

[HIGH COURT OF AUSTRALIA.]

QUINN APPELLANT;
 PLAINTIFF,

AND

NOTT RESPONDENT.
 NOMINAL DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
 NEW SOUTH WALES.

H. C. OF A. *Public Service—Officer—Leave on full pay—Death—Money value of leave not taken—*
 1937. *Unmarried officer—Dependent relative—Right to payment—Public Service*
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 SYDNEY, *(Amendment) Act 1919 (N.S.W.) (No. 43 of 1919), sec. 14—Public Service*
(Amendment) Act 1929 (N.S.W.) (No. 10 of 1929), sec. 11 (c).
 Aug. 18;
 Sept. 1.

Latham C.J.,
 Rich, Starke,
 Dixon, Evatt
 and McTiernan
 JJ.

Sec. 14 of the *Public Service (Amendment) Act 1919* (as amended by sec. 11 (c) of the *Public Service Amendment Act 1929*) (N.S.W.), which provides for payment to "his widow, or in the case of a widower leaving children, his children, or their guardian, or other dependent relative, or their legal representative" of the money value of extended leave not taken by an officer who, being entitled to such leave, dies before entering upon it, or before completing it, applies to an officer who at all material times was a bachelor, and, therefore, a dependent relative of such an officer is entitled to the benefits conferred by that section.

So held by Latham C.J., Rich, Dixon, Evatt and McTiernan JJ. (Starke J. dissenting).

Decision of the Supreme Court of New South Wales (Full Court): *Quinn v. Nott*, (1937) 54 W.N. (N.S.W.) 18, reversed.

APPEAL from the Supreme Court of New South Wales.

In an action brought in the Supreme Court of New South Wales, the plaintiff, Agnes Quinn, claimed the sum of £95 2s. 11d. from

Melville Charles Nott, as nominal defendant on behalf of the Government of the State of New South Wales.

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In her declaration the plaintiff alleged that Thomas James Quinn, who died on 19th August 1935, was at all material times an officer within the meaning of the *Public Service Acts* in force in the State and at the time of his death had acquired a right under those Acts to extended leave with pay and died before entering upon it or before its termination, and that Quinn was at all material times a bachelor and thereupon the plaintiff as the unmarried sister of Quinn and sole dependent relative upon him became entitled to receive from the defendant the money value of the leave not so taken or not so completed computed at the rate of salary Quinn received at the time of his death.

The defendant demurred to the declaration on the grounds: (a) that it disclosed no cause of action; (b) that sec. 14 of the *Public Service (Amendment) Act* 1919 had no application to the case of an officer who at all material times was a bachelor; and (c) that the plaintiff was not a dependent relative within the meaning of that section.

The Full Court of the Supreme Court of New South Wales entered judgment for the defendant on demurrer: *Quinn v. Nott* (1).

From that decision the plaintiff, by special leave, appealed to the High Court.

Miller, for the appellant. The object of sec. 14 of the *Public Service (Amendment) Act* is to deal with dependent persons. Under that section the money value of extended leave not taken or not completed is payable to (a) the widow; (b) if no widow, then to the officer's children; or (c) the guardian of such children; and (d) if no widow or children then to any dependent relative of the officer. The expression "legal representative" in sec. 14 includes the executor or administrator of any of the preceding persons. That expression merely describes some person who in fact may be authorized to receive the payment impressed with the trust. The word "their" means "his," or "her," or "their." The section applies to all officers whether male or female. The construction

(1) (1937) 54 W.N. (N.S.W.) 18.

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put upon the section by the Supreme Court is too narrow. This court should give effect to the expression "dependent relative". The appellant has alleged that she is the sole dependent relative of the deceased officer and thus is entitled to the whole of the money value of the extended leave due to him.

E. M. Mitchell K.C. (with him *K. A. Ferguson*), for the respondent. The benefits conferred by sec. 14 may be claimed only in two cases, namely: (a) where an officer dies leaving a widow, then his widow or those representing her may claim; and (b) in the case of a widower officer who dies leaving children, then those children or their guardian or other dependent relative or their legal representative may receive payment under the section. The moneys do not form part of the estate of a deceased officer. In differentiating between deceased male officers and deceased female officers, and in not making any provision in regard to bachelor officers the legislature in sec. 14 followed the policy adopted in the *Superannuation Act*. Sec. 14 does not deal with all public servants but only with a limited class of public servants. The section does not apply to females at all, neither does it apply to bachelors. The use in the section of the words "his widow" clearly indicates that provision is made only for married male officers. The principle that the masculine gender includes the feminine gender does not apply. Another indication is that no provision is made in respect of surviving husbands, or in respect of married women officers dying and leaving children. The expression in sec. 14, "in the case of a widower leaving children," qualifies all the succeeding words in the relevant sentence. In a case where an officer is survived by a widow and children, the widow is entitled under the section to the whole payment. "Dependent relative" means someone who was part of the deceased's family, and resided with him. The word "other" indicates that "dependent relative," which, significantly, is used in the singular, is alternative to guardian who, in the majority of cases, would probably be a relative. The section confers upon the Crown the right to pay the money value to the dependent relative for the benefit of the children thus avoiding the expense and inconvenience of having to appoint a guardian. The question of payment

to a dependent relative arises only in the event of there being children. The word "other" in the section refers to some person other than the guardian who is a dependent relative. The word "their" applies only to children. "Legal representative" means personal representatives and executors and administrators (*Stroud's Judicial Dictionary*, 2nd ed. (1903), vol. 2, p. 1081).

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Miller, in reply. "Legal representative" merely means authorized agent of a widow or children. The section should be construed as meaning widow whether dependent or not, children whether dependent or not, and other relatives if dependent, and, alternatively, as if the words after the word "widow" pointing to guardian were mere surplusage.

Cur. adv. vult.

The following written judgments were delivered :—

Sept. 1.

LATHAM C.J. The plaintiff is the unmarried sister of Thomas James Quinn, a bachelor, and was dependent upon him at the time of his death. Quinn was an officer within the meaning of the *Public Service Acts* of New South Wales and at the time of his death had a right to extended leave under sec. 13 of the *Public Service (Amendment) Act* 1919. If an officer who has acquired such a right retires at ages 65 or 60 without having taken such leave he receives in lieu thereof "the money value" of the leave as a gratuity (sec. 13A). Sec. 14 of the Act provides for the case of an officer who has acquired a right to extended leave but dies before entering upon it or before its termination. The section is as follows :—
"Where an officer or member of the board has acquired a right under this Act to extended leave with pay and dies before entering upon it, or after entering upon it dies before its termination, his widow, or in the case of a widower leaving children, his children, or their guardian, or other dependent relative, or their legal representative, shall be entitled to receive the money value of the leave not taken, or not completed, computed at the rate of salary the officer received at the time of his death. Such payment shall be in addition to any payment due under the provision of the *Superannuation Act*. Provided that where payment of the money value of leave

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has been made under this section, no action may be brought against the Crown for payment of any amount in respect of such leave."

The question which arises is whether the plaintiff as a dependent relative of Quinn is entitled to receive the money value of the leave which Quinn was unable to take. The Full Court of New South Wales has held that the section does not apply to bachelors. An appeal is brought to this court.

It is contended on behalf of the defendant that the section, which admittedly is inartistic in form, applies only to two cases: first, the case of an officer leaving a widow, and secondly, the case of an officer who was a widower leaving children. The object of the section, upon this interpretation, is to give benefits to widows and children only, and not to any other persons even if they were dependants of deceased officers. Upon this view the section applies only to men who have been married and not to women or to bachelors. On the other hand, it is argued that the persons who obtain rights under the section include the following classes: (a) the widow of a deceased officer; (b) the children of a deceased widower officer; (c) the dependent relatives of any deceased officer, whether male or female, and whether married or unmarried. Upon both views of the section the reference to the guardian of children is regarded as merely in aid of the reference to the children so as to permit the Crown to pay money to the guardian of children instead of to the children themselves. Also, upon both views, the phrase "their legal representative" may be regarded as applicable in the case of any person entitled to a benefit under the section. It is unnecessary to decide for the purposes of this appeal whether "legal representative" means legal personal representative or next of kin or residuary legatee, or legally authorized agent (See *Stroud's Judicial Dictionary*, 2nd ed. (1903), title, "Legal Representatives").

Against the second view it is contended that the words "or in the case of a widower leaving children, his children, or their guardian" are mere surplusage because the use of the phrase "other dependent relative" shows that children are regarded as dependent relatives so that the children of a deceased widower officer would be included under the words "dependent relative" without the use of the words which specifically refer to children. This circumstance, it is urged,

must be given some weight as tending to show that the construction which makes the phrase mere surplusage should not be adopted. It is necessary to examine the section as a whole before dealing with this argument. I therefore postpone consideration of it for the meantime.

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On the other hand, the first view, which denies any independent effect to the words "or other dependent relative," meets much difficulty in finding any meaning at all for these words. Upon this view the section means that, if an officer dies leaving a widow, his widow is entitled under the section, and that the only other case covered is the case of a widower leaving children. The contention is that in the latter case the persons who may receive benefit under the section are "his children, or their guardian, or other dependent relative." The words "their legal representative" may then be read as associated either with all the preceding persons or only with the children, whichever view of the section is adopted. It is easy to understand why reference should be made to the guardian of children who are possibly not able to look after themselves. But it is difficult to see why a benefit intended for the children should in any case be payable to any "other dependent relative." Any person covered by this phrase must first be a dependant, that is, a dependant of the deceased officer. It seems absurd to take the view that the dependent relative referred to is to be a dependant of the children. Further, any such person must be a relative. If the person is to be a relative such person must, being described as a dependent relative, and "dependent" meaning dependent on the deceased officer, be also a relative of the deceased officer. Thus the words "other dependent relative" mean other person who is both a dependant of and a relative of the deceased officer. It is difficult to suggest any reason why such a person should be, as it were, appointed by the section as a person to whom the Crown may fitly pay moneys on behalf of the children in substitution for the children themselves or the guardian of the children. Thus, in spite of the awkwardness of the language, I think it should be held that "other dependent relative" is a phrase chosen to describe a class of persons which is quite separate and distinct from any of the persons previously mentioned. Thus, in my opinion, the

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 QUINN guardian of the children of a widower who dies leaving children;
 v. (c) any other person who was at the time of the death of the officer
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 Latham C.J. cases the Crown may discharge its liability by paying the money
 to the "legal representative" (whatever that may mean) of a person
 included under the previous headings a, b and c.

The section contains no provision for sharing the money between the classes of persons mentioned. It should, therefore, I think, be read as involving a direction as to priority and exclusiveness in payment; for example, if an officer dies leaving a widow and children the money ought to go to the widow exclusively and in priority to the children. If, on the other hand, a widower officer dies leaving children, his children take exclusively and in priority to any dependent relatives. Dependent relatives can take only where there is no widow, or, in the case of a widower, no children.

I now return to the argument that, upon the view suggested, the words referring to children are mere surplusage because children are included in the words "other dependent relative." The use of this phrase does not necessarily mean that the persons before mentioned, namely, widows and children, are to be entitled to benefit under the section only if they are dependants. A widow is not a "relative" of her husband, and the words "other dependent relative" would not include a widow. Children are relatives, but are not necessarily dependent upon a parent. But there is no serious obstacle in the way of construing the section to mean that a widow is entitled to take in all cases, whether she is dependent or not, and that, where there is no widow but there are children, the children are entitled to take whether they are dependent or not, and that the third class consists of any other relatives who were in fact dependent upon the deceased officer.

Upon this view the section will apply in the case of bachelor officers and also in the case of women officers, and not only widows and children, but also any dependent relative of a deceased officer may receive a benefit under the section. The husband of a deceased woman officer, however, even though dependent upon her, would

not be entitled to any benefit thereunder. Thus, in my opinion, the contention of the plaintiff is right and the demurrer should be overruled and judgment given for the plaintiff in demurrer.

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RICH J. We are called upon to construe an obscurely worded provision of the *Public Service (Amendment) Act* 1919, sec. 14. The Supreme Court decided that a sister dependent upon a bachelor officer who died without having taken his extended leave was not entitled to its money value. Their Honours considered that the benefit was limited to the case of married officers who died leaving either a widow or children. This is, I think, too narrow a construction. Before the amendment was introduced by sec. 14 the money payments to which an officer was entitled under secs. 13 and 13A lapsed on the death of the officer. They did not pass by will or upon intestacy. Sec. 14, however, was intended and does operate to pass on these payments. The opening words of the section are wide enough to include any officer, male or female, married or single. And reading the section as a whole I think that the intention of the Legislature was to prevent the extinction of the money benefits accrued to officers after long service and to distribute them on the principle of dependency. The dependants to be benefited are a widow, if one survive the officer, if none his children, and failing widow and children a dependent relative. I have had occasion in other cases to refer to the difficulty of ascertaining how phrases should be attached owing to the fact that English is a positional language (*Miller v. Hilton* (1)). The difficulty in this case is occasioned by the position of the phrase “or other dependent relative.” The phrase is not attached to the words “in the case of a widower leaving children,” and consequently a dependent relative has a claim to the money payments where neither widow nor children are survivors.

The appeal should be allowed.

STARKE J. The declaration in this action alleges that Thomas Joseph Quinn who died on 19th August 1935 was at all material times an officer within the meaning of the *Public Service Acts* of New South Wales, and at the time of his death had acquired a right under the said Acts to extended leave with pay and died before entering upon it or before its termination, and that the said Thomas

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James Quinn was at all material times a bachelor and that the plaintiff was the unmarried sister of Quinn and the sole dependent relative upon him and became entitled to receive the money value of the leave not so taken or not so completed computed at the rate of salary Quinn received at the time of his death.

The defendant in the action demurred to the declaration. The Supreme Court of New South Wales entered judgment for the defendant on demurrer and an appeal against this judgment is now brought to this court. The question for determination depends upon the proper construction of the *Public Service (Amendment) Act* 1919, sec. 14, as amended by Act No. 10 of 1929.

The Chief Justice has stated the terms of the section and it is unnecessary for me to repeat it. Shortly, however, the question is whether the words of the section "or other dependent relative" are attached to or governed by the opening words of the section or to the words "in the case of a widower leaving children." Positionally and grammatically they attach themselves to the case of a widower leaving children and the words "other dependent relative" in their context indicate a relative or relatives other than a child or children.

I would read the section thus: Or in the case of a widower leaving children (a) his children or their guardian, (b) or dependent relative other than a child or children. The words "or their legal representative" which occur in the section occasion, I think, but little difficulty and may be regarded as the Chief Justice suggests "as applicable to the case of any person entitled to a benefit under the section." In the result I agree with the judgment of the Supreme Court but I am unable to accept the view that the dependent relatives merely receive the benefits conferred by the section on behalf of the children. The dependent relatives can take for themselves, but only in the case of a widower leaving children.

In my opinion the appeal should be dismissed.

DIXON J. Under sec. 14 of the *Public Service (Amendment) Act* 1919 when an officer entitled to extended leave dies before he has taken it, certain dependants or potential dependants become entitled to the money value of the leave that was due to him. Unfortunately the provision is obscurely expressed and it is very difficult to know what class or classes of dependants it means to include.

This appeal raises the question whether a sister dependent upon an officer dying a bachelor is entitled to the money value of the extended leave which he had not taken before his death. The Supreme Court has decided against her claim on the ground that the section applies only to officers who have married and limits the pecuniary benefit it confers to two cases, viz., the case when the officer leaves a widow and the case when, being a widower, he leaves children. The terms of the section are as follows: "Where an officer or member of the board has acquired a right under this Act to extended leave with pay and dies before entering upon it, or after entering upon it dies before its termination, his widow, or in the case of a widower leaving children, his children, or their guardian, or other dependent relative, or their legal representative, shall be entitled to receive the money value of the leave not taken, or not completed, computed at the rate of salary the officer received at the time of his death. Such payment shall be in addition to any payment due under the provision of the *Superannuation Act*."

Provided that where payment of the money value of leave has been made under this section, no action may be brought against the Crown for payment of any amount in respect of such leave."

In support of the decision it is contended by the Crown that the words "or other dependent relative" are governed by the words "in the case of a widower leaving children" and form an alternative under that case, that is to say, that it describes a class of beneficiary alternative with that expressed by the words "his children or their guardian."

In my opinion, this construction of the provision is erroneous. The words "or other dependent relative" are not governed by the words "in the case of a widower leaving children" and they form an alternative with the whole phrase "his widow, or in the case of a widower leaving children, his children, or their guardian" and not with the words "his children, or their guardian." The construction which I give to the material part of the section may be made clear by saying that I read it as if the words "or in the case of a widower leaving children, his children, or their guardian" were enclosed in brackets thus: "Where an officer . . . dies . . . his widow (or in the case of a widower leaving children, his children, or their guardian)

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or other dependent relative, or their legal representative, shall be entitled to receive the money value of the leave not taken." Thus, subject to the case enclosed in brackets, there are two events provided for, namely, his leaving a widow and his leaving some other person dependent upon him. A construction producing absurd and incongruous results is to be avoided unless the language of a statute is plain and unambiguous. The epithets "absurd and incongruous" are by no means too strong to apply to the results produced by the construction the Crown places upon the section. For, if the section bore that construction, it would mean that no dependant of an officer, except his widow, could take under its provisions unless the officer died a widower leaving children. It would mean that, in that event, a title to the money was conferred upon a class of persons described as the children or their guardian or other dependent relative or their legal representative. None of these could claim unless the two conditions were fulfilled that the deceased died a widower and left a child or children. But if these conditions were fulfilled the child or children and the dependent relative or relatives would possess a title to share. In what proportions is not stated. Apparently "legal representative" means executors or administrators and, on the Crown's construction, "their" must mean "of the children." Yet as the officer "leaves" the children, *ex hypothesi* they are living at his death. The "other dependent relative" must mean a relative of the deceased officer dependent upon him. Yet it would seem to follow from the Crown's construction that the only occasion when such a relative is treated as worthy of consideration is when there are children with whom his claim can compete. To avoid this apparently inevitable consequence of the construction for which the Crown contends, it was argued on its behalf that the "dependent relative" was to take, not in competition with the children, but on their behalf in lieu of a guardian. In other words, we are asked to suppose that, in searching for a description of person who should be "entitled" to receive money on behalf of children left without parent or guardian, the legislature chose any relative of the deceased officer so long as he or she had been dependent upon him in his lifetime. It appears to me quite obvious that the dependent relative is to be entitled for

his or her own benefit because of the dependency. I think also that it is reasonably clear that other dependent relatives are not to take when there is a widow or when a widower leaves children.

The section begins with a conditional clause covering all officers who have extended leave due to them at death and upon the construction I adopt, the main clause is coextensive with the conditional clause upon which it depends except that it does not apply to an officer dying without widow, children, or any dependent relative. I construe it as conferring the right upon a widow if there be one, and, if there be no widow, upon every dependent relative unless there be children, and, in that case, upon them.

In so construing it, I treat the reference to the case of the widower leaving children as a parenthesis. In a well-drawn provision this might appear to involve some violence to the order or position of terms upon which English depends so much for its meaning. But to read the present provision as containing a parenthetical, or perhaps interpolated, alternative is to do no more than to give appropriate recognition to the draftsman's evident incapacity for expression. Further, a study of the meaning of the separate terms of the provision and a consideration of its general sense has satisfied me that the section was meant to be read in this manner and, by so understanding its peculiar structure, the true explanation of its meaning is found.

In my opinion the appeal should be allowed.

The order of the Supreme Court should be set aside and judgment in demurrer entered for the plaintiff.

EVATT J. This appeal raises the question whether, under sec. 14 of the *Public Service (Amendment) Act* 1919, in the case of unmarried officers who have acquired a right to extended leave with pay but who die before entering upon it, their dependants are entitled to receive the money value of the leave not taken. In my opinion the dependent relatives are so entitled.

Now sec. 14 is concerned with remedying the legal situation which arises where public servants have actually earned the right to extended leave but are prevented by death from enjoying it in full. The general principle adopted is that the relatives of such officers should be given the money equivalent of the leave not

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taken. This is little more than bare justice, because extended leave may have to be postponed through the exigencies of the public service and through no fault of the officer.

In what cases is the transferred right to be enjoyed by the officer's relatives? It would be surprising to find exceptional treatment of the dependants of officers, and the legislative intention to cover all possible cases is clearly expressed in the opening phrase of the section, viz., "Where an officer . . . has acquired a right under this Act to extended leave with pay and dies before entering upon it, or after entering upon it dies before its termination." This phrase indicates very clearly that the Legislature is addressing itself to *every* case where (a) the officer has already acquired the right to extended leave, but (b) death has prevented its being enjoyed. So far, there is not the slightest reason to suppose that, in the case of unmarried officers, male or female, the right already earned will not be transferred to some suitable beneficiary.

Then follows the list of the statutory beneficiaries of the transferred right: first, the officer's widow, second, (there being no widow) the officer's children (or their guardian) and, third, the officer's "other dependent relative." In all three cases the payment may be made to the "legal representative" of the beneficiaries.

I cannot understand the difficulty supposed to attach to this construction. It merely follows the words of the section. It is said of the phrase "or in the case of a widower leaving children, *his children, or their guardian, or other dependent relative, or their legal representative*" that all the words italicized must be related to the single instance of a widower leaving children. No reason whatever can be suggested for restricting the grant of the transferred right solely to cases where there are children of a widower, especially as the case of infant children is already provided for by allowing payment to be made to their guardian. In my opinion the construction suggested by the Crown is fanciful and unjustified. It takes no account of the broad principle of universality which appears so plainly in the introductory phrase of the section. It leads to the grave absurdity already pointed out. It has no stronger grammatical foundation than the construction suggested by the appellant which merely requires the pronominal adjective "his" to

be understood before “dependent relative,” so that the legislature is speaking of the “dependent relative” of the officer whom the hand of death has prevented from enjoying his well-earned right to leave.

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The appeal should be allowed.

MCTIERNAN J. The order of the alternatives in sec. 14 of the *Public Service (Amendment) Act 1919* invites a controversy as to whether the section applies only to officers who married and provides benefits only for the widow of an officer, or, if he should die a widower, for his children.

In my opinion the construction for which the more persuasive reasons can be found in the language and the order of the alternatives expressed by the section is that it extends to officers who have not married and that the words “or other dependent relative” include a dependent relative of an officer who died a bachelor. These reasons have been fully gone into in the preceding judgments and it is unnecessary to add to them. In my opinion there should be judgment for the plaintiff on the demurrer and the appeal should be allowed.

Appeal allowed with costs. Judgment for plaintiff in demurrer with costs.

Solicitors for the appellant, *Collins & Mulholland*.

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

J. B.