

H. C. OF A. the meaning of this Act. For that reason I think the appeal
1909. should be dismissed.

SHACKELL
v.
HOWE,
THORNTON &
PALMER.

Appeal dismissed with costs.

Solicitors, for the appellant, *Nunn, Smith & Jeffreson.*
Solicitors, for the respondents, *Blake & Riggall.*

B. L.

[HIGH COURT OF AUSTRALIA.]

CURLEY PLAINTIFF ;

AND

THE COMMONWEALTH DEFENDANTS.

H. C. OF A. *Public servant—Salary — Officer in corresponding position — “Any Australian*
1909. *Colony,” meaning of—Public Service Act 1900 (Vict.) (No. 1721), sec. 19.*

MELBOURNE,
March 23.
Griffith C.J.,
Barton and
O'Connor JJ.

In sec. 19 of the *Public Service Act 1900* (Vict.), which provides that “From the commencement of this Act every officer of the Trade and Customs Defence and Post and Telegraph Departments shall be entitled to receive a salary equal to the highest salary then payable to an officer of corresponding position in any Australian Colony,” the words “any Australian Colony” do not include Victoria.

DEMURRER.

John Michael Curley brought an action in the High Court against the Commonwealth wherein the statement of claim was as follows :—

1. Prior to and from 27th December 1900 to 28th February 1901 the plaintiff was an officer of the Post and Telegraph Department of the Public Service of the State of Victoria within the meaning of sec. 19 of the *Public Service Act 1900* (Vict.) and

prior to and during the aforesaid period and at all times material thereto discharged the duties of a porter in the said Department within the said State.

2. It was provided by sec. 19 of the said *Public Service Act* 1900 that from the commencement thereof (namely 27th December 1900) every officer of the Trade and Customs, Defence and Post and Telegraph Departments should be entitled to receive a salary equal to the highest salary then payable to an officer of corresponding position in any Australian Colony provided that such section should not entitle any officer to receive more than £156 per annum.

3. In one of the Australian Colonies namely the Colony (now State) of Victoria the highest salary payable on the said date namely 27th December 1900 to an officer of corresponding position to the plaintiff namely a porter was the sum of £140 17s. per annum.

4. From 27th December 1900 up to and inclusive of the said 28th February 1901 the plaintiff was entitled by virtue of the Public Service Acts of the State of Victoria to receive a salary in respect of his services as such officer at the rate of £140 17s. per annum.

5. On 1st March 1901 the said Post and Telegraph Department became transferred to the Commonwealth.

6. On 1st March 1901 the plaintiff as such officer as aforesaid became subject to the control of the Executive Government of the Commonwealth and from the said 1st March 1901 to 31st October 1905 inclusive remained in the service of the Commonwealth and during such period discharged the duties of porter in the Post and Telegraph Department of the Commonwealth.

7. The plaintiff has received from the Commonwealth in respect of such services for the whole of the period from the said 1st March 1901 to 31st October 1905 inclusive a salary at the rate of £132 per annum and no more.

8. Under the provisions of the *Commonwealth of Australia Constitution Act* and the *Commonwealth Public Service Act* 1902 and the regulations made thereunder the plaintiff was and is entitled to be paid by the Commonwealth in respect of such services for the said period a salary at the same rate as that

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H. C. OF A. which he was entitled to receive under the Public Service Acts
 1909. of the State of Victoria in force on the said 28th February 1901
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 CURLEY namely £140 17s. per annum.

v.
 THE COM- 9. The amount actually paid in salary to the plaintiff by the
 MONWEALTH. Commonwealth for the period 1st March 1901 to 31st October
 1905 inclusive does not exceed £627 whereas the proportion due
 to him by reason of the foregoing circumstances amounts to
 £668 14s.

10. The plaintiff is entitled to arrears of such salary £41 14s.

The defendants demurred to the statement of claim and the question for argument was:—

Do the provisions of sec. 19 of the *Public Service Act* 1900 (Vict.) entitle the plaintiff, being an officer in the Department of the Colony of Victoria described in the statement of claim, to the highest salary payable at the date of the commencement of the said Act to another officer of corresponding position in Victoria?

McArthur (with him *Lewers*), for the defendants in support of the demurrer. The only object of sec. 19 of the *Public Service Act* 1900 was to put officers in the specified Departments in positions as good as those of officers holding corresponding offices in the Departments of the other Colonies of Australia, and all of whom were in a short time to become officers of the Commonwealth: *Miller v. The King* (1); *Miller v. The Commonwealth* (2); *Bond v. The Commonwealth* (3). It was not intended by that section to raise the salary of any officer to an equality with the salary of any other officer in a corresponding position in Victoria who was receiving a higher salary. Such an intention is contrary to the whole of the *Public Service Act* 1900.

Duffy K.C. (with him *Macfarlan*), for the plaintiff *contra*. The object of the section was that these officers who were going over to the Commonwealth service from Victoria should be as well off, not only as those who were going over with them from the other Colonies, but also as those other Victorian officers with whom they were going over. See secs. 1, 8, 12, 20. Looking at

(1) 28 V.L.R., 530; 24 A.L.T., 150.

(2) 1 C.L.R., 668.

(3) 1 C.L.R., 13.

the general objects of the Act, there is no reason for limiting the generality of the expression "any Australian Colony" to any Australian Colony other than Victoria. No ambiguity arises unless it is assumed that the legislature was contemplating the possibility of higher salaries being paid for similar services in other Colonies only. If the words are considered apart from that assumption, their meaning is clear and they are apt to express the intention of the legislature. See *Hardeastle (Craies) on Statutes*, 4th ed., p. 66.

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McArthur, in reply, referred to *Maxwell on Statutes*, 4th ed., p. 30.

GRIFFITH C.J. The Court is invited once more to consider sec. 19 of the *Public Service Act* 1900, which came into operation four days before the establishment of the Commonwealth. It provides that:—"From the commencement of this Act every officer of the Trade and Customs Defence and Post and Telegraph Departments shall be entitled to receive a salary equal to the highest salary then payable to an officer of corresponding position in any Australian colony. Provided that this section shall not entitle any officer to receive more than one hundred and fifty-six pounds per annum." The Court has on previous occasions pointed out that this section is to be read in view of the fact that four days later the Trade and Customs Department would be transferred to the Commonwealth—because 1st January 1901 was fixed as the day upon which the Constitution of the Commonwealth was to come into operation—and that the other Departments, though they might not be taken over so soon, would, it was known, be taken over before long. Then this section was passed. It formed part of an Act which dealt with a number of matters relating to the Public Service of Victoria and principally with officers who would not be transferred to the Commonwealth. I myself am unable to derive much assistance from the rest of the Act. This sec. 19 stands by itself, and is intended to confer on the officers mentioned certain distinct privileges. If the words are quite clear and unambiguous, as I think they are, we need go no further. What idea does this section

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convey to anybody who reads it knowing that in four days, in the one case, and in a very short time in the others, these officers would cease to be officers of the Government of Victoria and would take over to the Commonwealth all their existing rights as public servants. To my reading, knowing those facts only, they seem to suggest this:—Hitherto there have been six several Departments administering the Customs of Australia. Next week there will be only one, and there will be officers from Victoria and officers from the other Colonies in the one Department. The section then speaks of officers of corresponding positions in any Australian Colony.

The idea that conveys to my mind is a comparison between officers in a Victorian Department and officers holding corresponding positions in the same Department in some other Australian Colony. That is the only idea the words convey to my mind.

It is quite possible for the words “any Australian Colony” to include Victoria also. If there is an ambiguity the second of the rules in *Heydon's Case* (1), is very *apropos*. What was the mischief and defect for which the Constitution of the Commonwealth, which was coming into operation in a few days, did not provide? As soon as that question is asked the answer is apparent. There were then six different Departments in Australia which were about to be united in a few days. The remuneration of officers holding corresponding positions in those Departments varied very greatly. In some cases the officers in other Australian Colonies might be better off than officers holding corresponding positions in Victoria, in other cases they might be worse off. The section plainly says that officers transferred from a Victorian Department should not be in a worse position than those transferred from any other Colony. I do not think the words are apt to express any other idea, and if they are, having regard to all the circumstances, I think it is quite impossible for them to have any other meaning in this Act.

The other meaning contended for is that every officer in the Departments mentioned shall be entitled to receive a salary equal to the highest salary then payable to an officer of corresponding position in his Department. That would be a most

(1) 3 Rep. 7a.

extraordinary thing to say. If the legislature meant that, I think we would certainly expect to find some such words as these "Every officer," &c., "shall be entitled to receive the highest salary payable to any other officer holding a corresponding position in his Department or holding a corresponding position in any other Australian Colony." I think that we are practically asked to interpolate these words in the section. As said by counsel on both sides, it is difficult to come to any conclusion except that the words are plain. In my opinion they are plain, and the plaintiff fails.

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BARTON J. I concur. I cannot see how any other conclusion could be come to by any reasonable person.

O'CONNOR J. I concur. The matter is so plain that I do not think it worth while to add anything.

Judgment for defendants with costs.

Solicitors, for the plaintiff, *Rigby & Fielding*.

Solicitors, for the defendants, *C. Powers*, Commonwealth Crown Solicitor.

B. L.