[HIGH COURT OF AUSTRALIA.]

SHUGG . . . . . APPELLANT;
PLAINTIFF,

AND

THE COMMISSIONER FOR ROAD TRANSPORT AND TRAMWAYS (NEW SOUTH WALES) . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Aug.* 4, 5; *Sept.* 1.

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

Transport—"*Officer*"—*Casual employee*—*Bank holiday*—*Leave*—*Transport Act* 1930 (*N.S.W.*) (*No.* 18 *of* 1930), *secs.* 101, 123.

Held, by *Latham* C.J., *Dixon*, *Evatt* and *McTiernan* JJ. (*Starke* J. dissenting), that the word "officer" in sec. 123 of the *Transport Act* 1930 (N.S.W.) includes a casual employee appointed under sec. 101 of that Act, and, therefore, such an employee (by *Dixon* J., if employed continuously or indefinitely), is entitled to the leave provided for by sec. 123.

Decision of the Supreme Court of New South Wales (Full Court): *Shugg* v. *Commissioner for Road Transport and Tramways*, (1937) 54 W.N. (N.S.W.) 33, reversed.

APPEAL from the Supreme Court of New South Wales.

In a special case stated under the provisions of the *Common Law Procedure Act* 1899 (N.S.W.) it was shown that the plaintiff, Harold Robert Shugg, since 6th March 1933, had been continuously employed in the service of the defendant, the Commissioner for Road Transport and Tramways of New South Wales, as a body builder. Immediately prior to his appointment he was examined by the

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commissioner's Staff Board and by its medical officer, and he signed a memorandum acknowledging that, in accepting employment in the motor omnibus service of the commissioner, he understood that the work was purely of a temporary character, and that he was appointed as a casual employee under sec. 101 of the *Transport Act* 1930 (N.S.W.).

On 5th August 1935, which was observed throughout New South Wales as a bank holiday, the plaintiff was required by the commissioner to work and he did in fact work the full eight hour shift, for which he was duly paid the sum of 17s. 11d., the award rate for a day's work. The plaintiff claimed that he was an " officer " within the meaning of sec. 123 of the *Transport Act* 1930, and that he was entitled to leave on full pay for one day in lieu of the bank holiday on which he had worked.

The question reserved in the special case for the opinion of the court was :

Whether the plaintiff on 5th August 1935 was an officer within the meaning of sec. 123 of the *Transport Act* 1930 ?

For the purposes of the special case it was agreed between the parties that (*a*) if the answer to the question were in the affirmative there should be a verdict for the plaintiff in the sum of 17s. 11d. but with costs on the highest scale, and (*b*) that if the swer were in the negative there should be a verdict for the defe. 'ant with costs on the highest scale.

The Full Court of the Supreme Court of New South Wales answered the question in the negative, and, accordingly a verdict was entered for the defendant: *Shugg* v. *Commissioner for Road Transport and Tramways* (1).

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

Evatt K.C. (with him *R. R. Kidston*), for the appellant. The appellant is an officer within the meaning of that word as used in sec. 123 of the *Transport Act* 1930; therefore he is entitled to the benefits conferred by that section. His position in this regard is not adversely affected by the context of that section (See sec. 4). It is obvious that the provisions of secs. 118-122, 124 and 125, wherein

(1) (1937) 54 W.N. (N.S.W.) 33.

the word "officer" is used, apply equally to all the employees of the respondent irrespective of whether they are classified as "permanent," or "temporary" or "casual" employees, and the same meaning must be given to that word as used in sec. 123. The power conferred by sec. 101 to fix conditions of employment is qualified and restricted to such conditions as are not fixed in the Act itself. The conditions of employment fixed in sec. 123 apply to all officers in the wide meaning of that word, and cannot be altered under sec. 101. If it be thought that the meaning of the word is ambiguous it should be construed in such a way as to prevent injustice (*Walsh* v. *Sainsbury* (1)).

Lamb K.C. (with him *Chambers*), for the respondent. The question cannot be solved merely by having regard to the word "officer" as defined in sec. 4. It is manifest that sec. 123 does not apply to all the employees of the respondent, otherwise it would apply to those persons who, to meet the demands of the consequential increased traffic, are employed only for and on holidays, that is, casual employees, which would be absurd. Reference to secs. 100-103, 105, 108-110, shows that the word "officer" does not apply to casual employees. It is intended to apply to those persons who are permanently employed by the respondent, that is, to those persons who are assured of continuity of service. Different conditions of appointment and dismissal operate as between the two classes. Whenever the legislature intended to refer to and include casual or temporary employees it has said so by express words so that where, as in sec. 123, the word "officer" is used its operation is confined to those persons who are not casual or temporary employees. In cases of doubt the particular meaning of the word must, pursuant to sec. 4, be determined in accordance with the context or subject matter of the particular section. On that test it is clear that the provisions of sec. 123 were intended to be applicable only to "permanent" employees. The principles which should be applied when interpreting wide and general words are as stated in *Walsh* v. *Sainsbury* (2). (See also *Blackwood* v. *The Queen* (3).)

(1) (1925) 36 C.L.R. 464, at pp. 479, 480. (2) (1925) 36 C.L.R., at p. 479.
(3) (1882) 8 App. Cas. 82.

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The meaning of the word "officer," and of the words "permanent," "temporary" and "casual" in relation to "officer," was discussed in *Williams* v. *Macharg* (1). The meaning of the word "officer" must be restricted to permanent officer.

Evatt K.C., in reply. The appellant is entitled to the benefits of sec. 123 (*Obee* v. *Railway Commissioners for New South Wales* (2); *Lindfield* v. *Railway Commissioners for New South Wales* (3)).

Cur. adv. vult.

Sept. 1.

The following written judgments were delivered :—

LATHAM C.J. In March 1933 the appellant Shugg was appointed by the defendant Commissioner for Road Transport and Tramways as a casual employee. He has since been continuously so employed as a body builder. On 5th August 1935, which was a bank holiday, the plaintiff was required by the defendant to work, and he was paid at the award rate (17s. 11d. per day) for that day's work. He claims that he is an officer within the meaning of sec. 123 of the *Transport Act* 1930 and that he is entitled to leave on full pay for one day in lieu of the 5th August 1935. He brought an action against the commissioner claiming 17s. 11d. in lieu of leave, which the commissioner has refused to give. This claim was apparently based upon a provision of the award under which it is provided that : "Payment for all leave due to an employee who resigns, or is dismissed, or dies shall be made as follows :—(*a*) In the case of resignation or dismissal, or when services are terminated for any other reason, to the employee ; (*b*) In the case of death, to his personal representative." The plaintiff has not resigned or been dismissed or died and his services have not been terminated and therefore it does not appear to me to be clear that by virtue of this provision he is entitled to the sum of money claimed. If his contention is right, his legal right is a right to a day's leave on full pay. The parties, however, have agreed that if it should be decided that the plaintiff was on the relevant date an officer within the mean-

(1) (1908) 7 C.L.R. 213 ; (1910) 10 C.L.R. 599 ; (1910) A.C. 477.
(2) (1930) 30 S.R. (N.S.W.) 201 ; 47 W.N. (N.S.W.) 71.
(3) (1930) 30 S.R. (N.S.W.) 346 ; 47 W.N. (N.S.W.) 115.

ing of sec. 123 of the Act, there should be a verdict for the plaintiff for the sum of 17s. 11d. As the parties have made this agreement it does not appear to me to be necessary to determine whether they have understood the alleged rights of the plaintiff with precise accuracy.

The parties agreed in stating a special case upon which the Full Court of the Supreme Court decided that sec. 123 did not apply to the plaintiff. An appeal is brought to this court by special leave.

Sec. 123 is in the following terms :—" Every officer shall be entitled to at least one week's leave on full pay in respect of each twelve months of actual service, in addition to bank and public holidays observed throughout the State ; and every officer who has completed twenty years of service shall be entitled to at least one month's extended leave on full pay : Provided that any officer who cannot take his leave on any such bank or public holiday by reason that he has been required to work on such days shall be entitled in lieu thereof to leave on full pay for the same number of days at some future time."

The plaintiff was employed by the defendant under the power conferred by sec. 101 of the Act, which is as follows :—" The board may appoint, employ, and dismiss such casual employees as it deems necessary for the purposes of this Act, and may fix wages and conditions of employment where these are not fixed in accordance with the provisions of other Acts." The functions of the board were at all relevant times discharged by the commissioner, who has been substituted for the board by the *Transport (Division of Functions) Act* 1932, sec. 5.

The provisions of sec. 101 must be contrasted with those of sec. 100, sub-secs. 1 and 2, which are as follows :—" (1) The board shall appoint or employ in the service of the trust for the conduct of its transport services such officers to assist in the execution of its powers and obligations under this Act as it thinks necessary, and every officer so appointed shall hold office during pleasure only. (2) Subject to this Act the board shall determine the salaries, wages, and allowances of officers so appointed where these are not fixed in accordance with the provisions of other Acts."

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Sec. 4 of the Act provides that " unless the context or subject-matter otherwise indicates or requires . . . ' Officer ' means any officer, clerk, servant or other person employed or appointed by the Commissioner of Road Transport or by the board, and includes a member of the police force when acting in pursuance of powers conferred upon him by or under this Act."

The contention of the plaintiff is that he is a person employed or appointed by the commissioner and therefore prima facie an officer within the meaning of that term as defined in sec. 4. He contends that neither the context nor the subject matter of sec. 123 either indicates or requires that " officer " in that section should be construed in any other sense than that specified in sec. 4. On the other hand it is argued that the subject matter of sec. 123 is such that it would be an unreasonable interpretation of the Act to make it applicable in the case of a " casual employee " who owed his position to the exercise of the power conferred by sec. 101. The argument is that sec. 123 applies only to " permanent employees," that is, to persons employed under sec. 100. They (it is urged) are persons who presumably will serve for an extended period, and the provisions with respect to twelve months of actual service and twenty years of service may readily be applied to them, but they are inapplicable and out of place in the case of a casual employee. The argument for the defendant is based in part upon a reluctance to accept the position that the same provision should apply to " casual employees " as to " permanent employees," for the reason that a certain haphazard and discontinuous element in employment is involved in the description of " employment " by the term " casual." There is no doubt that the word " casual " does contain an implication of this kind. It is clear that provisions in the Act which assume continuity of employment as a condition of employment cannot be applied to casual employees. An example of a provision which could not reasonably be regarded as applying to casual employees is afforded by sec. 102, which provides that, subject to the Act " all appointments shall be made to the lowest grade in each of the various branches of the transport services, and on probation only, for a period of six months." This section also contains other provisions relating to the fitness of the officer as ascertained during the period

of probation, and as to confirmation of appointments after probation. These provisions are shown by the subject matter to which they refer to be inapplicable to casual employees.

I think also that it is reasonably clear that the provisions of sec. 123 would not be applicable in the case of a police officer who acted in pursuance of powers conferred upon him by or under the Act. Such a police officer is expressly included within the definition of "officer" in sec. 4 by the concluding words of the definition. But it is clear that this part of the definition is included only for the purpose of enabling a police officer to exercise powers under the Act—for example, investigations under secs. 164 et seq. Such a police officer is not a person employed by the commissioner and is therefore not a person to whom the commissioner can grant leave. The subject matter of sec. 123 (leave to be granted to "officers") is such as to exclude the application of the section to any "officer" to whom the commissioner is incapable of granting leave. Therefore, although the police officer was an "officer" he would not be entitled to leave as an officer under sec. 123.

In the case of a casual employee still in the employment of the commissioner such considerations do not exist. There is, in my opinion, no difficulty in applying the words to a casual employee in such a position. If a casual employee has actually served for twelve months, it is quite possible to give him a week's leave on full pay. If he has completed twenty years of service, there is no difficulty in giving him "one month's extended leave on full pay." So also, if he has been required to work on a bank or public holiday, there is no difficulty in giving him leave on full pay for another day at some future time. In my opinion there is neither legal nor administrative difficulty in applying these provisions to casual employees who are still in the employment of the commissioner.

I agree with the statement in the judgment of the Full Court that a casual employee can lawfully be dismissed at any time by virtue of the provisions of sec. 101. I also agree that after he is dismissed he cannot be given leave, for leave can be given by an employer, as already stated, only to a person who is actually employed by that employer. But sec. 123 still operates to give the *right* to leave even if, to take the extreme case used in argument, the engage-

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ment has been for a single public holiday only and the employment therefore has terminated at the end of that day. In such a case the award would come into operation. Under the award, payment is to be made to an employee " for all leave due " when he resigns or is dismissed or when his services are terminated for any other reason. It may be that the employee who was employed for a single day cannot be regarded as having been " dismissed " within the meaning of the award. But the services of such an employee would have been terminated for the reason that they were no longer required or for the reason that the term of his employment had expired. This appears to me to be a reasonable interpretation of the award. I recognize that the award cannot be used for the purpose of interpreting the Act and I refer to it only for the purpose of showing that the Act and the award, taken together, succeed in providing a complete and not irrational scheme.

If then the award is left altogether out of account, it may be urged that the result of the reasoning which I have developed in this judgment is that a casual employee, who is dismissed, is left with a supposed right to leave which the Act provides no means for enforcing. He has the " right to leave," but he cannot get the leave, being no longer in the employment of the commissioner, and he has no remedy for the refusal of leave because the commissioner broke no contract and infringed no law when he dismissed him. Thus, it may be argued, the result of holding that sec. 123 applies to casual employees is, so far as the Act is concerned, that they are declared to possess a supposed " right " of which, however, the commissioner can rightfully deprive them at any moment. This result would lead me to the conclusion that sec. 123 was not intended to be applicable to casual employees if it were not for the fact that all employees of the commissioner, including the " permanent " employees, are in the same position with respect to a right to a continuance of their employment. The commissioner can lawfully dismiss any employee at any time. Sec. 100 of the Act provides that every officer appointed under that section (the " permanent " officers) shall hold office during pleasure only. Sec. 101, as already stated, gives power to the commissioner to dismiss casual employees. Thus the legal position is that no officer is entitled to a continuance

of his employment. If this fact excludes a "right to leave," it excludes such a right in the case of every officer, whether "permanent" or "casual." The result then would be that sec. 123 would apply to no officers at all. This *reductio ad absurdum* shows that the right of the commissioner to dismiss is not regarded by the Act as preventing an employee from having a right to leave within the meaning of the Act.

Thus, though I agree that sec. 123 does not operate to compel the commissioner to keep a casual employee in his employment merely for the purpose of giving him leave from that employment, I am of opinion that there is no inconsistency between the right of dismissal at any time given to the commissioner by sec. 101, and the right to leave given to the employee by sec. 123. Thus, in my view, there is no obstacle to the conclusion that a casual employee engaged under sec. 101, and therefore liable to dismissal at any time, is an officer within the meaning of sec. 123 and is entitled to leave thereunder.

The appeal should be allowed.

STARKE J. The question in this case is whether the plaintiff is an officer of the defendant entitled to a day's leave of absence on full pay pursuant to the provisions of sec. 123 of the *Transport Act* 1930, in lieu of a bank holiday on which he had worked. Amendments have been made to the *Transport Act* 1930 by the Acts Nos. 3 and 31 of 1932, but it is unnecessary to refer to them for the decision of this question.

Officers employed in the transport services are of two classes; one appointed under sec. 100, who may be described as the regular or permanent staff; the other, casual employees, appointed under sec. 101.

The plaintiff was a casual employee. There is no doubt that the word "officer" includes both regular or permanent staff and casual employees in some sections, and equally clear that casual employees are not always within that term. See sec. 4, "officer," secs. 100, 124 and 125. But the question whether the word "officer" in sec. 123 includes casual employees depends upon the language of that section and its subject matter. The interpretation

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of the word " officer " in sec. 4 is not applicable if " the context or the subject matter otherwise indicates or requires." The facts are fully set forth in the special case and have been referred to by the Chief Justice, as have also the relevant sections of the Act, and I shall not repeat them. But the first clause of sec. 123 provides leave for officers on full pay in respect of each twelve months of actual service in addition to bank and public holidays, and for officers who have completed twenty years of service.

In my opinion this provision contemplates continuity of employment appropriate to the permanent and regular staff of the defendant, and is wholly inappropriate to the persons casually or intermittently employed.

Sec. 123 proceeds : " Provided that any officer who cannot take his leave on any such bank or public holiday by reason that he has been required to work on such days shall be entitled in lieu thereof to leave on full pay for the same number of days at some future time."

But the officers here indicated are those who cannot take the benefit of the leave on bank and public holidays conferred by the earlier part of sec. 123, by reason that they have been required to work on such days. It does not extend the scope of the word " officer " beyond its meaning in the first part of the section. Unless casual employees are officers within the meaning of the first part of the section it is clear, I should think, that they cannot be included in the same word under this part of the section. Moreover, there is the practical difficulty in the case of persons casually employed only for a bank or public holiday. The section contemplates that the officer remains in his employment and is entitled at some future time to take his leave in lieu of the day on which he has worked. The section does not provide that a person shall have double pay for work on a bank or public holiday, but that he shall be entitled in lieu thereof to leave on full pay at some future time for the holiday on which he worked.

Reference was made during argument to an industrial award relating to government railways and tramways providing for payment for all leave due to an employee who resigned or was dismissed or died. The plaintiff neither resigned nor died, nor was he dismissed, and the award is inapplicable to the case of the plaintiff.

and is moreover wholly irrelevant to the proper construction of sec. 123.

In my opinion the appeal should be dismissed.

DIXON J. The word " officer " is defined by sec. 4 of the *Transport Act* 1930 to mean any officer, clerk, servant or other person employed or appointed by the Commissioner of Road Transport or by the management board.

The plaintiff is a person employed or appointed by the commissioner. He has been continuously employed in the commissioner's motor omnibus service for over three and a half years as a body builder. On his appointment he underwent an examination by the staff board and by the medical officer of the commissioner. He signed a memorandum acknowledging that in accepting employment in the service he understood that the work was of a purely temporary character and that he was appointed as a casual employee under sec. 101 of the *Transport Act* 1930. That section provides that the board may appoint, employ and dismiss such casual employees as it deems necessary for the purposes of the Act, and may fix wages and conditions of employment where these are not fixed in accordance with the provisions of other Acts.

The question for decision is whether the plaintiff's status is such as to entitle him to the benefits conferred on officers by sec. 123 or at all events to the benefit of the part relating to bank and public holidays. Sec. 123 provides that every officer shall be entitled to at least one week's leave on full pay in respect of each twelve months of actual service, in addition to bank and public holidays observed throughout the State ; and every officer who has completed twenty years of service shall be entitled to at least one month's extended leave on full pay : Provided that any officer who cannot take his leave on such bank or public holiday by reason that he has been required to work on such days shall be entitled in lieu thereof to leave on full pay for the same number of days at some future time. The *Transport Act* makes provision for the appointment of officers whose entry into the service, rights of promotion and conditions of tenure are such as to justify according to common usage the description " permanent."

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Dixon J.

The decision under appeal limits the application of sec. 123 to officers of this kind and excludes from it all persons employed under sec. 101. This conclusion rejects the definition of officer contained in sec. 4 on the ground that a contrary intention appears in sec. 123. Sec. 4 makes its definitions applicable only "unless the context or subject matter otherwise indicates or requires."

In my opinion there is not enough in the context or subject matter to indicate that a person continuously employed by the commissioner under a contract of service subsisting until terminated by the act of one of the parties falls entirely outside sec. 123. I agree that sec. 123 is inapplicable to persons employed for a particular occasion who are not taken into any regular employment. The first part of its provisions includes the case of twelve months' service at least. Plainly that case involves employment indefinite in its duration or for a term of years.

The second part refers to officers who complete twenty years service and of course contemplates "permanent" officers. But it does not appear to me to follow that because the appointment or employment of an officer or employee was made under sec. 101 he cannot claim the benefit of sec. 123. For an appointment made under sec. 101 is not necessarily inconsistent with the fulfilment of all the conditions upon which rights conferred by sec. 123 depend. The expression "casual" is a word of indefinite meaning which elsewhere has caused difficulty. We are apt to associate with the word elements of chance or of discontinuity. We perhaps think of casual employment as occasional or intermittent. But it has been found so difficult to fix any definite tests for casual employment that under Workmen's Compensation Acts refuge has been taken in treating it as a question of fact in each case. I do not think that sec. 101 means to confine the board's power of appointing casual employees to temporary or unforeseen occasions. This case shows that the board in the exercise of the power retains men in its employment who are required for regular work and for an indefinite duration of time. Treating the section in this way as authorizing general employment as distinguished from appointment to permanent office, it appears to me that it does not afford the criterion for determining who do and who do not fall within sec. 123. The distinction

upon which the application of sec. 123 turns is, I think, between a general, indefinite or continuous employment and an employment for a particular occasion or occasions, or to fulfil some special or defined purpose of brief duration. If an employment is continuous, it may result in twelve months actual service or, indeed, conceivably in twenty years' service. I do not think that there is enough in sec. 123 or in the other sections dealing with officers to indicate that the word " officer " in sec. 123 does not include men continuously employed in such a way, simply because they are appointed under sec. 101. The definition of " officer " therefore appears to me to apply to sec. 123. But from its terms that section is inapplicable to cases such as were put in argument of men put on for a public holiday or holidays or for some other particular occasion and not employed continuously or indefinitely.

In my opinion the plaintiff was entitled to the bank holiday in question. The section entitles officers to holidays on full pay and not to pay in lieu of holidays. The parties have agreed that the plaintiff should recover a sum of money if the court should be of opinion that he was an officer within sec. 123. We are not concerned to inquire how they arrived at it or why they considered that a sum should be paid in lieu of the holiday. As they have agreed to the consequences, we have nothing to do but give effect to it.

I think the appeal should be allowed. The judgment of the Full Court should be discharged. In lieu thereof the question should be answered: Yes, and a verdict entered for the plaintiff.

EVATT J. From March 1933 to October 1936—a period of $3\frac{1}{2}$ years—the plaintiff was employed by the Commissioner for Road Transport and Tramways. Upon his first accepting employment, the plaintiff signed a document declaring that his work was of a temporary character and that he was appointed under sec. 101 of the *Transport Act* 1930.

Sec. 123 of that Act confers upon every " officer " a right to yearly leave and extended leave. It also gives such " officer " the right of leave either on " bank and public holidays observed throughout the State," or days substituted for such holidays. Prior service with the Railway Commissioners &c. counts as service for the purposes of sec. 123.

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Evatt J.

The sole question which arises is whether the plaintiff was an "officer" entitled to the benefit of sec. 123. By sec. 4, unless the context or subject matter otherwise indicates or requires, an officer means any "person employed or appointed by the Commissioner of Road Transport or by the Board." Prima facie, therefore, the plaintiff, as a person so employed, is an "officer" within the meaning of sec. 123. It is contended that the context indicates otherwise. No doubt, the plaintiff is a "casual employee" within the meaning of sec. 101. But, in my opinion, sec. 101 was inserted in order to provide statutory warrant for the practice adopted by the Railway Commissioners, of appointing persons temporarily and continuing them in employment for periods extending far beyond the period of six months contemplated by the *Government Railways Act* 1912. Sec. 101 gives a specific authority to employ without any such limitation of time. Thus the plaintiff has been a "casual" for three and one-half years and apparently will be employed indefinitely.

Sec. 101 does not require or even suggest that a person appointed thereunder is not an "officer" within sec. 123. The policy embodied in sec. 123 is that the granting of leave in respect of public holidays is regarded as necessary for the efficiency of the transport services, especially as, in the case of the running services, the strain of work is greatly increased by reason of the increased public use of the services on holidays. It would be surprising to find that leave is granted to one employee but denied to another similarly employed merely because the latter is not "permanent." There appears to be no obligation to make "casual" employees "permanent" after a certain term, so that, if the commissioner is right, a "casual" might be employed for twenty years in the department but receive none of the benefits of sec. 123.

When the Act visits certain disabilities upon officers, there is no reason to suppose that persons temporarily employed are necessarily excluded from the disabilities. Thus upon conviction for felony, an "officer" is deemed to have vacated his office (sec. 107). Undoubtedly the plaintiff is an "officer" for the purposes of sec. 107. Similarly the plaintiff appears to be an "officer" within the meaning of every section in Division 5 other than sec. 123, which orms a part of that Division. For instance, the personal injury

section (sec. 124) clearly applies to him. Further, it appears that sec. 124 derives from sec. 100B of the *Government Railways Act*, and sec. 123 from sec. 100A. Everyone familiar with the statutory history of the New South Wales railways is aware that sec. 100B was introduced for the benefit of all persons employed in the railways, whether clerks at head office, tram conductors, workshop employees, or navvies working on railway construction. Similarly with sec. 100A, now reproduced in sec. 123.

No reason whatever has been shown for excluding temporary or casual employees from the benefits of sec. 123. In my opinion such employees are entitled as " officers " to enjoy such benefits, just as they are subjected to many of the disabilities or forfeitures applicable to an " officer."

The appeal should be allowed.

McTIERNAN J. In my opinion the appeal should be allowed. I agree with the judgment of the Chief Justice.

Appeal allowed with costs. Order of Full Court set aside and in lieu thereof order that question stated in special case be answered: Yes, and that a verdict be entered for the plaintiff for 17*s.* 11*d. with costs upon the highest scale.*

Solicitors for the appellant, *Abram Landa & Co.*

Solicitor for the respondent, *Fred. W. Bretnall*, Solicitor for Transport.

J. B.