

[HIGH COURT OF AUSTRALIA.]

MORLEY . . . . . APPELLANT ;  
PETITIONER,

AND

HUNKIN . . . . . RESPONDENT.  
NOMINAL DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF  
SOUTH AUSTRALIA.

*Public Service (S.A.)—Excess officer—Transfer—Reduction of salary—General provision empowering reduction—Special provision protecting salary—Public Service Acts 1916 to 1925 (S.A.) (No. 1259—No. 1716), secs. 11b, 11e\*, 21\*.*

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ADELAIDE,  
Sept. 29 ;  
Oct. 4.

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

On 1st July 1924 M. was appointed an accountant in the Public Service of South Australia at a salary of £510 per annum. On 1st October 1926 a “return” was made pursuant to the *Public Service Acts 1916 to 1925 (S.A.)* whereby his office was reclassified and the salary for the officer was reduced to a minimum of £300 per annum and a maximum of £348 per annum. M.’s salary was protected by sec. 11e of the *Public Service Acts* and for the time was unaltered. It was later found by the Classification and Efficiency Board that

\* *The Public Service Acts 1916 to 1925 (S.A.)* provided :—Sec. 11e : “Where by the return under this section any office is assigned a salary less than the salary which the officer holding such office is receiving at the time when the return comes into operation, the salary assigned to such office, shall, notwithstanding anything in this Act, not apply to such officer, but such officer shall be paid in accordance with the scale or regulation under which he was paid immediately before such time until he is promoted or transferred to another office providing a salary not less than that received by him at the time of the transfer or promotion.” Sec. 21 : “If at any time the board finds that a greater number of officers is employed

in any department or branch of a department than is necessary for the efficient working of that department or branch, any officer whom the board finds is in excess may be transferred by the commissioner to such other position of equal classification and salary in the Service as the officer is competent to fill, and if no such position is available the officer may be so transferred to a position of lower classification and salary. If no position is available for the officer, the Governor may, upon the recommendation of the commissioner, call upon such officer to retire from the Public Service ; and if he does not so retire he may be dismissed from the Public Service.”



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there was an excess of officers in M.'s department, and he was transferred to another department pursuant to the powers contained in sec. 21. From the time of his transfer until retirement, M. received a salary of only £348 per annum. He claimed that by virtue of sec. 11e he was entitled to a yearly salary of £510 until his service terminated.

*Held* that by sec. 11e of the *Public Service Acts 1916 to 1925* (S.A.) a right to a particular rate of salary was conferred on the officer personally, independently of the particular office, and that sec. 21 could not be applied to M. in such a way as to bring about a reduction of his salary.

Decision of the Supreme Court of South Australia (Full Court): *Morley v. Hunkin*, (1938) S.A.S.R. 111, reversed.

APPEAL from the Supreme Court of South Australia.

George James Morley was appointed to the Public Service of South Australia on 4th May 1885. On 1st July 1924 he was appointed accountant of the income-tax branch of the Land and Income Tax Department at a yearly salary of £510. In 1925 an amending Act was passed, which authorized a reclassification of the Service by a return to be made by the Classification and Efficiency Board under sec. 11b of the *Public Service Acts 1916 to 1925* (S.A.). By the return, made on 1st October 1926, it was provided that the title of Morley's office should be altered from that of accountant to staff clerk, and that the minimum salary for the office should be £300 per annum and the maximum salary £348 per annum. Sec. 11e protected his salary from reduction by reason of the return, and accordingly the return provided that his salary should continue to be £510 per annum. The title of his office was subsequently altered to that of pay clerk. On 26th June 1930 he was transferred from the Taxation Department to the Agriculture Department as clerk and receiver of revenue at a yearly salary of £348. From that date he was paid at the rate of only £348 per annum.

Morley brought a petition of right praying for payment of the difference between the amount of salary actually received by him and a salary at the rate of £510 per annum to which he claimed to be entitled. The petition was referred to the Supreme Court and heard by *Cleland J.*, who gave judgment for the petitioner. An appeal from this judgment to the Full Court of South Australia was allowed.



From the decision of the Full Court the petitioner appealed to the High Court.

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*Abbott* (with him *Ziesing*), for the appellant. Sec. 11e of the *Public Service Acts* 1916 to 1925 deals only with the salary of officers classified at a reduced salary, and protects the salary such officers were drawing at the time of reclassification. There is no conflict between secs. 11e and 21. Sec. 21 is a general clause dealing with the position of surplus officers. [Counsel was stopped.]

*Hannan* K.C. (with him *Healy*), for the respondent. Sec. 11e is a saving clause and has operation only in respect of classification; it is really a proviso to sec. 11b (4). The words are appropriate to refer to prejudice arising from the making of the return and that only. It cannot reasonably be imputed that Parliament intended by sec. 11e to give to officers an immunity which they did not enjoy before and which no other civil servant enjoyed. If sec. 11e excludes sec. 21, it excludes as well all those sections dealing with penalties and dismissals (secs. 57, 58, 59, 60 and 70). By reason of the Part of the Act in which sec. 11e occurs it was intended to be a saving provision consequent upon classification only. Sec. 21 is in another Part of the Act. [As to the effect of the headings in the Act counsel referred to *Napier v. Sholl* (1) and *Ragless v. District Council of Prospect* (2); and, as to the use of the marginal notes, to *Maxwell* on *The Interpretation of Statutes*, 8th ed. (1937), pp. 38, 39, and *In re Woking Urban Council (Basingstoke Canal) Act* 1911 (3).] The words "notwithstanding anything in this Act" in sec. 11e refer only to the applicability of the return. It would be imputing absurdity to the legislature to find that a man who is in excess is to retain his position indefinitely. It would give the plaintiff a right which he did not previously have.

*Abbott*, in reply.

*Cur. adv. vult.*

(1) (1904) S.A.L.R. 73, at pp. 94, 95.

(2) (1922) S.A.S.R. 299, at p. 311.

(3) (1914) 1 Ch. 300, at p. 322; 83

L.J. Ch. 201, at p. 217.



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The following written judgments were delivered :—

LATHAM C.J. The petitioner claimed by petition of right against a nominal defendant payment of salary alleged to be due to him by the Crown. *Cleland J.* gave judgment in his favour for the amount claimed, but this judgment was set aside by the Full Court, and an appeal is now brought to this court.

The petitioner was appointed to the Public Service of South Australia on 4th May 1885. On 1st July 1924 he was appointed accountant of the income-tax branch of the Land and Income Tax Department at a yearly salary of £510. In 1925 an amending *Public Service Act* was passed which authorized a reclassification of the Service by a return to be made by the Classification and Efficiency Board under sec. 11b of the Act, which was inserted in the principal Act of 1916 by sec. 5 of the 1925 Act. By the return, made on 1st October 1926, it was provided that the title of the petitioner's office should be altered from that of accountant to staff clerk and that the minimum salary for the office should be £300 per annum and the maximum salary £348 per annum. Sec. 11e, which was also introduced into the 1916 Act by sec. 5 of the 1925 Act, protected the plaintiff's salary from reduction by reason of the return, and accordingly the return provided that his salary should continue to be £510 per annum. The title of the petitioner's office was subsequently altered to that of pay clerk. On 26th June 1930 the petitioner was transferred from the Taxation Department to the Agriculture Department as clerk and receiver of revenue at a yearly salary of £348. From that date the petitioner was paid at the rate of only £348 per annum. He claims that by virtue of sec. 11e of the amending Act he became entitled to a yearly salary of £510 until his service terminated on 26th February 1932.

The petitioner was transferred to the Department of Agriculture under sec. 21, which is in the following terms :—"If at any time the board finds that a greater number of officers is employed in any department or branch of a department than is necessary for the efficient working of that department or branch, any officer whom the board finds is in excess may be transferred by the commissioner to such other position of equal classification and salary in the Service as the officer is competent to fill, and if no such position



is available the officer may be so transferred to a position of lower classification and salary. If no position is available for the officer, the Governor may, upon the recommendation of the commissioner, call upon such officer to retire from the Public Service; and if he does not so retire he may be dismissed from the Public Service.”

It is not contended by the petitioner that his transfer to the Department of Agriculture was invalid, but it is contended that sec. 11e protected him from any reduction of salary upon the transfer.

Sec. 11e is in the following terms: “Where by the return under this section any office is assigned a salary less than the salary which the officer holding such office is receiving at the time when the return comes into operation, the salary assigned to such office, shall, notwithstanding anything in this Act, not apply to such officer, but such officer shall be paid in accordance with the scale or regulation under which he was paid immediately before such time until he is promoted or transferred to another office providing a salary not less than that received by him at the time of the transfer or promotion.”

The return which is referred to in sec. 11e is plainly the return provided for by sec. 11b (1)—a return classifying all offices in the Service and assigning salaries to them. Sec. 11b (3) authorizes the board to make from time to time such variations of and additions to the return as any alteration in the conditions and requirements of the Service may render necessary, and sec. 11b (4) provides that the return shall come into operation upon the expiration of fourteen days from the publication in the *Government Gazette*. Provision is also made for appeal against their classification by dissatisfied officers. It is not disputed that, if the board had made a variation of the return under sec. 11b (3), the salary of the plaintiff could have been effectively reduced. But no such variation was made. The petitioner was transferred to another department under sec. 21. He has not been promoted or transferred to another office providing a salary not less than £510, and he therefore contends that the plain words of sec. 11e entitled him to the payment of that salary throughout his term of office.

The contention on behalf of the Crown is that sec. 11e operates only to protect the petitioner against any reduction of salary as a

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consequence of the return made under sec. 11b (1), that is, the general reclassification which was made on 1st October 1936, but that otherwise he remained subject to all the provisions of the Act.

In the argument before this court much emphasis was placed by the Crown upon the circumstance that the words "notwithstanding anything in this Act" apply only to the former and not to the latter part of sec. 11e. The first provision contained in sec. 11e is that, "notwithstanding anything in this Act," the reduced salary shall not apply to an officer holding office when the return is made. This part of the section is therefore an overriding provision, but its effect is limited by the introductory words, "where by the return under this section" the salary assigned to an office is reduced. *Prima facie*, therefore, this provision is designed only to exclude the consequences which would otherwise follow in the case of a particular officer from the making of the return in which a reduced salary was assigned to his office. Accordingly the first part of sec. 11e does not in itself secure the petitioner against any reduction of salary under any other provision contained in the Act if such provision is in terms applicable to him. It protects him against such reduction only as a consequence of the return which, in making a general reclassification of the service, reduces the salary assigned to the office which he holds.

The second part of sec. 11e is plainly designed to provide that certain salaries shall be paid to officers who hold offices the salaries assigned to which have been reduced by the return. In the absence of some provision for this purpose there would have been no provision for the salary to be paid to such officers. They could not have been paid the new low rates specified in the return, because the first part of sec. 11e provides that the return shall not apply to such officers. Nor could they have been paid the old high rate (in the absence of some special provision), because sec. 27 (2) of the Act (also introduced by the 1925 Act) provides that officers shall be paid a salary not lower than the minimum fixed by the board in respect of the offices held by the officers. The latter part of sec. 11e is plainly a special provision designed to prescribe the salaries applicable in such cases.



This provision secures to the officer what I have called the old high salary until he is promoted or transferred to another office providing a salary not less than that salary. This part of the section, however, does not contain the words "notwithstanding anything in this Act." It is therefore contended by the Crown that room is left for the application of the administrative provisions of the Act which authorize the reduction of salaries in certain cases. Unless this view is taken, it is said, officers who admittedly are overpaid are placed in a peculiarly and unreasonably advantageous position as compared with officers who are not admittedly overpaid.

The petitioner accepts the proposition that the general administrative provisions of the Act apply to him, but he contends that an exception is made in so far as the application of any other provision of the Act would result in a reduction of salary. Thus, for example, an officer to whom sec. 11e applies could be dismissed under sec. 60 (power to dismiss at pleasure). His office could be forfeited under sec. 57 (conviction of felony, &c.). If he became insolvent, he could under sec. 58 be dismissed or reduced to a lower class, but, it is argued, the salary paid to him could not be reduced. If he became incapable, he could be called upon under sec. 59 to retire and he could be dismissed in accordance with that section or be transferred to another office, but again, it is argued, without any reduction in salary. So also, if he committed any of the offences specified under sec. 53, he could be punished under sec. 54 by the infliction of any of the penalties mentioned in that section except reduction of salary; he could be reduced to a lower class or grade or sub-division of a class or grade or be transferred to another office. But the words of the section, "with a corresponding reduction in salary or other remuneration," would not, it is argued, apply to him. Thus, the relatively moderate penalty of reduction in salary could never be imposed, though he could be deprived altogether of his office.

In the argument on behalf of the Crown attention was called to another result of the interpretation of sec. 11e for which the petitioner contends. Where the section applied to an officer his salary *in his existing post* could never be increased. The fundamental proposition of the petitioner is that his salary could be altered (and only upwards) only upon promotion or transfer to "*another office*" with equivalent

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salary. A further result would be that the position of an officer whose work was overpaid in the opinion of the board (as shown by the return made under sec. 11e) would be markedly, and advantageously to him, different from the position of other officers who were (in the opinion of the board as shown by the same return) not overpaid. The salaries of the latter officers (not overpaid) could under the general administrative provisions of the Act be reduced (secs. 21, 11b (3) and the penalty sections already mentioned). But the salary of the overpaid officers could never be reduced under those provisions. These results naturally suggest a cautious consideration of the interpretation which brings them about.

Although it is impossible to avoid being impressed by these arguments, the concluding words of sec. 11e are, in my opinion, too strong to make it possible to accept the arguments. Sec. 21 is a general provision dealing with the transfer of excess officers. It provides that, if a position of equal classification and salary which an excess officer is competent to fill is not available, "the officer may be transferred to a position of lower classification and salary." Sec. 11e recognizes that under other provisions of the Act officers may be promoted or transferred. Thus, the operation of sec. 21 dealing with transfer is not excluded in the case of officers to whom sec. 11e applies. But the effect of applying such a general provision is limited by the very clear words of sec. 11e. Sec. 11e in effect says that an officer to whom the section applies may be transferred but that he is to receive a specified salary (in this case £510 per annum) until he is transferred to another office which provides for him (in this case) a salary not less than £510. Accordingly, in my opinion, the general provision relating to transfer of officers, while applicable to the petitioner, cannot be applied to him in such a way as to bring about a reduction of his salary. In my opinion the judgment of *Cleland J.* was right.

It does not follow from what I have said that the disciplinary provisions of the Act to which I have referred have no application in the case of the petitioner. Admittedly they apply except where the effect of their application is to bring about a reduction in salary, but, as at present advised, I can see no sufficient reason to prevent their application so as to bring about a reduction in salary in the



case of officers to whom sec. 11e applies. The conclusion which I have reached upon the facts of the present case depends upon the circumstance that the final words of sec. 11e contain a specific reference to the transfer of officers and accordingly limit the application of any other general provisions contained in the Act which relate to transfer. But the section does not contain any words which would limit in a similar manner the application of the disciplinary provisions mentioned. Accordingly it does not follow from this decision in favour of the plaintiff in this case that officers in his position are not liable to reduction of salary as a result of the disciplinary provisions of the Act.

In my opinion the appeal should be allowed.

RICH J. I agree that the appeal should be allowed and have nothing to add to what has been said.

DIXON J. In the course of the reasons which *Napier J.* read on behalf of himself and *Angas Parsons J.* a doubt is raised whether the facts of the plaintiff's case brought him under the operation of sec. 11e of *The Public Service Acts 1916 to 1925* (S.A.), but their Honours resolved the doubt in his favour.

Upon the hearing of the appeal to this court the defendant did not contend that this conclusion was erroneous. He supported the decision of the Full Court on the ground upon which it proceeds, namely, that, conceding that the plaintiff came within the operation of sec. 11e, it nevertheless did not protect him from a reduction of salary if, in the exercise of the power conferred by sec. 21 upon the Public Service Classification and Efficiency Board, the Public Service Commissioner transferred him to a position of lower classification and salary.

Sec. 21 is a general provision stating what may be done if that board finds that in a department or branch of a department a greater number of officers is employed than is necessary for its efficient working. In that event, the section empowers the commissioner to transfer any excess officer to such other position of equal classification and salary as he is competent to fill and, if there be no such position, to one of lower classification and salary. If no position at

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all is available for the officer, he may be retired. Pursuant to this provision, the plaintiff was transferred to a position of lower classification and salary. He says, however, that in spite of the transfer, the validity of which is not, and, in my opinion, could not be, denied, he remained entitled to the same rate of salary as theretofore he had enjoyed. This rate of salary belonged to an office which he held before and at the time of the classification or return mentioned in sec. 11e. Sec. 11e is a special provision dealing with officers affected by a return or classification authorized by secs. 11b to 11d, which, in common with sec. 11e and sec. 21, as well as a number of other provisions, were introduced in 1925 by Act No. 1716. It provides for the case of the return or classification assigning to an office a salary less than the salary which is received by the officer holding the office at the time of the return. It describes the classification as "the return under this section," but it is evident that by "this section" is meant, not sec. 11e, but sec. 5 of Act No. 1716, by which secs. 7 to 11g were introduced into the *Public Service Acts*. In the case mentioned, sec. 11e directs that the salary so assigned to such office "shall, notwithstanding anything in this Act, not apply to such officer, but such officer shall be paid in accordance with the scale or regulation under which he was paid immediately before such time until he is promoted or transferred to another office providing a salary not less than that received by him at the time of the transfer or promotion."

The plaintiff's case is simple. He says that he has not been promoted or transferred to another office providing a salary not less than that received by him at the time of the return and that he, therefore, remains in terms of sec. 11e, entitled to be paid in accordance with the scale or regulation under which he was paid immediately before the return mentioned in that section, notwithstanding his transfer as an excess officer to a position of lower classification and salary.

On the other hand, the defendant points to the express power contained in sec. 21 to reduce any excess officer to a position of lower classification and salary and maintains that sec. 11e does not, upon its true interpretation, give a right which will survive the application of sec. 21.



Many considerations of general reasoning and policy were advanced for restricting the "until" clause in sec. 11e, or the operation of the section, in such a way that sec. 21 would produce its ordinary consequences when an officer was reduced to a position of lower classification and salary, notwithstanding that he fell within sec. 11e. It was said, moreover, that any interpretation of sec. 11e which did not do so would result in the officer's obtaining immunity from the loss of salary through retirement or dismissal from the service on account of age, misconduct, insolvency, or conviction of felony or other indictable offence, or through removal by the Executive (See secs. 70, 54 (f) (iv), 58, 57 and 60). This last argument goes much too far. The "until" clause in sec. 11e, on any view, presupposes the continuance of the officer in the service. He must always fill the character of an officer. On the other hand, the considerations of general reasoning and policy have much weight, a weight I have no desire to diminish. But, in my opinion, the language of sec. 11e is clear and unambiguous and does not admit of the proposed qualification or restriction. It is a special provision, special in more aspects than one. It is confined to a special class of officers, namely, those in office at the time of the first return made under sec. 11b to whose offices the return assigned a lower salary than they were then receiving. It deals specially with the right of such officers to retain the rate of salary then enjoyed. It deals specially with the kind of promotion or transfer which will terminate that rate and expressly confines the termination to the event of promotion or transfer to an office providing a salary not less than that received by the officer at the time. On ordinary principles, it is impossible to construe such a special provision as subject to a general provision like sec. 21 and give the latter section a paramount or controlling effect. The conclusion for which the defendant contends can be reached only by giving to sec. 11e itself a restricted meaning or application, as was done in the Supreme Court. But to do so appears to me to involve introducing, by implication, either some further alternative event in the conditional limitation expressed by the "until" clause, or else some general exception to the operation of the section. I find it difficult to formulate the implication proposed. It is plain that sec. 11e was meant to protect the officers to whom it applied

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from reduction of salary by indirect means as well as by the direct effect of the then contemplated reclassification. It is not easy to define the nature of any notional restriction on sec. 11e which goes far enough for the defendant's purposes, and yet does not go too far. An implication should represent an intention or meaning which may be read into the text as an intelligible proposition, term, or condition. But, in any case, I do not think the considerations relied upon supply a firm enough foundation for qualifying by restrictions or exceptions the explicit statement contained in sec. 11e, expressed, as it is, in perfectly clear and unmistakable language. It states definitely the right of the officer, and it describes the conditions of the limitation upon that right. One of the conditions relates to transfer, the very event in question, and in face of an express statement that, to end the right, the transfer must be to an office providing no lower salary it is impossible, in my opinion, to treat any transfer as an event or occasion upon which his rate of salary may be lessened.

The reliance placed by the defendant upon the position of the phrase "notwithstanding anything in this Act" is justified. It certainly modifies the verb "apply" and not the verb "shall be paid." But this is no ground for reading "subject to this Act" after the word "shall" and before "be paid." To do so would defeat the intention of the section in many particulars. It would, for instance, enable the board to reduce the salary by exercising the power of amending its return.

The defendant placed reliance on sec. 58 (f) (iii), which includes reduction of salary among the punishments for misconduct. It is unnecessary to decide whether sec. 11e is inconsistent with the imposition of a punishment of such a kind. But the difficulty gives no sufficient foundation for restricting sec. 11e in the manner sought. The general nature of sec. 11e is a security in respect of salary rights, a saving clause forming part of an amending enactment. If a study is made of the law as it stood before the amendments then introduced, it will be found that, although an officer might be dismissed or removed, it was almost, if not quite, impossible without his consent to diminish his salary, except by statute or by the imposition of a punishment. See, for example, secs. 21, 50, 51, 54 (f) (iii) and 58 of the *Public Service Act* 1916 (No. 1259). This may explain



the reason for the definite character of the limitation contained in the “until” clause, and, at the same time, it may supply some ground for treating reduction by way of punishment as standing on a separate footing.

In my opinion the appeal should be allowed, the order of the Full Court should be discharged and the judgment of *Cleland J.* restored. The plaintiff should receive his costs of the appeal to the Full Court and of the appeal to this court from the nominal defendant.

McTIERNAN J. I agree that the appeal should be allowed.

The Public Service Classification and Efficiency Board, acting under sec. 5 of the *Public Service Act Amendment Act (No. 2) 1925* of South Australia, prepared “a return” which became operative under that section. It assigned a salary to the office held by the appellant which was less than the salary he was receiving at the time the return came into operation. But as sec. 11e of the principal Act, as enacted by sec. 5 of the 1925 Act, provided that the salary assigned by the returns should, notwithstanding anything in the principal Act, not apply to the holder of the office to which the return assigned a reduced salary, the appellant’s rights depend upon the following part of sec. 11e: “but such officer shall be paid in accordance with the scale or regulation under which he was paid immediately before such time until he is promoted or transferred to another office providing a salary not less than that received by him at the time of the transfer or promotion.” Subsequently to the return the appellant was transferred by the Public Service Commissioner to a position of lower classification and salary than that which he held at the time the return was made. The commissioner acted under sec. 21 of the principal Act, as enacted by sec. 9 of the 1925 Act, the material part of which is: “If at any time the board finds that a greater number of officers is employed in any department or branch of a department than is necessary for the efficient working of that department or branch, any officer whom the board finds is in excess may be transferred by the commissioner to such other position of equal classification and salary in the Service as the officer is competent to fill, and if no such

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position is available the officer may be so transferred to a position of lower classification and salary."

The question is whether the appellant's right to be paid the salary which he was receiving immediately before the return became operative was defeated by the above-mentioned transfer. The question is one of legislative intention with respect to the conditions upon which such protection as is given by sec. 11e to an officer against any deduction in his salary should terminate. Two conditions only are expressed. The appellant is entitled to succeed unless a third condition that the protection should cease upon his transfer under sec. 21 can be added by necessary implication. It is argued that it is necessary to imply this additional condition to reconcile sec. 11e with sec. 21. But, in considering whether there is any conflict, it should be borne in mind that, if the officer who is transferred as a surplus officer is one for whose position a salary had been fixed under sec. 11b of the principal Act, as enacted by sec. 5 of the 1925 Act, at a lower rate than that at which he was being paid, no new principle would be introduced if he were to receive, after he was transferred, a salary in excess of the responsibilities of the position to which he was transferred. Before transfer he was already receiving a salary which the Act recognized to be in excess of the estimated worth of his position. The transfer accomplishes the object of sec. 21, which is to rid the department from which he was transferred of a surplus officer. It is not essential for this purpose to retrench his existing rate of salary. Although sec. 21 authorizes the transfer of any officer, including an officer whose salary is protected against reduction by sec. 11e, to a position of lower classification and salary than that from which he was transferred, it does not follow that, as a matter of necessary implication, the Act says that the protected rate should not be paid after the transfer. When it is recognized that the legislature has very clearly envisaged the principle that, in the case of those officers whose salaries are safeguarded, the rate of salary should be appurtenant to the officer and not to the office, no conflict of legislative intention appears upon the face of sec. 11e and sec. 21. The construction which denies that the right given to these officers by sec. 11e can be defeated, not by a transfer under sec. 21, but by the fulfilment of



the conditions expressed in sec. 11e, does not, in my opinion, lead to the conclusion that this right may not be liable to attack under other sections referred to by the Crown Solicitor. Where these sections provide for the reduction of an officer's salary, they do so on some ground which, in distinction to the ground which, it is urged, sec. 21 provides, does not depend upon any disproportion between the duties entrusted to an officer and the salary assigned to him.

The judgment in favour of the appellant should, in my opinion be restored.

*Appeal allowed with costs. Order of Full Court set aside. Respondent to pay to appellant costs of appeal to Full Court. Judgment of Cleland J. restored.*

Solicitors for the appellant, *Lempriere Abbott & Cornish.*

Solicitor for the respondent, *A. J. Hannan* K.C., Crown Solicitor South Australia.

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