[HIGH COURT OF AUSTRALIA.]

GEDDES . . . . . APPELLANT;
DEFENDANT,

AND

MAGRATH . . . . . RESPONDENT.
PLAINTIFF,

MORGAN . . . . . APPELLANT;
PLAINTIFF,

AND

GEDDES . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1933.

SYDNEY, *Nov.* 14, 24.

Gavan Duffy C.J. Rich, Starke, Dixon, Evatt and McTiernan JJ.

Public Service—Officers—Appointment under statute—Abolition of office—"Services dispensed with . . . otherwise than according to law"—Compensation—Computation of amount—Industrial Arbitration (Amendment) Act 1926 (*N.S.W.*) (*No.* 14 *of* 1926), *secs.* 6 (4)*, 8 (1)*—*Industrial Arbitration (Amendment) Act* 1932 (*N.S.W.*) (*No.* 39 *of* 1932), *sec.* 6*—*Interpretation Act* 1897 (*N.S.W.*) (*No.* 4 *of* 1897), *sec.* 30*.

The right to "such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law," conferred by sub-sec. 2 of sec. 6 of the *Industrial Arbitration (Amendment) Act* 1932

* The *Industrial Arbitration (Amendment) Act* 1926 (N.S.W.) provides:—By sec. 6 (4): "The Governor may appoint a person qualified to be appointed commissioner to be a deputy commissioner for such time as the Governor may fix, and such deputy commissioner shall have and exercise such jurisdiction and powers of the commissioner as may be prescribed." By sec. 8 (1):—"The Minister may, in the manner prescribed, establish conciliation committees for any industry or calling for which a board is con-

(N.S.W.) upon a person whose office has ceased to exist by reason of sub-sec. 1 of that section, is a right to receive the amount to which he would have been entitled if he had been unlawfully deprived of his office.

Per Gavan Duffy C.J., *Evatt* and *McTiernan* JJ.: In order to determine the amount of such compensation, each person described in sec. 6 (2) should be regarded as entitled to receive the same amount of money as he could have recovered if his *de facto* appointment had been lawful.

Per Rich, *Starke* and *Dixon* JJ.: An appointment by the Minister, under sec. 8 (1) of the *Industrial Arbitration (Amendment) Act* 1926 (N.S.W.), of a chairman of conciliation committees, although expressed to be for a fixed term, could be determined by the Minister under sec. 30 of the *Interpretation Act* 1897 (N.S.W.), but compensation to a chairman for loss of office under sec. 6 of the *Industrial Arbitration Amendment Act* 1932 (N.S.W.) might properly be assessed on the assumption that, if his office had not been abolished by statute, the chairman would have continued in office until the end of the term for which he had been appointed.

Decision of the Supreme Court of New South Wales (Full Court): *Magrath* v. *Geddes*, (1933) 34 S.R. (N.S.W.) 25; 50 N.S.W.W.N. 212, affirmed, subject to a variation: *Morgan* v. *Geddes*, (1933) 34 S.R. (N.S.W.) 25; 50 N.S.W.W.N. 212, reversed.

APPEALS from the Supreme Court of New South Wales.

Geddes v. *Magrath*.—Edward Crawford Magrath sued William Butler Geddes, as nominal defendant on behalf of the Government of New South Wales, claiming compensation under sec. 6 (2) of the *Industrial Arbitration Amendment Act* 1932 (N.S.W.). The action was tried before *Street* J., without a jury, on 31st May and 14th June 1933.

The plaintiff was appointed to the position of deputy industrial commissioner under the provisions of sec. 6 of the *Industrial*

stituted, or for any industry or calling for which for the purpose of establishing a committee the commissioner may recommend that a board be constituted. The Minister may appoint such number of persons as may be prescribed to act as chairmen of conciliation committees and may fix their remuneration."

The *Industrial Arbitration (Amendment) Act* 1932 (N.S.W.), which came into operation on 6th December 1932, provides, by sec. 6:—"(1) Upon the commencement of this Act the offices of deputy commissioner and of the chairmen of conciliation committees shall cease to exist. (2) The deputy commissioner and each chairman of conciliation committee shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law."

The *Interpretation Act* 1897 (N.S.W.), provides, by sec. 30:—"Wherever by any Act power is given to Her Majesty, or to the Governor or to any officer or person, to make appointments to any office or place, it shall, unless the contrary intention appears, be intended:—(*a*) That such power shall be capable of being exercised from time to time, as occasion may require; and, (*b*) That Her Majesty or the Governor, or such officer or person shall have power to remove or suspend the person appointed."

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Arbitration (Amendment) Act 1926, for a period of three months from 24th June 1931, with salary at the rate of £1,000 per annum. The plaintiff's appointment was extended for a further period from 24th September until 31st December 1931, and on 19th November 1931 he was formally appointed for five years from 24th September 1931. On 6th December 1932, the plaintiff was informed by the Under-Secretary of the Department of Labour and Industry that the *Industrial Arbitration (Amendment) Act* 1932 had been proclaimed as from that day, and his attention was drawn to sec. 6 of that Act which provided that upon the commencement of the Act the offices of deputy commissioner and chairmen of conciliation committees should cease to exist, and that the holders of those offices should receive such compensation as they would have been entitled to had their services been dispensed with otherwise than according to law. Thereupon the plaintiff ceased to hold the office of deputy commissioner, and no further payment of salary was made to him after 6th December 1932. At that date, owing to the operation of the *Public Service Salaries Act* 1931-1932 (N.S.W.), which was due to expire on 30th June 1933, and had not at the date of the hearing been re-enacted, he was only entitled to receive salary at the rate of £800 per annum. After his services had been dispensed with the plaintiff made several efforts to obtain employment but all were unsuccessful.

Street J. held that, upon the proper construction of the relevant provisions of the *Industrial Arbitration (Amendment) Act*, the plaintiff was entitled to recover damages on the footing that there existed between himself and the Crown a valid and binding contract appointing the plaintiff to the office of deputy commissioner for a period of five years from 24th September 1931, at a salary of £1,000 per annum. On the question of quantum of damages his Honor said that the plaintiff had to be placed financially in the position in which he would have been if his appointment had not been terminated. This, continued his Honor, would be achieved by calculating the cash equivalent of unpaid salary, at an appropriate rate of interest, as at 6th December 1932, on the basis of reduced salary up to 30th June 1933, and full salary for the balance of the term thereafter, from which a deduction should be made for the liberty the plaintiff would have of obtaining other employment.

His Honor held that the appropriate rate of interest was two and one-half per cent per annum, the rate allowed by the Commonwealth Savings Bank of Australia upon amounts paid into that bank and which were available for withdrawal at any time, and not three and three-quarters per cent per annum, which was the rate returnable on Commonwealth loans. His Honor held that the cash equivalent of unpaid salary so ascertained was the sum of £3,424. From this sum a deduction was made for the reason shown above, and a verdict was entered for the plaintiff in the sum of £2,900. The Full Court of the Supreme Court dismissed an appeal by Geddes from the decision of *Street* J., but reduced the amount of the verdict in favour of Magrath by the difference that would be arrived at by employing an interest rate of three and one-half per cent in lieu of an interest rate of two and one-half per cent per annum : *Magrath* v. *Geddes* (1).

Morgan v. *Geddes*.—William Joseph Tyler Morgan sued William Butler Geddes, as nominal defendant on behalf of the Government of New South Wales, for compensation for the loss of the office of chairman of conciliation committees.

Morgan was originally appointed to be a chairman of conciliation committees under the provisions of the *Industrial Arbitration (Amendment) Act* 1926, for a period of five years commencing 14th June 1926, with remuneration at the rate of £750 per annum, and after several appointments for short periods he was, on 28th January 1932, appointed as chairman for a further period of five years from 31st January 1932, with remuneration at the same rate of £750 per annum. As in Magrath's case, the plaintiff's salary was reduced under statutory provision and on 6th December 1932 he was in receipt of a salary at the rate of £611 5s. per annum. The Act which brought about this reduction was due to expire on 30th June 1933. Since 6th December 1932 the plaintiff had made attempts to obtain employment but without success.

Street J. held against the contention that there was no power in the Minister to enter into any agreement with chairmen of conciliation committees which could have the effect of conferring upon them any tenure of office. Applying the principles which he had applied

(1) (1933) 34 S.R. (N.S.W.) 25 ; 50 N.S.W.W.N. 212.

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in Magrath's case, his Honor determined the cash value of the plaintiff's salary for the unexpired balance of his term as at 6th December 1932, at the sum of £2,803, and held that after making allowance for the probability of his obtaining appropriate employment during such unexpired balance, and taking into account all the surrounding circumstances, the proper sum to allow him as compensation was the sum of £2,550. A verdict for that amount was entered in favour of the plaintiff.

The Full Court of the Supreme Court, by a majority, allowed an appeal by Geddes, set aside the judgment of *Street* J., and entered a verdict for Geddes, on the ground that appointments of chairmen of conciliation committees under the *Industrial Arbitration (Amendment) Act* 1926 were terminable at the will of the Crown: *Morgan* v. *Geddes* (1).

From these decisions respectively Geddes and Morgan now appealed to the High Court. Magrath cross-appealed on the question of rate of interest.

The appeals were heard together.

Teece K.C. (with him *Owen*), for Geddes. The correct interpretation of sub-sec. 2 of sec. 6 of the *Industrial Arbitration (Amendment) Act* 1932 is that the deputy commissioner should receive such compensation as he would have been entitled to had his services been dispensed with otherwise than under sub-sec. 1, that is, "otherwise than according to law." The services of Magrath and Morgan were dispensed with "according to law" by the abolition of their respective offices. An officer whose office has been abolished has no right of compensation. Although the *Industrial Arbitration (Amendment) Act* 1926 authorized the appointment of a deputy commissioner, that Act did not make any provision for the payment of salary to the person so appointed: he, therefore, was dependent for his salary upon such amount as Parliament from time to time voted. Until the abolition of the offices in 1932, the Governor had power to remove the holders thereof (*Gould* v. *Stuart* (2)). There is

(1) (1933) 34 S.R. (N.S.W.) 25; 50 N.S.W.W.N. 212.
(2) (1896) A.C. 575.

thus no warrant for the assumption that Magrath's salary would be at the rate of £1,000 during the whole of the period for which he was appointed. If compensation is payable to Magrath, it should be assessed on the basis that his *de facto* contract must be treated as a valid contract, binding on the Crown, to be paid a salary of £800 per annum. Notwithstanding that the Crown appoints a person to an office for a term, it retains the prerogative of dismissing at pleasure (*Interpretation Act* 1897 (N.S.W.), sec. 30; *Dunn* v. *The Queen* (1); *Gould* v. *Stuart* (2)). Statutory provisions designed to prevent the Crown from removing civil servants do not prevent the Crown from abolishing the offices held by those servants, in which case the occupants of the offices are without a remedy (*Young* v. *Waller* (3)). Magrath and Morgan held office for an indefinite term; therefore, compensation, if payable, should be assessed on the probability or otherwise of their remaining in their respective offices. A "probability" as a basis for a claim for damages was dealt with in *Chaplin* v. *Hicks* (4). The Act of 1926 did not provide for the appointment of chairmen of conciliation committees for a term. An appointment for a term is inconsistent with the provision in sec. 6 empowering the Governor to appoint such number of chairmen as may be prescribed, that is, prescribed "from time to time" (see *Interpretation Act* 1897, sec. 30 (*a*)). Thus there was not any contract as far as Morgan was concerned; he was simply a person who held office for an indefinite term. Alternatively, it is submitted that deputy commissioners and chairmen of conciliation committees should be put on the same footing as a person actually carrying on in a position from which he could not be dismissed at will, but only on reasonable notice and who, in lieu of such notice, would be entitled to reasonable compensation. If the interpretation placed upon sec. 6 (2) of the Act of 1932 by *Street* J. is correct, then the method of calculating the quantum of compensation payable is as shown in *Yelland's Case* (5).

E. M. Mitchell K.C. (with him *Gain*), for Magrath and Morgan. Sec. 30 of the *Interpretation Act* 1897 only applies to enable an

(1) (1896) 1 Q.B. 116.
(2) (1896) A.C. 575.
(3) (1898) A.C. 661.
(4) (1911) 2 K.B. 786.
(5) (1867) L.R. 4 Eq. 350.

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appointment made by the Governor to be determined by him in the absence of any contrary intention appearing in the statute authorizing the appointment. The empowering by a statute of the making of an appointment for a definite term, as here, in the case of the deputy commissioner, is a contrary intention. Sub-sec. 2 of sec. 6 of the Act of 1932 does not give the Crown a right of defence, but was intended by the Legislature to give to an officer whose position had been abolished a statutory right to compensation which otherwise he would not have had (*Halsbury's Laws of England*, vol. 23, p. 352). Magrath and Morgan should be dealt with as if they were lawfully in their respective offices. The Crown is precluded from setting up any defence to the effect that they have been lawfully put out of such offices. It cannot, therefore, be suggested that they were dismissed at pleasure (*Ryder* v. *Foley* (1)). Magrath and Morgan are in the position of persons wrongfully dismissed, and, therefore, are entitled to some compensation; the only question is as to quantum. At the time of the passing of the Act of 1932, Morgan was in office and had an expectancy of a continuance of that office. The Legislature acted on the assumption that the expectancy would continue save only in the event of misconduct. The appointments were not for an indefinite term terminable on reasonable notice. If the Legislature had intended that the appointments should be made and terminated on such a basis it would have made express provision to that end. Magrath and Morgan should receive compensation equivalent to the salary they would have received during the balance of the term of their respective contracts. All appointments made under the 1926 Act have been for definite terms of years. It is a proper assumption that this was known to the Legislature when it made provision in the 1932 Act for compensation. The right of action of a person dismissed from office was dealt with in *Ryder* v. *Foley* (2). The provisions of the 1926 Act show an intention on the part of the Legislature that officers appointed under that Act should not be dismissed at pleasure (*Gould* v. *Stuart* (3)). The rate of interest should be two and one-half per cent per annum as determined by *Street* J. The rule adopted in the Equity Court is not applicable.

(1) (1906) 4 C.L.R. 422, at p. 436. (2) (1906) 4 C.L.R. 422.
(3) (1896) A.C. 575.

Teece K.C., in reply. The correct rate of interest is three and one-half per cent per annum. If Magrath and Morgan are entitled to damages, they are entitled to a lump sum of money the quantum of which should be determined in the manner shown in *Yelland's Case* (1). What the recipients propose to do with the money should not affect the rate of interest. The Full Court was right in adopting the rule applied by the Equity Court. The 1926 Act did not authorize the Governor to promise any definite sum to the deputy commissioner as salary.

Cur. adv. vult.

Nov. 24.

The following written judgments were delivered :—

GAVAN DUFFY C.J., EVATT AND MCTIERNAN JJ. These two appeals from the Full Court of the Supreme Court of New South Wales raise the same question of construction. They were heard together and may be conveniently disposed of together.

Sec. 6 of the *Industrial Arbitration (Amendment) Act*, No. 39 of 1932, provided as follows :—" (1) Upon the commencement of this Act the offices of deputy commissioner and of the chairmen of conciliation committees shall cease to exist. (2) The deputy commissioner and each chairman of conciliation committee shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law."

At the time of the passing of the Act, the respondent Mr. E. C. Magrath was exercising the powers and functions and performing the duties appertaining to the office of deputy commissioner, and the appellant Mr. W. J. T. Morgan, those appertaining to the office of a chairman of conciliation committees. The powers, functions and duties of the two offices are set out in the *Industrial Arbitration (Amendment) Act* 1926. By sec. 6 (4) of that Act, the Governor was empowered to appoint a person to be a deputy commissioner of the Industrial Commission of New South Wales for such time as the Governor might fix. There was no express provision fixing, or authorizing the fixation of, the salary payable to the deputy commissioner. Curiously enough, each chairman of conciliation

(1) (1867) L.R. 4 Eq. 350.

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committees occupied what may be called the converse position. By sec. 8 (1) the Minister was empowered to appoint persons to act as chairman, and to fix their remuneration; but there was no special provision fixing their tenure of office.

The actual terms of the Executive-Council minute appointing Mr. Magrath provided for a period of five years from September 24th, 1931, at a salary of £1,000 per annum. The Government informed him that he had been appointed upon such conditions to the office of deputy commissioner. So, also, the actual terms upon which Mr. Morgan was appointed by the Minister provided for a period of five years from January 31st, 1932, with remuneration at the rate of £750 per annum, and he was informed accordingly.

The main argument presented on behalf of the nominal defendant for the Government of New South Wales is that, under the provisions of the 1926 Act, the Governor was not empowered to fix any salary for the deputy commissioner, and the Minister was not empowered to make an appointment for a term in respect of the office of chairman of conciliation committees. In our view, it is not necessary to consider whether there is any substance in these contentions. Sec. 6 (1) of the 1932 Act declared that, from the commencement thereof, the offices both of deputy commissioner and of chairman should cease to exist. And the Legislature immediately provided in sec. 6 (2) that the deputy commissioner and each chairman of conciliation committees should receive compensation as therein provided.

We are of opinion that Parliament, in using the words "the deputy commissioner and each chairman of conciliation committee", intended to refer to the persons in actual occupation of those offices. It is clear that Parliament also intended each occupant to receive "such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law"; in other words, each person described in the sub-section is entitled to recover by way of compensation for the loss he has sustained by the lawful act of the Legislature the same amount of money as he could have recovered if his appointment had been lawful and the termination of his services had been unlawful. This is the view of the matter which was adopted by *Street* J., and we are in complete agreement with him.

Of course, in assessing the amount of compensation in the case of each occupant of office, consideration would have to be given to the possibility of the plaintiff's obtaining some other appointment during the currency of the agreed period of service. This element, operating in diminution of compensation, was fully considered by *Street* J., and we think that his method of assessment was right.

Further, we are of opinion that, in calculating the amount of compensation, the learned trial Judge did not proceed erroneously in point of law in working out the compensation upon such a rate of interest as he considered reasonable in all the circumstances. We think that he was not bound to follow the practice of the local Court of Equity and that, in this respect, there is no reason which would justify us in interfering with his assessment of compensation.

The result of this opinion is that, in each case, the order of the Full Court should be discharged, and in lieu thereof an order should be made restoring the order of the trial Judge. In Magrath's case, there should be a dismissal of the Crown's appeal and an allowance of the cross-appeal, which was instituted for the purpose of restoring the order of the trial Judge. In Morgan's case the appeal should be allowed.

RICH J. Sec. 6 of the *Industrial Arbitration (Amendment) Act* 1932 is as follows :—" (1) Upon the commencement of this Act the offices of deputy commissioner and of the chairmen of conciliation committees shall cease to exist. (2) The deputy commissioner and each chairman of conciliation committee shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law."

Magrath, the respondent in the first of these appeals, was the deputy commissioner and Morgan, the appellant in the second of the appeals, was a chairman of conciliation committees under the Act of 1926. The deputy commissioner was appointed under sec. 6 (4) of that Act, which in so many words empowers the Governor to fix a term, and, in my opinion, impliedly authorizes him to define the salary at which an appointment is made to the office. A chairman of conciliation committees is to be appointed by the Minister, who by sec. 8 (1) is expressly empowered to fix remuneration, but is

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not expressly empowered to appoint for a term. In my opinion sec. 30 of the *Interpretation Act* 1897 applies to the power conferred by sec. 8, which must be construed as enabling the Minister to remove from, as well as appoint to, the office of chairman of conciliation committees. Both the respondent Magrath and the appellant Morgan received appointments for five years certain. The Full Court construed sec. 6 (2) of the Act of 1932 as meaning that for loss of office the officers should receive such compensation as the law would give them if they had been ousted or removed otherwise than under the statute of 1932. Accordingly, in its opinion the appellant Morgan was entitled to no compensation because, notwithstanding his appointment for five years certain, the Minister had lawful authority to remove him without cause. I am unable to adopt this construction of sec. 6 (2) of the Act of 1932. In my opinion it means no more and no less than it says: the words "had his services been dispensed with otherwise than according to law" mean "if he had lost his office contrary to law." It does not mean to set the Court upon inquiry whether this could have happened; it simply directs that it shall be supposed it has happened, and that upon that supposition compensation shall be assessed. Accordingly, I think the judgment of the Full Court was wrong in the case of the appellant Morgan, and he is entitled to compensation.

In Magrath's case the Full Court agreed with the trial Judge that he was entitled to compensation on the ground that he could not be removed during his term of office by the Crown, because of the statutory authority to fix the term. It of course follows from the view I have taken that the conclusion of the Full Court in Magrath's case is right, although I do not agree with the distinction drawn by the Full Court between the two cases.

In assessing compensation in Morgan's case, *Street* J. proceeded upon the assumption that he was not removable from office during his term. I do not think sec. 6 (2) of the Act of 1932 requires such an assumption, but nevertheless I consider that the assessment by *Street* J. should not be disturbed. My reason is that I do not think the mere existence of a power in the Minister to interrupt the assigned term and remove the officer should make any difference in the amount estimated as representing the loss he

would have suffered if he had been removed contrary to law. He was appointed for a fixed term. There was nothing unlawful in nominating a term for which he should hold office. It gave him an assurance that he might retain office for that term unless it was sooner determined by the active intervention of the Minister for some unexpected cause, and it informed him that at the end of the term he would be required to vacate office unless reappointed. The presumption that unless he misconducted himself the statutory power of removal would not be exercised is very strong, and is reinforced by the fact that, although it was decided to abolish his office by statute, the Executive Government did not terminate his appointment but left it to the Legislature, which abolished the office only subject to payment of compensation. The existence of the power of removal is therefore, in my opinion, a matter which does not make it right to reduce the sum assessed for compensation.

In ascertaining the amount of compensation, *Street* J. proceeded in each case by reducing the future anticipated payments of salary to their present value as at the date of the abolition of office. For this purpose he took a rate of two and one-half per cent. The Full Court considered that this rate was too low and raised it to three and one-half per cent. Without disagreeing with the proposition of the Full Court that three and one-half per cent would be an appropriate rate for the purpose, I do not think that they should have substituted their opinion on this matter for that of the trial Judge. It was, after all, only a figure which he adopted for his own assistance in going through the process of estimating a lump sum for damages. The method he adopted of arriving at the lump sum was not opposed to law and no information was before him which would establish that the rate of two and one-half per cent would produce a greater amount of compensation than the loss suffered by deprivation of salary. Accordingly I think that in each case the assessment of compensation by *Street* J. should stand.

This means that the Crown's appeal in Magrath's case should be dismissed, that Magrath's cross-appeal should be allowed and the judgment of *Street* J. restored, and that Morgan's appeal against the judgment of the Full Court should be allowed and the judgment of *Street* J. restored.

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STARKE AND DIXON JJ. *Morgan* v. *Geddes*.—Sec. 8 (1) of the *Industrial Arbitration (Amendment) Act* 1926 made the following provision :—" The Minister may, in the manner prescribed, establish conciliation committees for any industry or calling for which a board is constituted, or for any industry or calling for which for the purpose of establishing a committee the commissioner may recommend that a board be constituted. The Minister may appoint such number of persons as may be prescribed to act as chairmen of conciliation committees and may fix their remuneration."

On 9th June 1926, the appellant was appointed by the Minister to act as chairman of conciliation committees for a period of five years, and, after various extensions of this appointment, on 28th January 1932, the Minister appointed him to be a chairman for a further period of five years until 31st January 1937 with remuneration at the rate of £750 per annum. On 6th December 1932, Act No. 39 of 1932 commenced, sec. 6 of which is as follows :—" (1) Upon the commencement of this Act the offices of deputy commissioner and of the chairmen of conciliation committees shall cease to exist. (2) The deputy commissioner and each chairman of conciliation committee shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law." The appellant brought proceedings to recover compensation from the Crown pursuant to sub-sec. 2 of sec. 6. The proceedings came before *Street* J., who assessed compensation at the sum of £2,550 by determining as at 6th December 1932 the present value of the appellant's salary for the unexpired balance of the term of five years and making a deduction on account of the probability of his obtaining employment during that period. On appeal to the Full Court this decision was reversed and a verdict entered for the Crown. The ground upon which the Full Court held that the appellant was not entitled to compensation was that, upon the true construction of sec. 6 (2) of Act No. 39 of 1932, it did no more than confer a right to that compensation, if any, which would ensue from deprivation of office if the statute were not a justification, and that under sec. 8 (1) of the *Industrial Arbitration (Amendment) Act* 1926 there was no abridgement of the Crown's right at any time to remove at pleasure notwithstanding any period

mentioned in the appointment of a chairman. We are unable to agree with the construction placed upon sub-sec. 2 of sec. 6 of the Act of 1932. In terms the section provides that each chairman shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law. This language appears to us to require the assumption, for the purpose of compensating him, that the appellant has suffered an unlawful deprivation of office and to direct that he shall receive that compensation which would be given for such a loss occasioned unlawfully. The expressions " would have been entitled " and " had his services been dispensed with " are adapted to describe an assumption contrary to fact. The words " otherwise than according to law " have the same meaning as " in a manner contrary to law." The construction adopted by the Full Court makes them mean " had his services been dispensed with otherwise than under this section whether according to law or not according to law." Such a meaning, in our opinion, the provision will not bear. A person who holds the office of chairman of conciliation committees and loses it under the Act is given a right to that compensation which he would receive if he had suffered an unlawful deprivation of office. In our opinion, a verdict ought not to have been entered for the Crown.

But a question remains whether the appellant is entitled to compensation assessed upon the footing that he would have retained office for the unexpired residue of the five years expressed in his appointment. Sub-sec. 1 of sec. 8 of the *Industrial Arbitration (Amendment) Act* 1926 does not fix or expressly empower the Minister to fix a period for which a chairman of conciliation committees should hold office. We agree with the view that sec. 30 of the *Interpretation Act* 1897 applies to sec. 8 (1), and, accordingly, that the Minister had authority to suspend or remove a chairman from his office notwithstanding that a fixed term had been specified in his appointment. In ascertaining the amount of compensation payable under sec. 6 (2) of the Act of 1932, we think no assumptions are required beyond that which is expressed. The tenure and conditions of office are to be taken to be what in fact and in law they were, but it is to be assumed that the claimant lost the office unlawfully and is to receive compensation for this assumed legal wrong. The question is not one of

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wrongful dismissal, although analogous to it. The chairmen of conciliation committees had entered into no contract of service with the Crown. They were independent persons occupying a public office to which rights and duties were assigned by law, not by contract. When they are treated for the purposes of compensation as having suffered a wrongful deprivation of office, the inquiry must be directed to ascertaining what were the profits and advantages which they might justly expect to flow from occupying it, and what corresponding burdens or restrictions they were relieved from by losing it. *Street* J. addressed himself to this question, but he treated the appellant as entitled as of right to hold office for the full residue of five years. In this, we think, he was wrong, because the appellant was subject to the Minister's power of summary removal. But, on consideration, we have come to the conclusion that no diminution should on this ground be made in the amount of compensation awarded. The appellant had a definite appointment of five years duration. This, although it would not prevent the exercise of the Minister's power of removal, amounts to a definite assignment of the term for which the Crown meant the appellant to hold office. It founded a just right to expect that, in the absence of misconduct, incapacity, or the like, on his part, the term would not be abridged by the exercise of the power to intervene and remove from office. The Legislature itself appears to have acted upon this view of the matter in removing the occupants of the offices by legislative means instead of leaving the Executive to resort to its statutory powers. In assessing compensation for loss of office, the practice has been to give an amount which represents the future advantages which the holder has a just right to expect. Under sec. 66 of 5 & 6 Wm. IV. c. 76, an officer of a borough in any office of profit which should be abolished became "entitled to have an adequate compensation, to be assessed by the council, and paid out of the borough fund, for the salary, fees and the emoluments of the office which he shall so cease to hold, regard being had to the manner of his appointment to the said office and his term or interest therein, and all other circumstances of the case." Compensation for loss of office assessed under this provision was calculated in respect of the period during which there

was a just expectation that the office would continue (*Ex parte Lee* (1); *The Queen* v. *The Mayor, Aldermen and Burgesses of the City and Borough of Norwich* (2)).

We think the assessment of *Street* J. should be restored, subject, however, to one modification. We agree with the Full Court in the adoption of three and one-half per cent instead of two and one-half per cent in computing the present value of future salary.

Geddes v. *Magrath*.—In the case of Morgan we have stated the construction which we place upon sec. 6 (2) of the *Industrial Arbitration* (*Amendment*) *Act* 1932, and the principles upon which we consider compensation thereunder should be ascertained. That construction and those principles apply a fortiori to the facts of this case, in which the appointment for a fixed term was made under express statutory authority. In the case of a deputy commissioner, sub-sec. 4 of sec. 6 of the *Industrial Arbitration* (*Amendment*) *Act* 1926 expressly authorized the fixing of a term, and it was for this reason that the Supreme Court held that the respondent was entitled to compensation. The Crown's appeal against that judgment must be dismissed. But, in the Full Court, the actual amount assessed by *Street* J. was reduced, rightly as we think, by the adoption of a higher rate of interest for ascertaining the present value of future salary. The respondent's cross-appeal from this reduction should be dismissed.

Geddes v. Magrath.—Appeal dismissed. Cross appeal allowed. Order of Full Court varied by omitting such part thereof as reduces the verdict for the plaintiff for £2,900. *Verdict for the plaintiff for* £2,900 *restored. Appellant to pay costs of appeal and cross-appeal to this Court.*

Morgan v. Geddes.—Appeal allowed. Order of Full Court discharged and verdict for plaintiff for £2,550 *restored. Respondent to pay costs of this appeal and of appeal to Full Court.*

Solicitor for Geddes, *J. E. Clark*, Crown Solicitor for New South Wales.

Solicitors for Magrath and Morgan, *R. D. Meagher, Sproule & Co.*

J. B.

(1) (1837) 7 Ad. & E. 139, at p. 140; 112 E.R. 423, at p. 424.

(2) (1838) 8 Ad. & E. 633; 112 E.R. 978.