Judgment of the Lords of the Judicial Committee of the Privy Council, on the Original and Cross Appeals, at the instance of the Honourable James Henry Young v. *Thomas Francis Waller, et e contra, from the Supreme Court of New South Wales; delivered 29th April* 1898.

Present:

LORD WATSON.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The Plaintiff in this suit, who is Respondent in the leading Appeal, obtained employment in the public service of the Government of New South Wales, after the passing of the "Civil "Service Act, 1884." Before the "Public Service "Act of 1895" was passed, the office which he held was abolished by the Government. After the Act of 1895 became law the suit in which these Appeals are taken was brought by the Plaintiff against the Government, as represented by the Appellant, who had been duly appointed to act as nominal Defendant. He claims 7,500*l.* as damages for wrongful dismissal and deprivation of office.

By his defence the Defendant, who is the leading Appellant, pleaded (2°) "that the services "and employment of the Plaintiff in the de- "claration mentioned were the services of a "person employed in the public service within "the meaning of the Act 59 Victoria, No. 25, "Section 58, and the alleged grievances in the "declaration mentioned were the exercise by

" the said Government of the right and power of " the Crown in the said section mentioned to " dispense with the services of any person em- " ployed in the said public service, and not " otherwise. He pleaded (3°) " that whilst the " Plaintiff was in the said service and employment " the said Government abolished the Plaintiff's " said office, and thereupon dispensed with the " services of the Plaintiff as such officer, as in the " declaration mentioned, in consequence of the said " abolition of his said office under and in accord- " ance with the said Civil Service Act, and the " grievances in the declaration mentioned are the " said dispensing with the services of the Plaintiff " in consequence of the said abolition of his office, " and not otherwise."

These two pleas were heard, on demurrer, before Darley, C.J., with Stephen and Cohen, J.J., who, on the 6th May 1897, unanimously entered judgment for the Plaintiff on his demurrer to the Defendant's second plea, and overruled his demurrer to the Defendant's third plea, with costs.

The opinion of the Court was delivered by Darley, C.J., with the concurrence of the two learned Judges who sat with him. Their judgment upon the demurrer to the second plea was rested, without discussion, upon the decision of the Supreme Court in the case of *Adams* v. *Young*. In that case, however, the Plaintiff's office was not abolished, and the loss of which he complained was solely due to his summary dismissal by the Government. In this case, the Plaintiff's loss of his office, and its emoluments, has not been due to his summary dismissal, but to the abolition by the Government of the office which he held. Now, although it was decided by this Board in *Gould* v. *Steuart* (App. C., "1896," 575) that the effect of the "Civil Service Act, 1884," was to deprive the Crown of its right to dismiss its civil servants

summarily, without following the procedure prescribed by the Act, it was certainly not suggested that the provisions of the Act do, either directly or by implication, take away the right of the Crown to abolish a civil office. In the argument addressed to us for the Plaintiff it was not disputed that the Crown's power of abolition is recognised by the Act of 1884, which makes special provision, in the event of its exercise, for the compensation to be made to the civil servant who is thereby deprived of his office and its emoluments. The substance of the Defendant's third plea, to which the Plaintiff demurs, is, that the Plaintiff is not entitled to any compensation under the Act of 1884. If that can be shown, it follows that the Plaintiff has no title to insist on his claim of damages at common law, as for breach of contract.

There are only two clauses in the Act of 1884 which bear upon this question. Section 10 provides,—"If the services of any officer be "dispensed with, in consequence of the abolition "of his office, or of any departmental change, "and not from any fault on his part, such "officer may be required, at the rate of salary "last received by him, to perform any duty for "which he is considered competent in any public "department, and should he refuse such change "of duty, he shall not be entitled to receive any "compensation." Section 46 enacts,—"When "the services of any officer are dispensed with "in consequence of the abolition of his office, "and no office can be offered to him at the same "salary as hereinbefore provided, or at a salary "of not less than five-sixths of the same, he "shall be entitled to retire upon the super-"annuation allowance hereinafter provided."

It was admitted in the argument for the Plaintiff that at the date when his office was

abolished he had not been a civil servant for such a period of time as would entitle him to a superannuation allowance. He therefore rested his claim for damages or compensation upon the failure of the Government to fulfil their statutory obligation, by offering him employment as a civil servant in some public department, at the rate of salary received by him before the abolition of his office, or at a salary of not less than five-sixths of the same.

The argument of the Plaintiff was rested entirely upon the contention that, by Sections 10 and 46 of the Civil Service Act, 1884, an imperative duty is imposed upon the Government of the Colony, in the event of their abolishing a civil office, to make compensation to the holder of it, by offering to him an office in some public department, at the same salary which he had received before the abolition, or at a salary not less than five-sixths of the same. For that contention, in their Lordships' opinion, there is no warrant to be found in the language of the Act, which places it entirely within the option of the Government to re-engage the civil servant whose office has been abolished, or not, as they shall see fit. Section 10 merely provides that the displaced official may be required to perform any duty for which he is considered competent in any public department, at the rate of salary last received by him; and the penalty of his declining to accept the duty when required is, that he shall not be entitled to any compensation. But it is clear that all questions relating to his competency, and to the propriety of requiring him to accept another situation, are left to the discretion of the Government.

In like manner, Section 46 enacts that a civil servant, displaced by the abolition of his office, shall be entitled "to retire upon the super-

"annuation allowance hereinafter provided," if no other office can be offered to him at the same salary as hereinbefore provided, or at a salary of not less than five-sixths of the same. These enactments, in so far as they relate to the offer of another office, refer back to the provisions of Section 10, and leave the right of judging whether such an offer ought to be made to the Government.

Their Lordships will therefore humbly advise Her Majesty to dismiss both the original and the cross Appeals. The parties will each bear their own costs.