary to be invested by the said Government so as to form portion of a fund called the 'Police Superannuation Fund' and that the said Government would retain the plaintiff in their service and employment until such service and employment should be determined in the manner prescribed by law as set forth in *The Police Act* 1863 and Rules made thereunder." The contract so set forth, if we read it according to the plaintiff's interpretation, is such a contract as no civil servant of the Crown could make, unless he were expressly authorized by Statute. For that proposition I think the case of *Grant* v. *Secretary of State for India* (1) is in point. The claim is accurately described in the head-note, which says:—"In an action against the Secretary of State for India the claim stated that plaintiff accepted a commission in the military service of the East India Company upon the basis and faith of the customs, laws, regulations, and provisions of the company's service, which were (amongst others) that an officer entering the service should continue therein so long as he was physically and mentally efficient—and that, before the removal of any officer from any appointment, he should be made acquainted in writing with the accusation preferred against him and should be summoned to make his defence, having a reasonable time allowed him for that purpose, and that the plaintiff was compelled to subscribe to a military fund to provide for widows and orphans of officers, and that if he had continued in the service his widow would have been entitled to an allowance out of a fund called 'Lord Clive's Fund.' That after the Indian forces had been

(1) 2 C.P.D., 445.

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transferred to the Crown he, while in the performance of military duty, and in all respects physically and mentally competent to perform any duties which were or might be required of him, was, without any charge of misconduct, called upon to retire from the service, in pursuance of a general order made by the Governor General of India with the sanction of the defendant, by which order unemployed officers ineligible for employment by reason of clear misconduct, or proved physical or mental inefficiency &c., might be required to retire upon a pension; and, upon his declining voluntarily to retire, he was compulsorily placed upon the pension-list; and the fact of his removal to the pension-list was notified in the usual way by a general order of the Commander-in-Chief published in the *Gazette*:—*Held*, on demurrer, that the claim disclosed no cause of action, for the Crown, acting by the defendant, had a general power of dismissing a military officer at its will and pleasure, that the defendant could make no contract with a military officer in derogation of such powers; and the customs, regulations, &c., relied on by the plaintiff must be taken to be always subject to it, and incapable of superseding it, and further, that the publication in the *Gazette* was an official act under the authority of the Crown, for which the defendant could not be responsible in an action for libel." *Grove* J., in giving judgment, after stating the material part of the statement of claim, said (1):—"I am of opinion that the East India Company, and afterwards the Crown, had the absolute power to dismiss or compel retirement of an officer in the Indian army; that the power in the nature of Crown Prerogative, conferred upon the East India Company, being for the public benefit, the safety of the realm, and possibly the existence of the Indian empire, could not be waived by contracts with officers; that the relation of an officer to the East India Company and to the Crown is not in the nature of an ordinary contract; and, further, that the allegations and facts set out in paragraph 2 of the statement of claim do not, as stated, constitute a binding contract by which the East India Company abandoned or excluded their power of removal or dismissal at will, as I regard such statement as consistent with the customs,

(1) 2 C.P.D., 445, at p. 453.

laws, regulations, and provisions being general regulations for the ordinary management of the forces, subject to be changed, if necessity or the better discipline or efficiency of the forces should so require." If the principle is the same with regard to military and with regard to civil servants, as I shall show presently that it is, that case applies, and unless there is something in this Statute which authorizes a difference in the ordinary terms of employment between civil servants and the Crown, the case is to be determined upon the principles ordinarily regulating such matters, and it is only upon clear authority on the face of the Statute that the plaintiff can be exempted from the liability to dismissal at the pleasure of the Crown. Does this Statute authorize such a contract? If not, there is no cause of action. Now, the *Police Act* 1863 contains three sections which throw a great deal of light upon this question—secs. 11, 12 and 15. Sec. 11 sets out the form of oath of service which has to be taken alike by the Commissioner, the inspectors, sub-inspectors, sergeants and constables. None of them can hold office until they take this oath and it is an oath to serve, "without favor or affection malice or ill-will for the period of . . . and until I am legally discharged" &c. The next section says:—"Every person taking and subscribing such oath shall be deemed to have thereby entered into a written agreement with and shall be thereby bound to serve Her Majesty as a member of the said force and in the capacity in which he shall have taken such oath at the current rate of pay for such member and from the day on which such oath shall have been taken and subscribed until legally discharged. Provided that no such agreement shall be set aside cancelled or annulled for want of reciprocity. Provided also that such agreement may be cancelled at any time by the lawful discharge dismissal or other removal from office of any such person or by the resignation of any such person accepted by the Commissioner of Police or other person acting in his stead."

Both by his oath and his agreement every member of the force from the highest to the lowest is bound to serve on the terms there laid down, and he cannot by himself terminate his service. It may be terminated at any moment by the other party—that is the Crown, by its officers. There is the further section—sec. 15,

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which provides:—"No constable or other member of the police force shall be at liberty to resign his office or withdraw from the duties thereof unless expressly authorized in writing so to do by the Commissioner of Police or the officer under whom he may be placed or unless he shall give to such officer three months' notice of his intention so to resign or withdraw and any constable or other member who shall so resign or withdraw without such previous permission or notice shall upon conviction in a summary way before any two Justices of the Peace for every such offence forfeit a sum not exceeding twenty pounds." One would think that these sections would scarcely be in need of any judicial interpretation—they are so clear. They are clear that the contract is entirely a unilateral one, that, as long as a man remains in the service as a member of the police force, he is bound by it, and it can only be determined either by cancellation in the terms set out in the section by the Commissioner, acting for the Crown, or by the Commissioner being willing to accept his resignation. But there has been judicial interpretation of it in Victoria in the case of *Power* v. *The Queen* (1) decided in 1873, upon the Victorian Act of 1865. It may be as well to premise that the sections there mentioned compare with the sections in the *Police Act* in this way:—Sec. 9 in the Victorian Act is the equivalent of sec. 11 in the Queensland Act; sec. 10 in the Victorian Act is the equivalent of sec. 12 in the Queensland Act; and sec. 11 in the Victorian Act is the equivalent of sec. 15 in the Queensland Act. Now, in giving judgment in that case, *Barry* J., speaking of the policeman suing, said (2):—"His rights depend on the nature of the contract under which he served. Members of the police force enter into an engagement to serve by taking and subscribing an oath, which is set out in the *Police Regulation Statute* 1865, No. 257, sec. 9." His Honor read sec. 10 of that Act, which is section 12 of the Queensland Act, and then went on to say:—"We are of opinion that the evidence adduced at the trial of the petitioner having taken and subscribed the oath required was sufficient. The verdict found for him on the first and fifth issues will therefore be undisturbed." He then makes further reference to issues which it is not necessary to

(1) 4 A.J.R., 144.

(2) 4 A.J.R., 144, at p. 145.

repeat, and proceeds:—"We are of opinion that the agreement created by the Statute includes a concurrence between the parties. By it the petitioner promised to serve as long as it would please Her Majesty to employ. On this condition his promise was accepted. But this does not include a mutuality or reciprocity of contract and liability. There is in fact but one contracting party, that is the petitioner. Nothing can be clearer than that the engagement entered into is unilateral only, not mutual. It binds him to serve, but does not oblige Her Majesty to retain him in her service beyond the period which circumstances may render necessary. The circumstances which create the necessity may be various, and while the members are not allowed to exercise the privilege of withdrawing from the force when they please without cause assigned or because at some critical emergency some distasteful duty may be allotted to them, they cannot insist on being retained should the social condition of the country render it expedient to reduce certain of the effective members of the force, or should Parliament decline to vote salaries for more than a number deemed sufficient for the maintenance of the public peace. We are of opinion, therefore, that no such contract exists as to entitle the petitioner to maintain this suit on the first or second counts." I entirely approve of that conclusion, and I should like to mention that the case was subsequently approved by the same Full Court in the case of *Green* v. *The Queen* (1). Those three sections in the Queensland Act—11, 12 and 15—being apparently abundantly clear, the question is how do they affect the construction of sec. 6, which apparently has not its equivalent in the Victorian Act. It may be said that sec. 6 taken by itself is ambiguous. That is the best that can be said for the plaintiff's view of that section. Are we to construe the doubtful section so as to obscure the sections that are otherwise clear? That would be an inversion of the principles of construction. But if we use what is clear to remove the doubt as to the ambiguous, we take the correct course. In *The State of Tasmania* v. *The Commonwealth of Australia and State of Victoria* (2) in giving judgment—I mention that case, not merely to quote my judgment, but because it puts the matter

(1) 17 V.L.R., 329; 13 A.L.T., 29. (2) 1 C.L.R., 329, at p. 357.

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in a form, which I think applicable to the present case—I referred to the case of *Warburton* v. *Loveland* (1) in which *Tyndal* C.J. delivering the unanimous opinion of the Judges in the House of Lords said:—"No rule of construction can require that when the words of a Statute convey a clear meaning . . . it shall be necessary to introduce another part of the Statute, which speaks with less perspicuity, and of which the words may be capable of such construction as by possibility to diminish the efficacy of the other provisions of the Act." In the case before the High Court to which I am now referring the question was as to the construction of secs. 89, 92 and 93 of the Constitution. I said (2):—"Applying those expressions to these sections I should say they amount to this: Seeing that sec. 89 has an absolutely clear meaning, the rules of construction do not require us to introduce another part of the Statute which speaks with less perspicuity, and to apply that part to the construction of sec. 89. That would have the effect of diminishing the clearness of sec. 89, and appears to me to be an absolute inversion of the rule which is applicable in such a case. *Hardcastle*, in his work on the *Interpretation of Statutes* (3rd ed.), p. 111, says:—'It is only when, as the Court said in *Palmer's Case* (3), "any part of an Act of Parliament is penned obscurely, and other passages can elucidate that obscurity, recourse ought to be had to such context for that purpose.'" (In other words, while recourse cannot be had to sec. 6 to make secs. 11, 12 and 15 less clear, the clearness of those last sections can be called in to remove any apparent ambiguity in sec. 6.) Then I go on to say, "This cannot apply to the raising, by means of such obscurities, of constructions from which the plain language itself is free. It is not by raising obscurities in sec. 93 that we can diminish the plain meaning of the words in sec. 89. On the other hand, if sec. 93 can be read as in any way obscure, then it is clear that under the opinion expressed in *Palmer's Case* (3) recourse can be had to sec. 89 to clear up that obscurity." That is to say, if sec. 6 itself is ambiguous, the clear sections which I have referred to can be read for the purpose of making sec. 6 clear. Now, repugnance is to be

(1) 2 Dow. & Cl., 480, at p. 500.
(2) 1 C.L.R., 329, at p. 357.
(3) 1 Leach., 355.

avoided, and it seems to me that upon the plain construction, as I have said before, of sec. 11 and the other sections in that line there is a statutory provision which affirms the Crown's right to dismiss the plaintiff; and that statutory provision would be rendered practically nugatory as regards sergeants and constables, but not as regards the Commissioner, the inspectors, and the sub-inspectors, if we adopted the construction contended for by the appellant. Any such construction that we give to sec. 6 would necessitate something in the nature of a judicial proceeding, before the contract could be determined. In taking the course I indicated in the case I have last cited we bring the three secs. 6, 12, and 15 into harmony by holding that sec. 6 does not make a statutory contract shorn of the ordinary term that the Crown can dismiss at pleasure. One may pause here to refer to the case of *Shenton* v. *Smith* (1). In the judgment it is said :—"It has been argued at the bar that a Colonial Government stands on a different footing from the Crown in England, with respect to obligations towards persons with whom it has dealings. Their Lordships do not go into the cases cited for proof of that proposition, for they are quite different from this case, and neither principle nor authority has been adduced to show that in the employment and dismissal of public servants a Colonial Government stands on any different footing than the Home Government. It appears to their Lordships that the proper grounds of decision in this case have been expressed by *Stone* J. in the Full Court. They consider that, unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law-suit, but by an appeal of an official or political kind." That passage seems to be quite sweeping in its application to all classes of public servants whether civil or otherwise. But the matter is put entirely beyond doubt in the case of *Dunn* v. *The Queen* (2), which shows that there can be no distinction in this respect between civil and military service, and that the right to

(1) (1895) A.C., 229, at p. 234. (2) (1896) 1 Q.B., 116.

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dismiss at pleasure has not been at all confined to the question of military service. Lord *Esher's* very plain remarks have been cited by the Chief Justice. Lord *Herschell* says (1):—"It seems to me that it is the public interest which has led to the term which I have mentioned being imported into contracts for employment in the service of the Crown. The cases cited shew that such employment being for the good of the public, it is essential for the public good that it should be capable of being determined at the pleasure of the Crown, except in certain exceptional cases where it has been deemed to be more for the public good that some restriction should be imposed on the power of the Crown to dismiss its servants." And *Kay* L.J. (2) says:—"I think that a general principle has been established by the cases on the subject. Some of those were no doubt cases of military service. It was argued that in such cases other considerations applied, and that it was essential for the advantage of the State that the Crown should have the right of dismissal at pleasure, but that the same considerations did not apply to the civil service. I do not concur in that view. It seems to me that the continued employment of a civil servant might in many cases be as detrimental to the interests of the State as the continued employment of a military officer. It is impossible not to see that in remote places on the frontiers of our territory the question of peace or war might depend on the action of a civil servant on the spot; and it seems to me that there is as much ground for the possession by the Crown of an unrestricted right of dismissal in the case of civil service as there is in the case of military service." What, then, is the reading of sec. 6 which would bring it into harmony with secs. 12 and 15? I drop sec. 11 because that is simply a section embodying the oath. It is a reasonable construction of sec. 6 to say that it is not intended to give sergeants and constables any peculiar privilege by way of tenure. First there is nothing at all to show an intention to cut away the Crown's power of dismissal. There is nothing to show that the authority given to the Commissioner is not merely an additional one, and unless it is shown that this was not intended, the section will be so read. That is to say, the right given to the Commissioner is

(1) (1896) 1 Q.B., 116, at p. 119. (2) (1896) 1 Q.B., 116, at p. 120.

not to take away the power of the Crown to dismiss, and that power would be left standing in addition to the power given to the Commissioner, unless there is plain indication otherwise. I think it is the most probable view of the intention of Parliament to say this: In its earlier part sec. 6, as to the appointment of fit and proper persons as sergeants and constables, is obviously directory to the Commissioner. Is it not a fair interpretation, and one that avoids any possibility of conflict with secs. 12 and 15, to hold that the authority to dismiss is also coupled with a direction to submit to the Government the reasons for his action in the shape of the proof he has found sufficient, so that the Government may approve or otherwise of what he has done? That is a check on hasty action by the depositary of a delegated power, and keeps the Government in a position to correct any such hasty action, if, on considering the evidence submitted, it thinks the person should be reinstated or have any amends made to him. Thus a proper sense of responsibility in the Commissioner is also secured. But all this is a purely administrative plan, and does not involve any judicial proceeding at all, nor do I think any judicial proceeding was intended. It would be strange if the sergeants and constables were placed in such a favoured position as that, while the Commissioner, the inspectors and sub-inspectors are left outside the pale. They are clearly subject to be dismissed at pleasure. First, The *Civil Service Act* 1863, assented to on the same day as the *Police Act*, exempts from its provisions by sec. 1 "officers, constables and other members of the police force." That includes the Commissioner, the inspectors and sub-inspectors. Secondly, they are not included in sec. 6, which is limited to sergeants and constables. But in the third place they are within secs. 11 and 12, and therefore within the principle illustrated by *Power* v. *The Queen* (1). And, apart from secs. 11 and 12, it cannot be pretended that there is any express provision to exempt them from the principle of *Shenton* v. *Smith* (2), so that the Commissioner and inspectors and sub-inspectors may be dismissed at will; but, it is argued, that the sergeants and constables are not to be dismissed without having the protection which their superior

(1) 4 A.J.R., 144.

(2) (1895) A.C., 229.

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officers lack of a charge, inquiry, defence and finding in a judicial proceeding. I cannot accept any such conclusion, for I believe that this Act intends the whole of the members of the police force to be placed on the same footing in this respect, that for obvious reasons of policy applicable to such a force, they are all from the highest to the lowest liable to dismissal at pleasure in that public interest for the protection of which the Crown's Ministers are responsible. I see nothing to bind the Commissioner to stay his hand until the Government has approved. The section is, in my judgment, not framed with an object for the fulfilment of which that delay would be essential. The proceeding not being a judicial one, the next inquiry to my mind is, what is a sufficient submission for the approval of the Government? The Commissioner has himself no power to bring documents before the Executive. Even if the words "the Government" are to be read to mean "the Governor in Council"—which is at least doubtful—the Commissioner has done all that an officer could do by way of submitting the evidence, when he has handed it or forwarded it to the Minister of the Crown responsible for the Police Department. In the exercise of his judgment it is competent for that Minister to obtain an Order in Council approving of the proof as sufficient (for it is the proof which is to be submitted for that purpose); but if the Minister does not choose to take the matter further, and merely contents himself with giving his own official approval of the proof, still the Commissioner has in that case done all that the section directs him to do, and I do not see that such a state of things can possibly give the dismissed servant a cause of action. By reason of the frame and character of the section, as being part of an administrative plan or scheme, it is as a check upon the Commissioner, and not as a privilege to the constable that the provision has been devised. Arguments were addressed to us founded on other Statutes with the view of bringing this case within the decision in the case of *Gould* v. *Stuart* (1). That is a case which the Judicial Committee of the Privy Council held to be one of those referred to in *Shenton* v. *Smith* (2) as exceptions to the general rule. The principal of those Statutes cited to us

(1) (1896) A.C., 575.

(2) (1895) A.C., 229.

on that case was the *Police Act* of 1853, 16 Vict. No. 33, of which it is sufficient to say that, while some of the provisions might give foundation to an argument in favour of the exception, it was repealed by sec. 1. of the present *Police Act*, which does not substitute similar provisions for those referred to. Further arguments were based on the provisions of the *Civil Service Act* 1863 passed concurrently with the Act now in question, and parts of that Act certainly strongly resemble the provisions of Part III. of the *Civil Service Act* 1884 (N.S.W.), on which the Judicial Committee rested their decision in *Gould* v. *Stuart* (1). But then these portions of the Queensland *Civil Service Act* 1863 are not at all reflected in the *Police Act*, and I cannot find, either in that or in the Amending Act of 1891, a body of provisions, or any provisions, dealing with the question of suspension and dismissal upon judicial principles. Sec. 25 of the Amending Act is avowedly for conferring a power to make certain Rules under the provisions of sec. 7 of the Principal Act, and in turning to that section I find that such rules are to be, and must be regarded as, purely disciplinary, and I cannot see how it can be argued that the enactment of sec. 25 of the Amending Statute gives to sec. 6 of the Principal Act a force and meaning that its words were clearly not intended to bear originally.

On the whole case, then, I think the plaintiff has no cause of action, and that, indeed, his statement of claim does not disclose one. I agree as to the manner in which the case should be treated upon this conclusion.

O'CONNOR J. As this case came before the Supreme Court of Queensland it was to obtain a decision as to the sufficiency of the defence. As the matter has been argued before us the principal contention has been that, as the plaintiff has shown on the record that he has no cause of action, it is not necessary for the defendant to make any defence, and, although that point was not expressly raised in the form of the questions, it was apparent on the record as the case comes before us. That being so, it would be a futile proceeding to answer the questions formally put, even if our answer was to be in favour of the plaintiff, if

(1) (1896) A.C., 575.

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when the case went to trial it would be necessary to hold that he must be non-suited. Therefore, it becomes necessary for us to consider the main question which was submitted in argument on behalf of the defendant, namely, whether or not the plaintiff's pleading discloses any cause of action. Before I deal with that I shall make one or two observations as to the decision of the Supreme Court on the questions expressly stated for our consideration. I entirely agree in the view of their Honors of the Supreme Court, that if the plaintiff had a right under sec. 6, to demand that there should be a sufficient proof of his misconduct before he was dismissed, then he had a right to be heard before the Commissioner who was to determine that question. If the Act has given him a right to demand that such proof shall be given, he is entitled on his part to be present, and put the matter to proof in any manner that he thinks fit. Whether the section does give that right is the matter for our consideration. The Supreme Court also decided that the word "Government" in the section must be read as meaning "Governor with the advice of the Executive Council." I cannot assent to that reading. The expression "Governor with the advice of the Executive Council," is used all through the Act in other sections. It is a term with a well-known statutory and constitutional meaning. When the word "Governor" has been used dealing with the same subject matter in different sections of the same Act, *primâ facie*, the word was intended in all the sections to have the same meaning—Governor with the advice of the Executive Council. In fact the word "Government" has no technical meaning in the sense in which it is used in sec. 6. It is a popular expression, and it must be taken to be used, *primâ facie*, in the popular sense; but when we find it contrâ-distinguished in sec. 6 from the other expression in the Act—"Governor with the advice of the Executive Council," it appears to me that it must mean something less than "Governor and the Executive Council," and the only meaning that can be put on it in the connection in which it stands is the Government, that is to say, the administration as represented by some Minister, who acts for the Government generally in the particular matter in question. It means, therefore, in this section, in my opinion, the Minister who has charge of the Police Department. I pass

away from that, because, whatever our answers may be upon those two questions, if we decide that the plaintiff has no cause of action, then it becomes unnecessary to consider the terms or the sufficiency of the defence.

The plaintiff's claim rests entirely upon a contract, and he must make out that the Crown has been guilty of a breach of some contract in dismissing him. We start with the assumption, which is the foundation of the plaintiff's case, that the plaintiff has been dismissed by the Government. The question as to whether that dismissal is wrongful or not depends upon whether the terms of the contract, under which the plaintiff was employed, entitled the Government to dismiss him as they did. It is unncessary for me to repeat the authorities that have already been cited, because the principles of the law to be applied to the case of an employé in the Public Service have been definitely settled for many years, and the statement of those principles will be found in the cases of *Shenton* v. *Smith* (1); *Dunn* v. *The Queen* (2); and *Gould* v. *Stuart* (3). The result of those authorities is this:—That in every case it must be taken to be a condition of service with the Crown that the Crown has the right to put an end to the service at any time, and in any manner that it thinks fit. There is however established by *Gould* v. *Stuart* (3) this qualification that the Crown may by Statute, or in any other way, alter the terms of the contract, so that it becomes, not a contract giving the Crown the right to dismiss at pleasure, but a contract to dismiss only after certain formalities have been observed. In the case of *Gould* v. *Stuart* (3) it was held that the ordinary form of contract between the Crown and the public servant had been altered to the extent of giving a right to the civil servant to demand that his dismissal should take place only after the observance of certain formalities, and Mr. Douglas very properly admitted that this case really turned upon the question—Was it apparent from this Statute—the *Police Act* 1863—that the ordinary incident which I have referred to as a part of the contract between the public servant and the Government, had been altered by the terms of the Statute? Now, the terms of

(1) (1895) A.C., 229.
(2) (1896) 1 Q.B., 116.
(3) (1896) A.C., 575.

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the contract are contained in secs. 11 and 12 of the *Police Act* 1863. I need not refer in detail to them; they have been read already by my learned brother, Mr. Justice *Barton*, and I would only observe that the form of contract with the police is stated in the Act itself. When the Act was passed, constituting the police force of Queensland as one Police Force under one head, taking away absolutely all local control by benches of magistrates, then for the first time, the oath of service was embodied in the Act, and it is precisely the same as that under which a soldier undertakes to serve the King. One can well understand that, the police force being in itself a *quasi* military organization, the form of contract should be the same in both cases. There is also a significant clause in sec. 12, which may throw a good deal of light upon the nature of the contract,—the proviso that no such agreement shall be set aside, cancelled or annulled for want of reciprocity. That section would be meaningless if there were reciprocity in the contract—if there was a right on the part of the constable to demand that his dismissal should not take place except under the conditions laid down in sec. 6. The clause would appear to strongly support the contention that it was intended that the contract should be the same as is ordinarily entered into by the public servants of the Crown with the Government, entirely unilateral—a contract enabling the Government to put an end to it at any time they might think fit.

Now, before dealing with sec. 6 upon which Mr. Douglas has relied, it will be well to revert to the necessity for some such provision in an Act of this kind. Under sec. 14 of the *Constitution Act*, which is the same here as in all the other States of Australia, all appointments to the public service must be made either directly or by duly constituted agency by the Governor with the advice of the Executive Council; but the proviso enacts that the section shall not extend to appointments, which by the Act of the legislature, or by the Governor in Council, may be vested in heads of departments or other officers or persons within the Colony. Therefore every appointment, no matter how small it may be, must be made, either by the Governor with the advice of the Executive Council, or by some officer, who is by Order in Council deputed or who is by Statute authorized, to make such an

appointment. And, in constituting a police force it was obviously necessary to give powers of appointment either to the Commissioner, or some Chief Officer of police either by Order in Council, or by Statute. It was necessary, therefore, that sec. 6 should be passed for that purpose. It was also necessary that the power to appoint should include the power of dismissal. Sec. 6 provides expressly what would otherwise be implied that constables "shall so long as they continue members of the said force have all such powers privileges and advantages and be liable to all such duties and responsibility as any constable duly appointed now has or hereafter may have either by the Common Law or by virtue of any Statute or Act of Council now or hereafter in force in the Colony." It therefore became necessary to provide some expeditious way by which, when the necessity arose, the constable's service should be terminated, so that those powers, privileges, and duties, which the common law imposes, and which a great many Statutes impose upon a constable, should not remain vested in an individual who was unfit to perform police duty. It was also fitting that the officer who exercised this power of dismissal should be directed to have before him sufficient proof of misconduct before he dismissed a constable, and that a record should be made of the proof so that the Government might satisfy themselves as to what had been done. The section, from the point of view which I have been adverting to, is therefore necessary and usual as a provision for the administration of the *Police Act*, having regard to the terms of the Constitution. Thus if we give the words of the section their natural and ordinary meaning, it was merely intended to place in the hands of the Commissioner the power to appoint constables, the power to dismiss them for misconduct or unfitness, with the additional obligation of keeping a record of the reasons for the Commissioner's action.

It is urged, however, that the section has another meaning—that it not merely imposes a duty on the Commissioner to the Government, but it imposes a duty upon the Commissioner to the constable to require sufficient proof of misconduct before the constable is dismissed. In other words, that it gives the constable the right to require, before he can be dismissed, that certain formalities shall be gone through, and that he should

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have an opportunity of being heard in his own behalf. It is contended that, to that extent at all events, the ordinary contract of civil servants has been altered by the section. Only one case has been cited to us, and I think only one can be found, in which the ordinary terms of contract between the public servant and the Government, giving the public servant the right to have some certain formalities complied with before dismissal, is the case of *Gould* v. *Stuart* (1). In the New South Wales Statute which was under consideration in that case elaborate provisions are made for the making of the complaint, the hearing, the adjudication, the statement of the result to the Government, and the action which the Government are to take upon the report. These sections clearly and in express language give the right to a hearing before dismissal, and lay down the procedure which is to be followed. But sec. 6 simply enables the Commissioner to make appointments and to make dismissals, and the enactment relating to sufficient proof is merely incidental. It would seem very unlikely that the well-known incident of dismissal at pleasure, which attaches to all contracts between public servants and the Government, would be so materially altered without some more formal and direct language than that which is used in the section under consideration.

Now, there is one consideration of considerable weight in determining whether this section was intended to so alter the ordinary form of contract between the public servant and the Government. The Commissioner and the commissioned officers of the police force hold their offices upon the usual terms of public service. They have no right of demanding sufficient proof of misconduct, or a hearing before dismissal, and it is unlikely that, if it was intended to give this right to constables, it was not given to the officers commanding them.

Without going any more into detail as to the bearing of the section upon the rest of the Act, I have come to the conclusion that it, putting it in the strongest way for the plaintiff, is capable of being read in two ways, either as giving the right which is claimed to the constable, or as being merely part of the necessary machinery for the administration of the powers of the

(1) (1896) A.C., 575.

Government by the Commissioner. In my opinion the whole meaning and purpose of the Act is inconsistent with holding that the object of the section was any other than merely administrative, and that it would be contrary, not only to the general provisions of the Act, but to the express provisions of the later Act of 1891, to hold that sec. 6 gives any right to the constable to an inquiry before dismissal. Mr. Douglas in a very forcible argument sought to draw from the history of police legislation reasons in support of his contention founded upon an analogy which he said existed between the present office of constable, and the old office of constable at common law. That office, no doubt, is what is called a freehold office, and could not be put an end to except upon a charge of misconduct which the constable had a right to answer. I was rather impressed by that argument at first, but after looking into the Statutes it appears to me that it has no foundation. The earliest of the Police Acts quoted to us was the Act of 1838, which authorized the police magistrates of the towns to nominate and appoint local police, and to swear them in for the purpose of preserving the peace within their localities. That Act gave express power to the justices to appoint or dismiss from employment any constable whom they considered unfit to remain in the service, who was negligent in the performance of his duty, or otherwise unfit for the office; but under that Act there was certainly no power on the part of the constable to demand an inquiry. Then came the Act 16 Vict. No. 53, the *Police Act* 1852, by which the Inspector-General was authorized to appoint all chief and other constables for the metropolitan district and the constables for the mounted patrols, gold escorts, and gold police. In all other districts it was left to the several benches of magistrates to appoint chief and other constables for such districts respectively, thus preserving to a certain extent local control of the police. Now, the only section bearing upon the right of the constable to an inquiry before dismissal under that Act is section 9, which sets out the acts which make a constable liable to be proceeded against before the magistrates for misconduct. It was provided in that section, reading it in the most favourable way to Mr. Douglas's contention, that as part of the punishment the constable might be dismissed

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by the magistrate, and that dismissal was subject to an appeal to the Government. That, of course, is quite a different thing from the creation of a freehold office giving the right to the constable to demand an inquiry before dismissal for misconduct. The provision there evidently was in aid of the enforcement of the performance of police duties by giving the magistrates that power as part of the punishment which might be inflicted upon the constable; but after all the main answer to all these arguments which have been urged from the history of the *Police Act* is the form and structure of the Act of 1863 itself, which swept away all local supervision, and placed the whole of the police force under one central control in the hands of the Government, and provided in detail for its management. That is the Act which we have to construe, and it is that Act, and that Act only, in which we are to find the rights, if there are any rights, which are now claimed on behalf of the constable by Mr. Douglas. I pointed out that that Act contains no such right—that it contains no departure from the ordinary contract of service between civil servants and the Government by which the Government have the right to dismiss at any time they think fit, and for any reason that they think fit, with or without an opportunity to the constable to show cause, as they may deem advisable. Under these circumstances, it appears to me that the plaintiff has no cause of action against the Government. I therefore agree that the appeal must be upheld.

Appeal allowed; order appealed from discharged; all proceedings in the action to be stayed.

Solicitor, for the appellant, *Hellicar, Crown Solicitor.*

Solicitors, for the respondent, *Morris & Fletcher* for *S. N. Johnson,* Charters Towers.

N. G. P.