

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Walker v. Simpson, from the Supreme Court of New South Wales; delivered the 25th March 1903.

Present at the Hearing :

LORD MACNAGHTEN.

LORD SHAND.

LORD ROBERTSON.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This is an Appeal on behalf of the Government of New South Wales against a judgment of the Supreme Court dated the 7th of November 1901 so far as it decides that the Respondent, who was Plaintiff in the action, became entitled on his retirement from the New South Wales Civil Service to superannuation allowance in respect of a period extending from 1857 to 1861, called in the proceedings period A.

The right of a civil servant in the position of the Respondent to superannuation allowance is derived under the Civil Service Act, 1884. The allowance according to scale is payable to any "officer" as defined by the Act who fulfils certain prescribed conditions. The term "officer" is explained as meaning "any person holding "office in the Civil Service" other than persons belonging to certain classes in which the Plaintiff is not included. The term "Civil Service" is defined as "the body of persons now or hereafter "appointed to permanent salaried offices in the

“service of the Government,” with certain exceptions not material to the present question.

It is not disputed that during the period A. the Respondent was an “officer” within the meaning of the Act of 1884.

In 1861 the Respondent gave up his position as a permanent salaried officer and obtained the appointment of licensed surveyor. Licensed surveyors are not salaried officers, nor are they members of the Civil Service. Though in the employment of the Government, they are at liberty to undertake private business. When employed on Government business, they receive separate instructions for each piece of work and are paid separately for every job. The period of the Respondent’s employment as licensed surveyor continued up to 1880. It is called period B.

In 1880 the Respondent was again appointed to a permanent salaried office in the service of the Government. He remained in the service as a permanent salaried officer until July 1896. In that month he attained the age of 60 and was then compulsorily retired under Section 68 of the Public Service Act, 1895.

The Respondent on his retirement claimed compensation allowance in respect of a term of service made up of the three separate periods A., B., and C. His claim in respect of period C. was admitted, but the Government refused to give him credit for periods A. and B. or either of them. His claim in respect of B. was rejected on the ground that during that period he was not an “officer.” His claim in respect of A. was disallowed on the ground that no claim to superannuation allowance could be admitted except in respect of continuous service.

The whole question turns on Section 48 of the Act of 1884. Reference was made in the course of the argument to several other sections

of the Act and to the Public Service Act, 1895. But after some discussion it became plain that little or no light could be thrown upon the question by anything in the Act of 1895 or any other sections of the Act of 1884.

Section 48 of the Act of 1884 declares that the
 “ following shall be the scale of superannuation
 “ allowances payable under this Act, viz.:—
 “ To any officer who shall have served 15 years,
 “ a superannuation allowance equal to one-fourth
 “ of his annual salary, with an addition of one-
 “ sixtieth part of such salary for each additional
 “ year of service, but in no case shall such super-
 “ annuation allowance exceed two-thirds of his
 “ annual salary, and such superannuation allow-
 “ ance shall be computed upon the average annual
 “ amount of salary or emoluments other than
 “ forage, equipment, or travelling allowance
 “ received by such officer during the preceding
 “ three years.”

Confining their attention to this Section, the learned Judges of the Supreme Court expressed their unanimous opinion that there was nothing to show that the service in respect of which superannuation allowance was provided must be continuous. Their Lordships agree entirely in that conclusion. Indeed the point appears to them too clear for argument. It is difficult to see why the years of service included in period A. are not just as much “additional” years of service as the years included in period C., other than those that go to make up the term of 15 years which gives the right to superannuation allowance. It may be observed that in Section 47 where the Act is dealing with a service terminated by ill-health and afterwards resumed on recovery, the expression “additional length of service” is applied to the period of further employment, though not continuous with the service, in respect

of which superannuation allowance had already been earned.

The Respondent, as he was entitled to do under the terms of the Order giving the Appellants special leave to appeal, renewed his claim to superannuation allowance in respect of period B. But the obvious and conclusive answer to that claim is that the Respondent was not, during period B., an "officer" within the meaning of the Act of 1884.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed.

In accordance with the undertaking given when special leave to appeal was granted, the Appellant will pay the costs of the Respondent as between solicitor and client.
