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of the appellant. There is no evidence whatever how or why they were placed there. Presumably they were placed there when the packets were appropriated to fulfil the orders of the Australian consumers. Even if they were placed there at the request of the appellant, its case would not be assisted. The words of the sticker are vague and ambiguous. An interpretation that would suit the appellant best would be that they are a notification to the Australian consumers that the cigarettes which they had purchased from the British-American Tobacco Co. had been manufactured in the United States of America for the appellant and that the appellant was the proprietor of Pall Mall cigarettes sold in Australia. From this it might be inferred that the sale of the packets in the United States by the British-American Tobacco Co. to the Australian consumers was made on behalf of the appellant. But this would not be a use of the mark in Australia. It would be a use of the mark in the United States where the goods were offered for sale and sold. It was only there that the mark was being used for the purposes of trade. The appellant was not offering for sale or selling any Pall Mall cigarettes in Australia either directly or indirectly. There is nothing to prevent a trader who is the proprietor of a trade mark registered in Australia using such a mark in the course of carrying on a trade abroad. But the use of the mark abroad would not be a use which could be protected by the Australian *Trade Marks Act* and it could not avail him if an application was made under s. 72 to remove his mark from the register for non-user in Australia. In our opinion *Fullagar* J. was right and the appeal should be dismissed.

*Appeal dismissed with costs.*

Solicitors for the appellant, *Best, Hooper, Rintoul & Shallard.*

Solicitors for the respondent, *Whiting & Byrne.*

R. D. B.

[HIGH COURT OF AUSTRALIA.]

KAYE . . . . . APPELLANT;
PLAINTIFF,

AND

ATTORNEY-GENERAL FOR TASMANIA . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

*Police—Detective constable—Servant of Crown—Tenure of office—Common law right of Crown to dismiss at pleasure—Whether right abrogated by statute—Acts Interpretation Act* 1931-1947 (*Tas.*), *s.* 6 (6)—*Police Regulation Act* 1898-1955 (*Tas.*), *ss.* 11, 12, 18, *Pt. IV*B, *ss.* 50-50D.

Neither the provisions of the *Police Regulation Act* 1898-1945 (Tas.) nor those of the *Police Regulation Act* 1955 amending the earlier Act by the introduction of a new Pt. IVB take away, abridge or affect the common law right of the Crown in Tasmania to dismiss from its service at pleasure a member of the police force of that State.

*Ryder* v. *Foley* (1906) 4 C.L.R. 422; *Fletcher* v. *Nott* (1938) 60 C.L.R. 55, followed; *Gould* v. *Stuart* (1896) A.C. 575, distinguished.

Decision of the Supreme Court of Tasmania (Full Court), affirmed.

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SYDNEY, 1955, *Nov.* 21, 22;

MELBOURNE, 1956, *Feb.* 23.

Dixon C.J., Williams, Fullagar, Kitto and Taylor JJ.

APPEAL from the Supreme Court of Tasmania.

In August 1955 Frederick Percy Kaye brought an action in the Supreme Court of Tasmania claiming a declaration that a purported dismissal of him from the Tasmanian Police Force made by the Governor in Council on 4th August 1955 was ineffective and that he was still a member of such force entitled to the salary and allowances of a detective senior constable. The parties agreed to a special case being stated for the opinion of the Full Court upon the questions of law appearing hereunder, and further agreed that the Full Court should be at liberty to direct judgment to be entered in the action for the plaintiff or for the defendant either with or without costs either of the special case or the action or both in accordance with the opinion of the court upon the questions asked in the special case.

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The special case was in the following terms :—1. The plaintiff was appointed by the Commissioner of Police on 27th January 1948 a constable in the Tasmanian Police Force and took and subscribed the oath set forth in Form I in the Second Schedule to the *Police Regulation Act* 1898-1945. 2. Prior to 4th August 1955 the plaintiff held the rank of detective senior constable in such force. 3. On 4th August 1955 His Excellency the Governor acting with the advice of his Executive Council purported to dismiss the plaintiff from the police force. The following is a copy of the minute for that purpose approved by the Executive Council on that day :— "Submitted : That Frederick Percy Kaye, a senior constable in the Tasmanian Police Force, be dismissed from the said police force with effect from 5th August 1955". 4. The questions of law for the opinion of the court are :—(a) Whether the plaintiff held his office as a detective senior constable in the Tasmanian Police Force during Her Majesty's pleasure and was subject to dismissal at will by the Executive Government. (b) If the answer to question (a) is in the negative upon what terms did the plaintiff hold his said office and in what manner (if at all) was he subject to dismissal. (c) Whether the plaintiff was validly dismissed from the police force on 4th August 1955.

The Full Court of the Supreme Court of Tasmania (*Green*, *Gibson* and *Crisp* JJ.) answered questions 4 (a) and (c) in the affirmative and entered judgment for the defendant accordingly, reserving the costs of the special case and of the defendant.

From this decision the plaintiff by special leave granted on 27th October 1955 appealed to the High Court.

*D. I. Menzies* Q.C. (with him *M. G. Everett*), for the appellant. The powers conferred on the Governor, Minister and Commissioner of Police by the *Police Regulation Act* 1898-1955 are exhaustive and exclusive, and the Act is the sole source of power of the Crown in relation to the police force. The scheme of the Act is that there should be an appeal in cases of dismissal by the commissioner or by the Governor, and it is effective to give every member of the police force an appeal, there being no reserve of power in the Crown to dismiss or suspend. Alternatively, if there is power in the Crown to suspend or dismiss outside the Act, the provisions of the Act are inconsistent with those powers extending to dismissal at will. [He referred to the *Police Regulation Act* 1898-1945, ss. 11, 12, 18 and to Pt. IVB introduced into the former Act by the *Police Regulation Act* 1955.] The question here is whether the general rule that servants of the Crown may be dismissed at pleasure is negatived

by the language of the statute. *Gould* v. *Stuart* (1) shows (a) that the relationship between a civil servant and the Crown is one of contract; (b) that it is for the court to examine the conditions under which an officer is employed to determine whether or not that contract is one in which there is an implied term that the Crown may end it at pleasure; and (c) that when provisions are found which are intended for the protection and benefit of an officer they establish that there should not be a right in the Crown to dismiss at pleasure, this being foreign to the purpose of the Act. As the right to dismiss at pleasure is a contractual right and not a prerogative right s. 6 (6) of the *Acts Interpretation Act* 1931-1947 is not applicable. [He referred to s. 18 of the *Police Regulation Act*.] The provisions of the present Act go further than did those in *Gould* v. *Stuart* (2) to make away with the right of the Crown to dismiss at will. [He referred to *Williamson* v. *The Commonwealth* (3); *Shenton* v. *Smith* (4); *R. Venkata Rao* v. *Secretary of State for India* (5); *Ryder* v. *Foley* (6); *Fletcher* v. *Nott* (7).] The present case is entirely different from *Fletcher* v. *Nott* (8). In this case the Governor's powers are statutory and subject to limitation, and it would be wrong to infer some other power not subject to like limitation, and this is *a fortiori* where the powers of the commissioner are concerned. The provisions of the *Police Regulation Act* are intended for the benefit of police officers and are directed to giving to members of the police force a right of appeal against a decision made by the administrative authority, whether the Governor or the commissioner. The rights so given are not merely administrative machinery necessary or desirable for the management and discipline of the force. The new Act taken in conjunction with those of 1898-1945 shows that it is wrong to say that any member of the police force is employed at the pleasure of the Crown. [He referred to *Reilly* v. *The King* (9); *Halsbury's Laws of England*, 3rd ed., vol. 7, p. 340, n. (k); *Lucy* v. *The Commonwealth* (10).] In appropriate circumstances there is no difficulty in finding a contract between the Crown and a person in its service under which such person has such security of tenure that he cannot be dismissed at will. [He referred to *Ivor L. M. Richardson*: *Incidents of the Crown-Servant Relationship* (11); *Terrell* v. *Secretary of State for the*

(1) (1896) A.C. 575, at pp. 577-579.
(2) (1896) A.C. 575.
(3) (1907) 5 C.L.R. 174, at p. 179.
(4) (1895) A.C. 229, at pp. 234, 235.
(5) (1937) A.C. 248, at p. 256.
(6) (1906) 4 C.L.R. 422, at pp. 426, 433-436, 449, 451, 452.
(7) (1938) 60 C.L.R. 55, at pp. 74, 76, 77.
(8) (1938) 60 C.L.R. 55.
(9) (1934) A.C. 176, at p. 179.
(10) (1923) 33 C.L.R. 229, at pp. 237, 253.
(11) (1955) 33 Can. Bar Rev. 424, at pp. 426, 427.

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*Colonies* (1); *Robertson* v. *Minister of Pensions* (2).] There must in all cases be grounds on which to imply a term authorizing the Crown to dismiss at pleasure, and the present statute reveals no power whatsoever in the Crown so to dismiss a constable. The *Police Regulation Act* 1898-1955 should not be construed first as it stood before 1955 and then examined in the light of the amendments made by the 1955 Act. The Act should be construed as a whole as it stood on the material date in this case, i.e. 4th August 1955. So regarded the powers of the Governor and of the commissioner with respect to dismissals were intended to be exhaustively defined, thereby excluding the Crown's right to dismiss at pleasure by necessary implication.

*S. C. Burbury* Q.C., Solicitor-General for the State of Tasmania (with him *J. R. M. Driscoll*), for the respondent. Since the decisions of this Court in *Ryder* v. *Foley* (3) and *Fletcher* v. *Nott* (4) members of a police force appointed under a legislative scheme such as the *Police Regulation Act* 1898-1955 become servants of the Crown. All persons holding office under the Crown, including police officers under a scheme similar to that here in question, are subject to dismissal at the Crown's pleasure, unless on the face of the statute under which they are appointed there is a clear provision to the contrary. [He referred to *Fletcher* v. *Nott* (5); *Dunn* v. *The Queen* (6); *Ryder* v. *Foley* (7).] The 1955 Act merely confers certain rights of appeal, and for this reason to ascertain the tenure of members of the police force it is proper to have regard to the *Police Regulation Act* as it stood before such rights of appeal were conferred. Section 12 of the *Police Regulation Act* 1898-1945 giving power to the commissioner to dismiss is not inconsistent with the power of the Crown to dismiss at will. [He referred to *Ryder* v. *Foley* (8).] The starting point is to look at the terms of tenure as set out in the Act and to inquire whether there is anything in the other sections of the Act inconsistent with the right of the Crown to dismiss at will. [He referred to *Fletcher* v. *Nott* (9).] Nothing in the *Police Regulation Act* restricts the power of dismissal to a power of dismissal for cause, so that it cannot be said that any member of the force has any security of tenure subject to good behaviour or an appointment for any particular period. His appointment is thus for an indefinite term subject to termination

(1) (1953) 2 Q.B. 482, at pp. 495, 497, 499.
(2) (1949) 1 K.B. 227, at p. 231.
(3) (1906) 4 C.L.R. 422.
(4) (1938) 60 C.L.R. 55
(5) (1938) 60 C.L.R. 55, at p. 67.
(6) (1896) 1 Q.B. 116, at pp. 118, 119, 120.
(7) (1906) 4 C.L.R., at p. 439.
(8) (1906) 4 C.L.R., at pp. 431, 444, 445, 450, 452, 454.
(9) (1938) 60 C.L.R., at pp. 69, 77.

at any time with or without reasons. Sections 11 and 12 do not exhaustively state the powers of the Crown, and they are not inconsistent with the power of dismissal at pleasure in the Crown. These provisions of the Act as they stood before 1955 are the same as the sections of the New South Wales statute considered in *Fletcher* v. *Nott* (1). The right of appeal given by the 1955 Act is not inconsistent with the Crown's right of dismissal at pleasure. A member of the force has no right to insist upon dismissal in any particular way. [He referred to *Rodwell* v. *Thomas* (2); *Lucas* v. *Lucas and High Commissioner for India* (3); *Deynzer* v. *Campbell* (4).] The right of the Crown to dismiss its servants at will is part of a prerogative right as that expression is used in s. 6 (6) of the *Acts Interpretation Act* 1931-1947. [He referred to *Dicey, Law of the Constitution*, 9th ed. (1941), p. 424; *Attorney-General* v. *De Keyser's Royal Hotel* (5); *Commercial & Estates Co. of Egypt* v. *Board of Trade* (6); *Chitty's Law of the Prerogatives of the Crown* (1820), pp. 82, 83.] Thus the prerogative right of the Crown in Tasmania to dismiss at pleasure cannot be taken away unless there are express words included in the statute for that purpose as required by s. 6 (6). There are no express words in the present statute abrogating that right and it is not sufficient to rely upon necessary implication.

*D. I. Menzies* Q.C., in reply.

*Cur. adv. vult.*

Feb. 23, 1956.

The following written judgments were delivered :—

DIXON C.J., FULLAGAR, KITTO AND TAYLOR JJ. This is an appeal from the Full Court of the Supreme Court of Tasmania. That court had before it a special case in an action brought by the appellant against the respondent. The relevant facts are of the simplest. On 27th January 1948 the appellant was appointed by the Commissioner of Police to be a constable in the police force of Tasmania, and on that date he took and subscribed the oath set forth in Form I in the Second Schedule to the *Police Regulation Act* 1898-1945 (Tas.). On 4th August 1955 he held the rank of detective senior constable in the police force. On that date the Governor of Tasmania, acting with the advice of the Executive Council, ordered that he " be dismissed from the said police force with effect as from the 5th day of August 1955 ". The appellant in

(1) (1938) 60 C.L.R. 55.
(2) (1944) 1 K.B. 596, at p. 600.
(3) (1943) P. 68, at pp. 74, 75.
(4) (1950) N.Z.L.R. 790.
(5) (1920) A.C. 508, at p. 526.
(6) (1925) 1 K.B. 271, at p. 294.

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his action challenged the validity of this Order in Council. He claimed (*inter alia*) declarations that it was not effective to dismiss him from the force, and that he was still a member of the force and entitled to the salary and allowances of a detective senior constable. It is to be noted that no claim is made for damages as for wrongful dismissal. The material questions asked by the special case were whether he held office in the force at Her Majesty's pleasure, so as to be subject to dismissal at will by Order in Council, and whether he was validly dismissed from the force on 4th August 1955. The Full Court (*Green*, *Gibson* and *Crisp* JJ.) answered these questions in the affirmative.

The police force of Tasmania, like those of the other Australian States, is part of the service of the Crown in the sense explained in *Attorney-General for New South Wales* v. *Perpetual Trustee Co. Ltd.* (1). " Unless in special cases where it is otherwise provided, servants of the Crown hold their offices at the pleasure of the Crown " (*Shenton* v. *Smith* (2)). The force, in the words of *Dixon* J. in *Fletcher* v. *Nott* (3), " is a disciplined force in the service of the Crown. Unless statute otherwise provides, either expressly or by implication, those who serve in such a capacity hold office at the pleasure of the Crown. The general rule of the common law is that the King may refuse the services of any officer of the Crown and suspend or dismiss him from his office " (4). In the same case (5) *Latham* C.J. quotes *Rowlatt* J. in *Rederiaktiebolaget Amphitrite* v. *The King* (6) as saying: " Except under an Act of Parliament, no one acting on behalf of the Crown has authority to employ any person except upon the terms that he is dismissible at the Crown's pleasure " (7): cf. *Rodwell* v. *Thomas* (8).

The general rule is not denied by the appellant, but it is argued that the right of the Crown in Tasmania to dismiss a member of the police force at pleasure has been taken away by statute. The argument makes it necessary to examine the provisions of the *Police Regulation Acts* of Tasmania. The principal Act is the *Police Regulation Act* 1898, but it has been amended from time to time in important respects. It will be convenient to consider first the Act as it stood at the end of 1954, and then to examine Act No. 7 of 1955, which came into force on 25th May 1955, i.e. very shortly before the making of the Order in Council which is now in question.

(1) (1955) A.C. 457, at pp. 477-481; (1955) 92 C.L.R. 113, at pp. 118-121.
(2) (1895) A.C. 229, at pp. 234, 235.
(3) (1938) 60 C.L.R. 55.
(4) (1938) 60 C.L.R., at p. 77.
(5) (1938) 60 C.L.R., at p. 67.
(6) (1921) 3 K.B. 500.
(7) (1921) 3 K.B., at p. 504.
(8) (1944) K.B. 596, at p. 602.

Section 5 of the Act defines the term " police officer " as meaning " any person employed in the police force ", and the term " the police force " is defined as meaning " all officers of police and all constables appointed under the authority of the Act ". The argument for the appellant stressed the distinction between " officers of police " and " constables ". The appellant was a constable and not an officer of police. The term " police officer " (rather confusingly) comprehends both " officers of police " and constables. Section 8 provides that the Governor may appoint a Commissioner of Police, who shall, under the direction of the Minister and subject to the Act, have the control and superintendence of the police force. Section 10 provides that *the Governor* may appoint such superintendents, inspectors, and other *officers of police* as he may think necessary. Section 11 provides that *the Governor* may at any time suspend, reduce, discharge, or dismiss, any commissioner, or any superintendent, inspector, or other *officer of police* appointed by him under the Act. Section 12 provides that *the commissioner*, with the approval of the Minister, may appoint such sergeants of police, constables and junior constables of different grades as he may think fit, and may suspend, reduce, or dismiss any *sergeant, constable, or junior constable.* The Governor is empowered to disallow any appointment made under this section. Section 15 provides that every police officer appointed under the Act shall have such powers and privileges, and be liable to all such duties, as any constable duly appointed has either by the common law or by virtue of any Act. Section 16 requires every person appointed to be a police officer to take and subscribe the oath set forth in form I in the second schedule. Section 18 provides that every person who has taken and subscribed such oath shall be taken to have thereby entered into a written agreement with, and shall be thereby bound to serve, His Majesty in whatsoever capacity he may be required to serve until legally discharged. The section proceeds :— " any such agreement shall not be set aside, cancelled or annulled for want of reciprocity, but every agreement shall be determined by the discharge, dismissal, or other removal from office of any such person, or by the acceptance of the resignation of such person by the Governor or the commissioner as the case may be ". By s. 19 no police officer is at liberty to resign his office, notwithstanding the period of his agreement has expired, except with the authority of the commissioner or upon giving one month's notice.

There is clearly, in our opinion, nothing in any of these provisions which can be regarded as taking away, or in any way abridging or

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affecting, the right of the Crown in Tasmania to dismiss a police officer at pleasure. Every one of those provisions is perfectly consistent with the existence and continuance of the well-established position at common law. It was argued that ss. 10, 11 and 12 amounted to a " code ", dealing exhaustively with the appointment and dismissal of " officers of police " and " other police officers " respectively, and vesting the power of dismissal exclusively in the Governor in the former case and exclusively in the commissioner (subject to the approval of the Minister) in the latter case. But what was essentially the same argument was put and rejected in *Ryder* v. *Foley* (1). In that case the relevant statutory provision was contained in s. 6 of the *Police Act* 1863 (Q.), which gave to the commissioner power to dismiss sergeants and constables " upon sufficient proof of misconduct or unfitness to be submitted for the approval of the Government ". The Act contained other provisions substantially identical with those of the Tasmanian Act which we have set out above. The Court held that s. 6 gave a special power to the commissioner without in any way affecting the right of the Crown to dismiss at pleasure. *Griffith* C.J. said :—" I regard the section as having nothing to do with the tenure of office of the constable as between himself and the Crown " (2).

*Barton* J. and *O'Connor* J. were of opinion that not merely could nothing be found in the Act to restrict by implication the prima facie right of the Crown to dismiss at pleasure, but that affirmative indications that it was preserved were to be found in the sections which corresponded to ss. 17, 18 and 19 of the Tasmanian Act. After setting these out *Barton* J. (3) referred to the decision of the Full Court of Victoria in *Power* v. *The Queen* (4), and quoted a passage in the course of which, speaking of a section corresponding to the Tasmanian s. 18, that court said :—" There is in fact but one contracting party, that is the petitioner. Nothing can be clearer than that the engagement entered into is unilateral only, not mutual. It binds him to serve, but does not oblige Her Majesty to retain him in her service beyond the period which circumstances may render necessary " (5). *Barton* J. said : " I entirely approve of that conclusion " (6), and mentioned that *Power* v. *The Queen* (4) had been approved in the later Victorian case of *Green* v. *The Queen* (7). *O'Connor* J., referring to the provision (Tasmanian s. 18) that " no such contract shall be set aside, cancelled or

(1) (1906) 4 C.L.R. 422.
(2) (1906) 4 C.L.R., at p. 434.
(3) (1906) 4 C.L.R., at pp. 440, 441.
(4) (1873) 4 A.J.R. 144.
(5) (1873) 4 A.J.R. 144, at p. 145.
(6) (1906) 4 C.L.R., at p. 441.
(7) (1891) 17 V.L.R. 329, at p. 332.

annulled, for want of reciprocity ", said : " That section would be meaningless if there were reciprocity in the contract—if there was a right on the part of the constable to demand that his dismissal should not take place except under the conditions laid down in s. 6. The clause would appear to strongly support the contention that it was intended that the contract should be the same as is ordinarily entered into by the public servants of the Crown with the Government, entirely unilateral—a contract enabling the Government to put an end to it at any time they might think fit " (1) : cf. *Power* v. *The King* (2). See also *Fletcher* v. *Nott* (3).

In the light of these authorities, the argument in this case based on ss. 11 and 12 of the Tasmanian Act seems untenable. A further argument of the appellant was based on the amendments made by Act No. 7 of 1955. This Act added to the principal Act a new Pt. IVB, consisting of sections numbered 50-50D. Sections 50, 50A, 50B and 50C provide for the constitution of a board, consisting of three persons, to be known as the Police Disciplinary Board. The chairman of the board is a police magistrate. Sub-section (1) of s. 50D provides that a police officer who is aggrieved by any decision, determination, order or recommendation made by the commissioner with respect to (*inter alia*) his dismissal from the police force may appeal therefrom to the board, which shall hear and determine the appeal. Sub-section (7) provides that, subject to sub-s. (8) the decision of the board upon the determination of an appeal shall be final, and that the commissioner shall give effect thereto accordingly. Sub-section (8) provides for an appeal from the board to the Supreme Court on points of law only, and sub-s. (9) directs the commissioner to give effect to the decision of the Supreme Court on any such appeal. Sub-section (10) provides that the right of appeal conferred on police officers by the section shall extend to any superintendent or inspector or other officer of police (other than the commissioner or the deputy commissioner) *appointed by the Governor* who is aggrieved by any decision determination or order of the Governor with respect to (*inter alia*) his dismissal from the police force. Sub-section (11) provides that in the application of the section to appeals under sub-s. (10) references to the commissioner in sub-ss. (7) and (9) shall be construed as references to the Governor.

It was argued that these provisions, which are clearly intended for the benefit of police officers, are inconsistent with the continued existence of a term of the contract of service that the Crown may

(1) (1906) 4 C.L.R., at p. 450.
(2) (1929) N.Z.L.R. 267.
(3) (1938) 60 C.L.R. 55.

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put an end to it at pleasure. Reliance was placed on *Gould* v. *Stuart* (1).

We can see no reason for saying that the right of the Crown to dismiss a member of the police force at pleasure is abrogated by the new Pt. IVB introduced by the Act of 1955. It seems to us clear that the right can co-exist with all the provisions of Pt. IVB. It is indeed qualified, in cases to which that sub-section applies, by s. 50D (10). For s. 50D (10) gives, in cases to which it applies, a right of appeal to the Police Disciplinary Board against an Order in Council dismissing a member of the force, and effect must be given to the decision of the board on any such appeal. But to give a right of appeal against a dismissal by the Crown is a very different thing from taking away the right of the Crown to dismiss.

The appellant had no right of appeal under s. 50D (10), because he was not a "superintendent or inspector or other officer of police" within the meaning of the Act. Nor, of course, had he any right of appeal under s. 50D (10), because the order dismissing him was not made by the commissioner but by the Governor in Council. It follows that he was subject to the unqualified right of the Crown to dismiss a police officer at pleasure.

The case of *Gould* v. *Stuart* (1) appears to us to have no bearing on the present case. Their Lordships there found in the general provisions of Pt. III of the *Civil Service Act* 1884 (N.S.W.) what seemed to them enough to justify the conclusion that the right of the Crown to dismiss a civil servant at pleasure was abrogated by implication. There is no analogy between the provisions there in question and the provisions now in question. In particular the *Civil Service Act* 1884 contained nothing corresponding to ss. 18 and 19 of the *Police Regulation Act* (Tas.).

One submission made by Mr. *Menzies* for the appellant should be noticed in conclusion. He said that it was wrong to approach the legislation in question, as the learned judges of the Supreme Court approached it, and as we have approached it, by looking first at the Act as it stood before 1955 and then examining the amendments made by Act No. 7 of 1955. He said that the Act should be regarded as a whole as it stood on 4th August 1955, and that, when it was so regarded, it was apparent that, on its proper construction, the powers of the Crown and of the commissioner with respect to appointments and dismissals were intended to be exhaustively defined, with the result that the power of the Crown to dismiss at pleasure was excluded by necessary implication. We

(1) (1896) A.C. 575.

would agree that the case must be decided on the Act as it stood on the date of the Order in Council, and that the Act must be looked at as a whole. But, in considering its meaning and effect, it is perfectly legitimate to have regard to its history. We do not think that a different effect can be given to ss. 11, 12, 17 and 18 after 25th May 1955 from that which must inevitably, in view of the authorities, have been given to those sections before that date. It is quite possible that the Act of 1955 was framed on the assumption that those sections did exhaustively define the powers of the Crown and of the commissioner respectively, though such an assumption would, we think, have been clearly inconsistent with *Ryder* v. *Foley* (1) and *Fletcher* v. *Nott* (2). But whether such an assumption was made or not appears to us to be a matter of no importance.

In the view which we take, it is unnecessary to consider whether the appellant could on any view obtain the relief sought by him in his action if there were actually a de facto exclusion of him from the duties and emoluments of his office. The position with regard to remedies in such cases has been discussed generally in this Court in *Williamson* v. *The Commonwealth* (3), and *McVicar* v. *Commissioner for Railways* (*N.S.W.*) (4). This appeal should, in our opinion, be dismissed.

WILLIAMS J. I agree that the appeal should be dismissed. The rule of the common law is clear. Apart from statute, the employment of servants by the Crown, naval, military or civil, is at the will of the Crown, so that the Crown is entitled to dismiss them at any time without notice. Even if they are employed for a definite period, their employment is still subject to a reserval of the right of the Crown to dismiss: *De Dohsé* v. *The Queen* (5); *Dunn* v. *The Queen* (6); *Gould* v. *Stuart* (7); *Denning* v. *Secretary of State for India* (8); *Kynaston* v. *Attorney-General* (9); *The Commonwealth* v. *Quince* (10); *The Commonwealth* v. *Welsh* (11); *Allpike* v. *The Commonwealth* (12). The legal position of a member of the police force under statutes containing many provisions identical with those found in the *Police Regulation Act* 1898-1955 (Tas.) has been fully analyzed in this Court in *Ryder* v. *Foley* (1) and *Fletcher* v. *Nott* (2). It is unnecessary to refer to these cases in

(1) (1906) 4 C.L.R. 422.
(2) (1938) 60 C.L.R. 55.
(3) (1907) 5 C.L.R. 174.
(4) (1951) 83 C.L.R. 521.
(5) (1886) 3 T.L.R. 114.
(6) (1896) 1 Q.B. 116.
(7) (1896) A.C. 575, at p. 577.
(8) (1920) 37 T.L.R. 138.
(9) (1933) 49 T.L.R. 300.
(10) (1944) 68 C.L.R. 227, at pp. 241, 242.
(11) (1947) 74 C.L.R. 245.
(12) (1948) 77 C.L.R. 62.

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any detail because their applicability to the present case has been fully explained in the judgments delivered by their Honours in the Supreme Court and in the joint judgment delivered in this Court. I cannot find anything in the *Police Regulation Act* 1898 as subsequently amended, including the amendments introduced by the *Police Regulation Act* (No. 7 of 1955), which curtails the right of the Crown to dismiss sergeants of police and constables and junior constables at will, and it is within this classification that the appellant as a senior constable fell.

The case of *Gould* v. *Stuart* (1) is clearly distinguishable because there the statute provided that the Governor, before dismissing an officer from the service, should first call on the officer to show cause and that the Governor before deciding might direct the board, or appoint one or more persons, to inquire into the matter with authority to receive evidence and to summon and examine witnesses on oath. These statutory provisions regulated and therefore imposed restrictions upon the otherwise absolute right of the Crown to dismiss an officer at will. The Act of 1955, wide as are its provisions, does not in terms impose any restrictions on the power of the Crown to dismiss sergeants of police, constables and junior constables at will. It merely imposes restrictions upon the power of the commissioner so to do. Apart from any interpretation Act, the general principle of construction requires that the intention to curtail the Royal prerogative by statute must be apparent either because the Crown is expressly named therein or by implication because it is manifest from the very terms of the statute that it was the intention of the legislature that the Crown should be bound : *Province of Bombay* v. *Municipal Corporation of Bombay* (2). The right of the Crown to dismiss its servants at will is such a prerogative right.

In Tasmania the *Acts Interpretation Act* 1931-1947, s. 6 (6) provides that no Act shall be binding on the Crown or derogate from any prerogative right of the Crown unless express words are included therein for that purpose. The words of an Act could, no doubt, be sufficiently express to derogate from such a right although they did not in terms refer to the prerogative if their operation necessarily or naturally had that effect. "It is quite clear that whatever the language used necessarily or even naturally implies is expressed thereby" per *Willes* J. in *Chorlton* v. *Lings* (3). But a statutory provision conferring on sergeants, constables and junior constables of police a right of appeal from a dismissal by

(1) (1896) A.C. 575.
(2) (1947) A.C. 58, at p. 61.
(3) (1868) L.R. 4 C.P. 374, at p. 387.