

## [HIGH COURT OF AUSTRALIA.]

SCHEDLICH . . . . . PLAINTIFF;

AGAINST

THE COMMONWEALTH . . . . . DEFENDANT.

H. C. OF A.  
1926.

ADELAIDE,  
Sept. 23.

MELBOURNE,

Oct. 4.

Rich J.

*Public Service of the Commonwealth—Transfer of Department from State to Commonwealth—“Existing and accrued rights” of transferred officer—Chance of promotion—Reduction of salary on classification—The Constitution (63 & 64 Vict. c. 12), secs. 69, 84—Commonwealth Public Service Act 1902 (No. 5 of 1902), secs. 8, 9, 20, 42—Civil Service Act 1874 (S.A.) (37 & 38 Vict. No. 3), secs. 9, 22\*—Public Service Regulations of 23rd December 1902, reg. 100.*

*Held, by Rich J., (1) that the chance of promotion from one class to a higher class of an officer in the Civil Service of South Australia at the time when the Department to which he belonged was transferred to the Commonwealth pursuant to sec. 69 of the Constitution was not, having regard to the conditions contained in sec. 22 of the Civil Service Act 1874 (S.A.), an existing or accruing right of that officer within the meaning of sec. 84 of the Constitution; (2) that the fact that such an officer, who was retained in the Public Service of the Commonwealth and who was then receiving the maximum salary of his class, had, before his formal classification under the Commonwealth Public Service Act 1902 came into operation, received from time to time increments to his salary, did not confer any right upon him to continue to receive the increased salary or preclude the Public Service Commissioner from allotting to him any salary, so long as it was equal to or greater than that which he was receiving at the date of the transfer.*

\* Sec. 22 of the *Civil Service Act 1874* (S.A.) provides that “When in the Ordinary Division any vacancy occurs, if it be expedient to fill up such vacancy, the Governor shall promote to such vacancy that officer, being qualified, and most deserving of promotion, who shall stand next in rotation on the classified list of that Division of the Service . . . . Provided that noth-

ing in this clause shall prevent the Governor from appointing any properly qualified non-classified officer to such vacancy, pursuant to clause 15 of this Act, or any other properly qualified person, although not previously engaged in the Civil Service, in any case where he shall think any special circumstances may render it necessary so to do.”



HEARING of action.

An action was brought in the High Court by Alfred Lewis Schedlich against the Commonwealth and was heard by *Rich J.*, in whose judgment hereunder the material facts are stated.

*Ligertwood* and *Wright*, for the plaintiff.

*Piper K.C.* and *Powers*, for the defendant.

H. C. OF A.

1926.

SCHEDLICH

v.

THE

COMMON-  
WEALTH.

*Cur. adv. vult.*

*RICH J.* delivered the following written judgment:—In this action the plaintiff claims that during the period from 1st November 1905 to 31st August 1912 he was paid by the Commonwealth £90 15s. 3d. less than the amount to which he was entitled. He claims a declaration that the defendant was not entitled to reduce his salary on 1st November 1905 or at all. The question for determination was stated by counsel to be whether under the circumstances the defendant had power under the *Commonwealth Public Service Act* 1902 to reduce the salary of transferred officers. Counsel for the defendant waived any objection under sec. 78 of that Act.

Oct. 4.

The facts agreed upon are as follows:—

“(1) For some time prior to 1st March 1901 the plaintiff was a member of the Public Service of the State of South Australia employed in the Postal Department, and was a classified officer of the sixth class and in receipt of a salary of £150 per annum, the maximum salary for the said sixth class under the *South Australian Civil Service Act* 1874.

“(2) On 1st March 1901 the Postal Department of the State of South Australia was transferred to the Commonwealth of Australia.

“(3) On the said 1st March 1901 the plaintiff was transferred with the Postal Department of the State of South Australia to the Public Service of the Commonwealth of Australia and became a clerk in the Department of the Postmaster-General and has remained therein continuously until the present time.

“(4) From the said 1st March 1901 to 31st August 1901 the plaintiff was paid a salary at the rate of £150 per annum.



H. C. OF A.  
1926.

SCHEDLICH

2.

THE

COMMON-  
WEALTH.

Rich J.

“(5) On 26th August 1901 the Deputy Postmaster-General for the State of South Australia recommended for the approval of the Postmaster-General the appointment from 1st September 1901 of plaintiff as a fifth class officer in the Post and Telegraph Department at a salary of £160 a year. That recommendation was subsequently approved by the Postmaster-General, and the appointment was approved by the Governor-General on 8th November 1901.

“(6) From the said 1st September 1901 the plaintiff was paid salary at the following rates: 1st September 1901 to 31st August 1902, £160 per annum; 1st September 1902 to 31st August 1903, £170 per annum; 1st September 1903 to 31st August 1904, £180 per annum; 1st September 1904 to 31st October 1905, £190 per annum.

“(7) The Governor-General, pursuant to the *Commonwealth Public Service Act* 1902, on 2nd November 1905 approved of the classification of the Public Service of the Commonwealth as recommended by the Public Service Commissioner, in his report to His Excellency the Governor-General dated 14th June 1904 as amended on 23rd June 1905 and as further amended on 11th October 1905, and ordered and directed that the classification as so amended and approved be deemed to have effect on and from 1st July 1904.

“(8) In such recommendation the Public Service Commissioner recommended that plaintiff be, and by the same and the approval thereof and the Governor-General's said order plaintiff was, classified as an officer in the Clerical Division of the Commonwealth Public Service and in the fifth class, sixth sub-division of such Division with a salary of £170 per annum.

“(9) The plaintiff was an officer in the fifth class of the Clerical Division of the said Public Service at all times from 1st November 1905 to 10th May 1907.

“(10) The plaintiff was paid salary at the rate of £170 per annum from 1st November 1905 until 9th May 1907.

“(11) On 25th April 1907 the plaintiff was lawfully appointed to be despatching officer, General Division, Mail Branch, with a salary of £174 per annum as from 10th May 1907, and from the last-mentioned day to 11th September 1912 he was at all times a despatching officer in the General Division of the Commonwealth Public



Service. By the Regulations under the Public Service Acts the salary attached to the said office of despatching officer was not less than £174 per annum for the first year in which an officer held the office, and not less than £174 per annum nor more than £180 per annum afterwards.

H. C. OF A.  
1926.  
~  
SCHEDLICH  
v.  
THE  
COMMON-  
WEALTH.  
—  
Rich J.

“(12) The plaintiff was paid salary at the rate of £174 per annum from 10th May 1907 until 31st May 1908, and at the rate of £180 per annum from 1st June 1908 until 11th September 1912.

“(13) The plaintiff claims that he should have been paid at the rate of £190 per annum from 1st November 1905, and claims the deficiency,” namely, £90 4s. 6d.

With these facts is to be incorporated reg. 100 of the Regulations made under the Act and published in the *Commonwealth Gazette* of 23rd December 1902 (p. 635), which is as follows: “Notwithstanding anything contained in these Regulations, officers may, until the Commissioner has made full inquiries and classified them, continue to receive the salaries or wages provided under the State Acts or Regulations, but thereafter shall not continue to receive such salary or wages unless approved by the Governor-General upon the recommendation of the Commissioner.”

Upon his transfer from the Service of the Province of South Australia the plaintiff surrendered himself to the control of the Executive Government of the Commonwealth. It was not suggested that any of the plaintiff’s “existing and accruing rights” preserved to him by the Constitution were invaded.

At the date of transfer, 1st March 1901, the plaintiff was an officer in the sixth class of the Ordinary Division of the Civil Service of South Australia and was in receipt of the maximum salary thereby limited. So far as he was concerned the annual increases were exhausted (*Civil Service Act* 1874, sec. 9). His chance of promotion was not, I think, an existing or accruing right having regard to the conditions in sec. 22 of that Act.

During the transitional period from 1st March 1901 until the classification of the Public Service of the Commonwealth referred to in par. 7 of the admitted facts, the plaintiff was appointed to the fifth class (see sec. 9 of the *Civil Service Act* of South Australia) and received the increases in salary before mentioned in par. 6.



H. C. OF A. The authority for this action rested, it was said, on secs. 70 and  
 1926.  
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 SCHEDLICH v. THE COMMON-WEALTH.  
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 Rich J.

The authority for this action rested, it was said, on secs. 70 and 108 of the Constitution operating on the *Civil Service Act* up to 1st January 1903, the date of the commencement of the *Commonwealth Public Service Act* 1902, and thereafter was based on reg. 100. No order was made under sec. 20 of the *Commonwealth Public Service Act* 1902. Mr. *Ligertwood*, who argued the plaintiff's case very well, contended that the Commissioner was bound to classify the officers as he found them at the date of classification, and the classification must be on the basis of existing salaries: no general power of reduction was conferred by the Act, the only power was that contained in sec. 46. I cannot accede to this argument. The plaintiff's existing and accruing rights being fully satisfied, I do not consider that the plaintiff's provisional treatment during the transitional period until the formal classification came into operation conferred any right upon him which warrants the claim for the salary he was receiving at the date of classification or which precluded the Commissioner from allotting any salary, so long as it was equal to or greater than the salary the plaintiff was receiving at the date of transfer: that salary was £150 per annum, and under the classification the plaintiff was given £170 per annum.

I dismiss the action, but, as this is a test case which may affect similar cases in other States, I make no order as to costs.

*Judgment for the defendant.*

Solicitors for the plaintiff, *Baker, McEwin, Ligertwood & Millhouse*.  
 Solicitors for the defendant, *Fisher, Powers & Jeffries*.

B. L.