[HIGH COURT OF AUSTRALIA.]

YOUNG . . . . . APPELLANT;
PLAINTIFF,

AND

WILLIAMS . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1916.

SYDNEY, *March* 29.

Griffith C.J., Barton, Gavan Duffy and Rich JJ.

Employer and Employee—Government railways—Authority of New South Wales Commissioner of Railways to bind the Crown—Payment of retiring allowance—Railways Act 1858 (*N.S.W.*) (22 *Vict. No.* 19), *secs.* 4, 5.

The New South Wales Commissioner of Railways had in 1886 no authority apart from Statute to make a promise binding the Government to pay a retiring allowance to employees who should remain in the employment of the Government until they had attained the age of sixty years, nor was such authority conferred upon the Commissioner by the *Railways Act* 1858 (N.S.W.).

Decision of the Supreme Court of New South Wales: *Young* v. *Williams*, 15 S.R. (N.S.W.), 419, affirmed.

APPEAL from the Supreme Court of New South Wales.

In an action brought in the Supreme Court by John Young against James Leslie Williams, a nominal defendant on behalf of the Government of New South Wales, the plaintiff sued the defendant for that, in consideration that the plaintiff would enter into the service of the Government and would continue in that service until he should have attained the age of sixty years, the Government promised him that they would pay to him on his retirement a certain retiring allowance; that the plaintiff entered into the service and continued in it until he attained the age of sixty years and then retired, but the Government

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refused to pay the retiring allowance or any part of it. The material defence was that the Government never made the agreement as alleged. It was admitted that the plaintiff was first employed in the Railway Department in 1877, and remained in that employment until 1912, when he attained the age of sixty years and retired. At the hearing evidence was given that in 1886 a deputation of employees waited on the then Commissioner of Railways. Counsel for the plaintiff then stated that he proposed to prove that the deputation was appointed by the railway employees to wait on the Commissioner with regard to the terms of their employment, that the Commissioner heard the deputation, and promised, amongst other things, that employees who retired at the age of sixty years with a good record would receive a gratuity on retirement of one month's pay for each year of service, that this was communicated to the men and amongst them to the plaintiff, who was then in the employ of the Railway Department. Evidence to prove these facts having been rejected, the plaintiff was nonsuited, and a motion to enter a verdict for the plaintiff or for a new trial was subsequently dismissed by the Full Court: *Young* v. *Williams* (1).

From that decision the plaintiff now appealed to the High Court.

Armstrong (with him *Hodgson* and *Baxter Bruce*), for the appellant. The Commissioner of Railways was, by sec. 4 of the *Railways Act* 1858, charged with the duty of carrying out the provisions of the Act. He has therefore power to engage servants and to fix their wages. He has power to do whatever is incidental to the carrying out of the objects for which he was appointed: *Cyclists' Touring Club* v. *Hopkinson* (2); *Halsbury's Laws of England*, vol v., p. 224. As a servant of the Crown he has power to bind the Crown as to payment of wages just as directors of a company have to bind the company. There is no fundamental difference between payment of wages and giving a gratuity. It is a reasonable exercise of the power of management to pay a gratuity to employees who remain in the Department until they reach a certain age: *Hampson* v. *Price's Patent Candle Co.* (3).

(1) 15 S.R. (N.S.W.), 419.
(2) (1910) 1 Ch., 179.
(3) 45 L.J. Ch., 437.

Blacket K.C. and *Pickburn*, for the respondent, were not called upon.

GRIFFITH C.J. The plaintiff was employed by the Railway Department of New South Wales. He alleges in his declaration that at a time not mentioned, but which we are told was in 1886, the then Commissioner of Railways promised that if he continued in the service until he attained the age of sixty years the Government would pay him a gratuity on his retirement. The question is whether such a promise is binding upon the Government. The learned Judge at the trial was of opinion that it was not, and that any evidence as to the terms of the alleged promise was irrelevant. He therefore rejected the evidence tendered on the point, so that there was nothing to go to the jury, and the plaintiff was nonsuited.

The appellant's counsel relied upon company cases, in which directors of companies had granted gratuities or pensions to retiring servants or the dependants of deceased servants, and one case in which directors had given extra payment for past services. The questions to be determined in those cases were, first, whether it was within the objects of the company, *i.e.*, within its corporate power, to make payments of the particular kind, and, secondly, whether it was within the powers of the directors administering the affairs of the company to authorize the payments. Those cases, however, have no relation to an action against the Government.

The principles of constitutional government are well settled. One most important principle is that no public money can be expended without the authority of Parliament, which, in theory (though not always in fact), is given in advance. How, then, can any other authority, even the Executive Council or a Minister, make a binding promise that money shall be paid irrespective of the sanction of Parliament? Of course it is impossible. It is equally impossible for a superior officer administering a department of Government to make such a promise. It is impossible for any officer without statutory authority, such as is given, for instance, in the case of mail contracts, to pledge the revenue of the Crown for future years. It has never been

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suggested that such a charge could be created except by Statute. Such Statutes are not uncommon, as, for instance, in the case of retiring allowances and pensions. In the absence of such a Statute, an officer of the Government has no power to pledge the future revenues of the Crown. Another well known principle is that the tenure of office under the Government is determinable at will.

The plaintiff must therefore rely upon some Statute in force in 1886 authorizing the Commissioner to make a binding promise to pay money out of the Treasury to servants who should remain in the employment of the Government until they had attained sixty years of age, that is to say, at some indefinite and probably far off time. There is nothing in the *Railways Act* then in force (22 Vict. No. 19) to suggest that any such power was given to the Commissioner. The plaintiff's case therefore fails, and the learned Judge was right in granting a nonsuit.

The appeal must consequently be dismissed.

BARTON J. I am entirely of the same opinion. I regret that it is necesary to disappoint the expectations of a large and faithful body of public servants. But the question is purely one of law, and can only be answered in the way proposed.

GAVAN DUFFY J. I agree.

RICH J. I agree.

Appeal dismissed with costs.

Solicitor for the appellant, *J. B. Moffatt.*

Solicitor for the respondent, *J. V. Tillett*, Crown Solicitor for New South Wales.

B. L.