[PRIVY COUNCIL.]

WILLIAMS . . . . . APPELLANT;

AND

THE CURATOR OF INTESTATE ESTATES (SUBSTITUTED FOR GREVILLE, DECEASED) } RESPONDENT.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

PRIVY COUNCIL.* 1908. June 3. 1909. March 31.

Civil Service Act 1884 (*N.S.W.*), (48 *Vict. No.* 24), *secs.* 10, 46, 48—*Public Service Act* 1895 (*N.S.W.*), (*No.* 25 *of* 1895), *secs.* 8, 59, 60, 67, 70—*Public Service—Services of officer dispensed with—Abolition of office—Right to compensation.*

An officer of the Public Service of New South Wales, entitled before the *Public Service Act* 1895 (N.S.W.) came into operation to the benefits conferred by sec. 10 of the *Civil Service Act* 1884 (N.S.W.), whose services were dispensed with under sec. 8 of the Act of 1895, and who received the compensation provided by sec. 60 of that Act, is excluded by sec. 67 from any other compensation, notwithstanding that his retirement was "in consequence of the abolition of his office" within the meaning of that expression in the Act of 1884.

Decision of the High Court: *Greville* v. *Williams*, 4 C.L.R., 694, reversed, but on a different ground, and the decision of the Supreme Court of New South Wales: *Greville* v. *Williams*, (1905) 5 S.R. (N.S.W.), 600, restored.†

*Present—Lord Loreburn L.C., Lord Macnaghten, Lord Atkinson, Lord Collins and Lord Gorell.

†On 27th May 1909, at the sittings of the High Court in Sydney, *Griffith* C.J. said in reference to this decision of the Privy Council:—

In what I am about to say I speak for my brothers *Barton* and *O'Connor* and myself. In a case of *Greville* v. *Williams* an appeal was brought to this Court from the Supreme Court of New South Wales. The appellant claimed to be entitled to a pension under the *Civil Service Act* of 1884, and the principal question raised was whether his office in the Civil Service had been abolished. This Court, differing from the Supreme Court, held that it had been abolished, and allowed the appeal. The respondent was a nominal defendant representing the Government of New South Wales. On 1st June 1907 His Majesty in Council granted leave to appeal from the judgment of this Court, the defendant submitting to pay all the costs of the appeal in any event if the Judicial Committee should so

APPEAL to His Majesty in Council from the decision of the High Court: *Greville* v. *Williams* (1).

The judgment of their Lordships was delivered by

LORD MACNAGHTEN. This is an appeal from an order of the High Court of Australia, which reversed the decision of the Full Court of New South Wales and directed a verdict to be entered for the plaintiff in the action.

The plaintiff, Henry James Greville, was a member of the Civil Service of New South Wales. His services were dispensed with, as from 30th of June 1896, by the Public Service Board, established under the *Public Service Act* 1895. At the date of

direct. The plaintiff Greville (respondent in the appeal to the Privy Council) having died in July 1907, application was made to this Court by the defendant Williams for a declaration that the Curator of Intestate Estates, who had been appointed to collect and administer Greville's estate, was in the opinion of the Court the proper person against whom the appeal should be revived, and on 22nd November 1907 the Court (constituted by my brothers *Barton* and *O'Connor* and myself) made the declaration asked for. Before the declaration was drawn up it occurred to us that, as the appellants were the Government of New South Wales, and as the person against whom the appeal would thus be revived was an officer of that Government, there might be a risk that he would not very strenuously oppose the views of his superiors, and the point was considered whether the declaration should not be recalled unless some assurance was given that the interests of Greville's family would be protected. But on further consideration, and remembering that the leave to appeal had been granted on the submission of the Government to pay the costs of both parties, we thought that to do so might be regarded as casting an imputation upon the good faith of the Government. Our expectations were not fulfilled. The Curator of Intestate Estates did not enter an appearance in the appeal, which was consequently heard *ex parte*. Judgment was delivered on 31st March 1909. The Judicial Committee indicated their surprise that, although the order giving leave to appeal had provided for the respondent's costs in any event, he was not represented on the argument. They did not dissent from the opinion of this Court on the point decided by it, but allowed the appeal on another ground not taken in the Australian Courts. It would be unbecoming in us to criticize the judgment of the Board, but we may be permitted to point out that in three out of the four cases in which the judgment of this Court has been reversed by the Judicial Committee (the fourth case is *Macintosh* v. *Dun*, 6 C.L.R. 303), the decision has been based on materials not adverted to in Australia—in one of them (so far as the Board dealt with matters discussed in the High Court) on a supposed fact not mentioned in the evidence in the case, and the existence of which we think no Australian counsel would have had the temerity even to suggest, but which was alleged in the *ex parte* petition for special leave to appeal. In the present case the statutory provisions upon which their Lordships apparently rely were not brought to our notice, and we are to this day not aware of their existence. We have thought it our duty to make these observations in order that they may be formally recorded as a warning to the Court not to repeat the error into which, we think, we fell in not taking sufficient precautions to ensure that the person whom we named as the proper person against whom the appeal in *Greville* v. *Williams* should be revived, would take steps for a due presentation of the respondent's case to the tribunal of appeal, and also as a warning of the danger of allowing new points to be made on appeal which are not raised in the Court from which the appeal is brought.

(1) 4 C.L.R., 694.

PRIVY COUNCIL. 1909.

WILLIAMS v. CURATOR OF INTESTATE ESTATES.

his retirement he was fifty-eight years of age and had forty-one years of service to his credit. On retirement he received such benefits as he appeared to be entitled to under the Act of 1895, in the shape of a refund of his contributions to the Superannuation Account established by the *Public Service Act* 1884, and a gratuity as provided by sec. 60, sub-sec. (1) of the Act of 1895. On the passing of the *Public Service (Superannuation) Act* 1899, he received, in addition, a pension, calculated in accordance with the provisions of that Act. In June 1905 he brought this action against the Government claiming an increased pension on the ground that his services had, in fact, been dispensed with in consequence of the abolition of his office, and that consequently he was entitled to the benefits in that case provided by the Act of 1884. He failed in the Courts in New South Wales, but succeeded in the High Court. Special leave to appeal against the order of the High Court was applied for and granted. The amount in dispute was not large, but it appeared that other cases depended on the result of the action, and the order of the High Court seriously affected the construction of the Act of 1895. Shortly after leave was granted the plaintiff died, and the appeal has been revived against the Curator of Intestate Estates as the plaintiff's legal personal representative. The case was heard *ex parte*, although the order granting leave to appeal provided for the respondent's costs in any event. The judgments of the learned Judges of the High Court seem to turn almost entirely on the question whether the plaintiff's retirement was or was not "in consequence of the abolition of his office" within the meaning of that expression in the Act of 1884. That, no doubt, is a question of some difficulty. Their Lordships are disposed to think that the judgment of the High Court is right on the point, assuming the point to be open. But, with the utmost respect, it appears to their Lordships that that was not the real question. There is the preliminary question which, in the argument before the High Court, does not seem to have received so much attention as, in their Lordships' opinion, it deserves. The question is:— Was it competent for the plaintiff, having regard to the express provisions of the Act of 1895, to fall back on the Act of 1884?

In the opinion of their Lordships, the question at issue between

the parties must depend on the provisions of the Act of 1895, and the action of the Public Service Board. But it will be convenient, in the first place, to refer briefly to the Act of 1884 and to explain the position of the members of the Civil Service at the time of the passing of the Act of 1895.

Now, the Act of 1884 seems to have been the first attempt in the State to regulate the Civil Service by Statute, and to provide pensions and gratuities on a large and liberal scale for civil servants on retirement. The Act, which came into operation on 1st of January 1885, recites in the preamble that "it is expedient that officers of the Civil Service should be classified and that a scale of salaries and a system of appointments, promotions, and retiring allowances should be established, and that other provisions for the regulation of the Service should be made," and then, after an interpretation clause, which throws no light on the question under consideration in the High Court, comes the body of the Act. It is divided into six parts. Part I., headed "Classification," contains the following clause, which was much discussed in the argument in connection with the meaning of the expression "abolition of office":—

"10. If the services of any officer shall be dispensed with in consequence of the abolition of his office or any departmental change, and not from any fault on his part, such officer may be required at the rate of salary last received by him to perform any duty for which he is considered competent in any public department and, should he refuse such change of duty, he shall not be entitled to receive any compensation.

Then the Act provides for the appointment of a Civil Service Board to carry out the purposes mentioned in the preamble.

Part V. contains clauses numbered 42-52. Clause 43 allows officers to retire at the age of 60. Clause 44 allows retirement under that age in case of ill-health. Clause 46 is in these terms:—

"46. When the services of any officer are dispensed with in consequence of the abolition of his office and no other office can be offered to him at the same salary as hereinbefore provided" [referring evidently to Clause 10] "or at a salary not less than five-sixths of the same, he shall be entitled to retire upon the superannuation allowance hereinafter provided."

PRIVY COUNCIL. 1909.

WILLIAMS v. CURATOR OF INTESTATE ESTATES.

Clause 48 lays down the scale of superannuation allowances.

Part VI., headed "Civil Service Superannuation Account, Miscellaneous," provides for setting up an account called "the Civil Service Superannuation Account." It was to be maintained by a grant from the Consolidated Revenue Fund and the transfer of a grant from that fund limited to £3,500 per annum, under the Imperial Act 18 & 19 Vict. c. 54, subject to existing and future claims thereon, and also by a levy of 4 per cent. per annum on the salaries of all members of the Civil Service to whom the Act applied.

The Act of 1895, passed on 23rd December 1895, was more drastic in its operation. It repealed the whole of the Act of 1884 except clauses 1 and 2 (short title and interpretation) and except Part V. and the provisions in Part VI. relating to the Civil Service Superannuation Account. It established a Board called "the Public Service Board" and conferred on that Board far larger powers than those enjoyed by the Civil Service Board. It provided (sec. 7) that the permanent head of each Ministerial Department of the Public Service should furnish the Board with a return showing the number of officers in his department, their respective salaries, emoluments, and duties and other particulars specified in the section, including the date of each officer's appointment and the length of his service. Sec. 8 required the Board to inspect every department and investigate the character of the work performed by every officer therein, and the efficiency, economy, and general working of such department both separately and in its relation to other departments. Then the section goes on to declare that—

"If the Board shall at any time find that a greater number of persons is employed in any department than it may determine to be necessary for the efficient working thereof, such persons as are in excess may, if practicable, be transferred to any other department which in the opinion of the Board requires additional assistance, and if the persons so found to be in excess cannot be usefully and profitably employed in any other department, their services shall be dispensed with subject to the provisions of sec. 60 hereof."

Sec. 60, so far as material, is in the following words:—

"60. If the services of any person permanently employed in the Public Service shall be dispensed with by the Board . . . otherwise than for an offence, then—

"(1) If such person shall have been employed in the Public Service before and at the date of the commencement of this Act and shall be a contributor to the Superannuation Account under the provisions of the *Civil Service Act* of 1884, but shall not be entitled to retire under secs. 43 and 44 of that Act, such person shall receive a refund of the amount of his contributions to such Account calculated to the date on which his services shall have been dispensed with, together with a gratuity not exceeding one month's pay for each year of service from the date of his permanent appointment and a fortnight's pay in respect of each year of temporary service, such gratuity to be calculated on the average of his salary during the whole term of his employment and to be payable only in respect to service prior to the commencement of this Act."

The only other material section in the Act of 1895 is sec. 67, which is in the following terms:—

"67. Except as in this Act provided no officer in the Public Service shall be deemed to be entitled to any compensation by reason of any reduction of his salary or in consequence of his services being dispensed with."

At the trial the Chairman of the Public Service Board deposed that in 1896 the Board went through the Bankruptcy Department. "We dealt with it," he said, "and graded it. It appeared that a greater number of persons were employed than was necessary. Plaintiff was one of the number in excess, and could not be usefully and profitably employed in any other department. His services were then dispensed with by the Board."

In the New South Wales Government Special *Gazette* of 4th of July 1896 a notice appeared stating that His Excellency the Governor, with the advice of the Executive Council and upon the recommendation of the Public Service Board, had approved of the retirement of the undermentioned officers from the Public Service under the provisions of the *Public Service Act* of 1895 as from the 30th ultimo. Then follows a list of names; among them appears "Mr. Henry James Greville, Accountant and

PRIVY COUNCIL. 1909.

WILLIAMS v. CURATOR OF INTESTATE ESTATES.

Cashier, Bankruptcy Office." Sec. 70 of the Act of 1895 enacts that all notices of retirements and removals of officers under the Act shall be published in the Special *Gazette*, and that "every such notice shall be deemed and taken to be conclusive evidence of every such . . . retirement or removal."

As already stated, the plaintiff on his retirement received a refund and gratuity in accordance with the provisions of sec. 60. His services were dispensed with under the *Public Service Act* 1895. The Public Service Board had no power to deal with his case under any other Act. He received the compensation provided by sec. 60. Sec. 67 excluded him from any other compensation.

It is quite true that the office of Accountant and Cashier in Bankruptcy was not filled up on the plaintiff's retirement by the appointment of a successor with the same title. The duties were performed by a gentleman who was graded as "Clerk," and continued to be officially described by that designation. Assuming, however, that the change of designation amounted in the case of the plantiff to the "abolition of his office" within the meaning of sec. 46 of the Act of 1884, their Lordships are unable to understand upon what grounds the plaintiff could claim the right to resort to that Act when no such right was reserved or granted to him by the Act of 1895. Secs. 43 and 44 of the Act of 1884 do not depend on any action by the Civil Service Board. But sec. 46 could only come into operation on the abolition of an office by, or at the instance of, the Civil Service Board, which is now defunct, or under the provisions of sec. 62 of the Act of 1895 in the case of an officer continued by the Public Service Board in the service after the passing of the Act for 12 months and then removed without any fault on his part. Then it is made applicable, though otherwise it would not apply.

Their Lordships will therefore humbly advise His Majesty that the Order of the High Court should be reversed, but without costs, and that the Order of the Full Court of New South Wales and the Judgment of *Pring* J., dismissing the plaintiff's action, should be restored.

There will be no costs of this appeal.