

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
the Honourable A. J. Gould v. Stuart, from
the Supreme Court of New South Wales;
delivered 28th July 1896.*

Present:

LORD WATSON.

LORD HOBHOUSE.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The Respondent in this appeal entered into the service of the Government of New South Wales under and in accordance with the provisions of the Civil Service Act 1884 of that Colony as a clerk at a yearly salary. Before his service had been determined in a manner prescribed by the Act the Government dismissed him. On the 7th of March 1895 he brought a suit to recover damages for the dismissal against the Appellant who had been duly appointed to be sued as nominal Defendant on behalf of the Government in the matter of that claim. The Appellant pleaded that when the Plaintiff was engaged as clerk he was not nor had he since been reasonably competent to perform the service for which he was engaged wherefore the Government rescinded the contract and dismissed him. And for another plea the Appellant said that the Plaintiff misconducted himself in the service by wilfully disobeying the reasonable orders of the Government and by habitually neglecting his duties and failing to perform them wherefore they dismissed him. The Plaintiff demurred to

these pleas and the Defendant gave notice that on the argument of the demurrer he would object to the declaration on the ground (1) That it did not disclose any cause of action; (2) That there is nothing in the provisions of the Civil Service Act which prevents the Government from terminating the employment of an officer under it at any time. The Supreme Court of New South Wales gave judgment for the Plaintiff on the demurrer, and the present appeal is from that judgment.

It is the law in New South Wales as well as in this country that in a contract for service under the Crown, civil as well as military, there is, except in certain cases where it is otherwise provided by law, imported into the contract a condition that the Crown has the power to dismiss at its pleasure (*Dunn v. The Queen*, 1896, 1 Q.B., 116; *De Dohsé v. Reg.*, *ibid.*, p. 117, note 7). The question then to be determined is, Has the Civil Service Act 1884 made an exception to this rule? Part I. of the Act provides for the classification of officers according to their salaries, the increase of salaries, and the appointment of a Civil Service Board. Part II. provides for the examination, appointment, and promotion of candidates for admission to the Service. Part V. for superannuation allowances in which according to Section 48 an officer is not entitled to a superannuation allowance until he has served fifteen years. Part VI. for the creation of a Civil Service Superannuation Fund to which every officer is made to contribute by a deduction of four per cent. from his salary. Sections 10 and 49 which were referred to in the argument for the Appellant are not applicable to the present case. Section 10 provides for the services of an officer being dispensed with in consequence of the abolition of his office or of

any departmental change and not from any fault on his part, and Section 49 to any officer not entitled to a superannuation allowance whose services may be dispensed with through no fault of his own or who may be compelled through infirmity of body or mind to leave the Service, giving power to the Governor to grant a gratuity to him. The provisions in Part III. are the most material in the present case. Section 32 provides for the suspension of any officer who in the opinion of the Minister or of any officer authorised by him to investigate any matters or accounts pending a report shall have committed any act which appears to him to justify suspension; but if the suspension is not made by the Minister, the officer making it is immediately to lay before the Minister a report stating his reasons for the suspension, and the Minister may either confirm it or restore the officer to his office. Then Section 33 enacts that if the Minister orders or confirms the suspension he shall report the same to the Governor, who after calling on the officer to show cause or make explanation, may remove the suspension or according to the nature of the offence dismiss the officer from the Service, or reduce him to a lower class therein or to a lower salary within his class, or deprive him of such future annual increase as he would otherwise have been entitled to receive or any part thereof during any specified time, or punish him by fine not exceeding 50l.; provided that the Governor before deciding may 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. Section 34 provides for punishment by fine not exceeding 10l. of an officer who is negligent or careless in the discharge of his duties; Section 35 for the summary dismissal of

any officer convicted of felony or any infamous offence, and the forfeiture of his office by becoming bankrupt or applying to take the benefit of an Insolvent Act, or making an assignment for the benefit of his creditors; and Section 37 for fine, suspension, or dismissal in case of dishonourable conduct or intemperance. These provisions which are manifestly intended for the protection and benefit of the officer are inconsistent with importing into the contract of service the term that the Crown may put an end to it at its pleasure. In that case they would be superfluous, useless, and delusive. This is in their Lordships' opinion an exceptional case in which it has been deemed for the public good that a Civil Service should be established under certain regulations with some qualification of the members of it, and that some restriction should be imposed on the power of the Crown to dismiss them.

Their Lordships will therefore humbly advise Her Majesty to affirm the judgment of the Supreme Court and to dismiss the appeal.
