[HIGH COURT OF AUSTRALIA.]

BENNETT . . . . . APPELLANT
PLAINTIFF,

AND

THE MINISTER FOR PUBLIC WORKS (NEW SOUTH WALES) . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Aug.* 21, 22, 27.

Griffith C.J., O'Connor and Isaacs JJ.

Construction of Statutes—Consolidation—Effect of consolidating Act upon intervening amending Act—Interpretation Act 1897 (*N.S.W.*), (*No.* 4 *of* 1897), *sec.* 25—*Resumption of land by Crown—Interest on compensation moneys—Lands for Public Purposes Acquisition Act* 1880 (*N.S.W.*), (44 *Vict. No.* 16), *sec.* 16—*Darling Harbour Wharves Resumption Act* 1900 (*N.S.W.*), (*No.* 10 *of* 1900), *sec.* 13—*Public Works Act* 1900 (*N.S.W.*), (*No.* 26 *of* 1900), *sec.* 119 (2).

Sec. 25 of the *Interpretation Act* 1897, which provides that, where an Act repeals and re-enacts with or without modification any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted, does not apply to a case where the Act which refers to the repealed Act refers to it not for the purpose of embodying any of its provisions, but merely by way of amending or repealing some of them.

Sec. 16 of the *Lands for Public Purposes Acquisition Act* (44 Vict. No. 16), provided that the interest payable on compensation moneys should be at the rate of 6 per cent. per annum. The *Darling Harbour Wharves Resumption Act* 1900, assented to on 4th September of that year, by sec. 13 provided that after the commencement of that Act interest payable under sec. 16 of 44 Vict. No. 16 should be at the rate of 4 per cent. "instead of 6 per cent. per annum as in the said section mentioned." On the 22nd of the same month the *Public Works Act* 1900, which purported to be merely a consolidating Act, by sec. 119 repealed and re-enacted practically without modification the provisions of sec. 16 of the 44 Vict. No. 16.

Held, that sec. 25 of the *Interpretation Act* did not apply. The *Public Works Act* 1900, being the latest Act dealing with the subject, must be regarded as the final expression of the legislative will, and, therefore, effect must be given to the plain words of sec. 119 fixing the rate of interest at 6 per cent., notwithstanding the recent enactment of sec. 13 of the *Darling Harbour Wharves Resumption Act*.

Morisse v. *Royal British Bank*, 1 C.B.N.S., 67; 26 L.J.C.P., 62, distinguished.

Observations on the principles to be applied in the construction of consolidating Acts.

Decision of the Supreme Court: (*Bennett* v. *The Minister*, (1907) 7 S.R. (N.S.W.), 219), reversed.

APPEAL from a decision of the Supreme Court of New South Wales on a special case stated by consent of the parties under sec. 55 of the *Common Law Procedure Act* 1899.

The action was brought to recover £324 8s. 4d. for interest on compensation moneys payable by the defendant to the plaintiff in respect of certain lands resumed under the *Public Works Act* 1900, by notification in the *Government Gazette*.

The plaintiff and the defendant not having agreed as to the amount of compensation, the plaintiff brought an action for the amount to which she claimed to be entitled. The jury found that the plaintiff was entitled to £6,633. The plaintiff claimed to be entitled to interest on that amount at the rate of 6 per cent. per annum from the date of notification in the *Gazette*. The defendant contended that the plaintiff was only entitled to interest at the rate of 4 per cent. per annum, and by consent of the parties a special case was stated for the opinion of the Supreme Court on the question whether the rate of interest payable was 6 per cent. or 4 per cent. judgment to be entered by the Court for the plaintiff or the defendant in accordance with the Court's opinion on that question.

The Supreme Court held that sec. 25 of the *Interpretation Act* 1897, applied and that the references in sec. 13 of the *Darling Harbour Wharves Resumption Act* 1900 to the provisions of the *Lands for Public Purposes Acquisition Act* 1880 (44 Vict. No. 16), sec. 16, should be read as references to the provisions of sec. 119 of the *Public Works Act* 1900, which repealed and re-enacted

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sec. 16 of the Act of 1880, and that therefore the rate of interest payable was 4 per cent.: *Bennett* v. *The Minister* (1).

From this decision the present appeal was brought to the High Court.

The material sections of the Statutes involved are set out in the judgments hereunder.

Rolin (*Waddell* with him), for the appellant. There is no "reference" in the Act No. 10 of 1900 to the provisions of the 44 Vict. No. 16 in the sense contemplated by sec. 25 of the *Interpretation Act* No. 4 of 1897. Moreover the Act No. 26 of 1900 is more than a mere consolidation. Certain important words that were in the 44 Vict. No. 16, sec. 16, are omitted, making a difference in the law as to sums bearing interest. The *Public Works Act* (51 Vict. No. 37) does not affect the question. The ordinary rule should be applied that the latest Act, if clear and unambiguous, must have its full effect. The legislature must be presumed not to have made a mistake: *Commissioners for Special Purposes of Income Tax* v. *Pemsel* (2). A consolidation is *primâ facie* not intended to alter the law, but if it clearly does so there is no escape from it. [He referred to *R.* v. *White* (3).] This case is not analogous to *Morisse* v. *Royal British Bank* (4). The *Public Works Act* 1900 No. 26 contains the whole law on the subject, and prior legislation cannot affect its construction if the words are clear: *Williams* v. *Permanent Trustee Co. of New South Wales* (5). In *The "Dart"* (6) the Court did not hesitate to follow the later Act though it was passed only one day after the earlier Act.

C. B. Stephen K.C. (*O'Reilly* with him), for the respondent. If the consolidating Act stood alone no difficulty could arise, but the *Interpretation Act*, sec. 25, cannot be overlooked. Consolidating Acts are not intended to be new legislation, but to be a summary of the old.

[GRIFFITH C.J.—That may be the object of the legislature, but the question is what have they said.]

(1) (1907) 7 S.R. (N.S.W.), 219.
(2) (1891) A.C., 531.
(3) 20 N.S.W.L.R., 12.
(4) 1 C.B.N.S., 67; 26 L.J.C.P., 62.
(5) (1906) A.C., 249.
(6) (1893) P., 33.

Sec. 25 of the *Interpretation Act* was intended to meet just such references as this, in order to prevent confusion. Until it is repealed it controls all future legislation, which must be construed in the light of its provisions. "Reference" includes modification or amendment, and there is no reason for restricting its meaning here. It cannot be supposed that the legislature intended to alter the provision for 4 per cent. so shortly after they had enacted it, and still less probable is it that they would do so in a Statute which purports to be merely a consolidation. Since the passing of No. 26 of 1900 there have been several Acts incorporating sec. 19 of that Act, but changing 6 to 4 per cent.

[GRIFFITH C.J.—That seems rather against you.]

A consolidating Act re-enacting a section in a previous Act does not operate as a repeal of an intervening Act which altered the provision re-enacted: *Morisse* v. *Royal British Bank* (1). [He referred also to *R.* v. *White* (2); *Shires Act* 1905 (No. 33), sec. 16 (*s*); *Sydney Corporation Amendment Act* 1905 (No. 29), sec. 20; *Local Government Act* 1906 (No. 56), sec. 130 (5).]

Rolin, in reply.

Cur. adv. vult.

August 27th.

GRIFFITH C.J. The question for determination in this case is raised upon sec. 25 of the *Interpretation Act* 1897, which provides that, "Where an Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted." That is a standing provision of the law of New South Wales, and it comes into operation whenever the circumstances mentioned in the section exist. The result is that every such repealing and re-enacting Act is to be construed as if it contained an enactment that "any reference in any other Act to the provisions of the Acts hereby repealed shall be construed as references to the provisions of this Act." It follows that, for the purposes of construction of the Act making the reference, the

(1) 1 C.B.N.S., 67; 26 L.J.C.P., 62. (2) 20 N.S.W.L.R., 12.

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repealing Act is to be taken to have been passed at the time of passing the repealed Act.

The question arises in this way. In 1900 an Act was passed called the *Public Works Act* 1900, which is described in the title as "An Act to consolidate the Acts relating to Public Works," and which consolidated and repealed a great number of previous Acts, and re-enacted their provisions with modifications. It was, therefore, an Act to which the provisions of sec. 25 of the *Interpretation Act* 1897 were applicable. The Act was assented to on 22nd September. By sec. 119 it was provided (*inter alia*) that under certain circumstances, which include the present case, compensation money in respect of land taken by the Government under the Act should bear interest at the rate of 6 per cent. per annum. The *Lands for Public Purposes Acquisition Act*, 44 Vict. No. 16, which was one of the Acts repealed and re-enacted by the *Public Works Act* 1900, had also, by sec. 16, provided that all moneys payable under the Act by way of compensation should be paid "together with interest at the rate of six per cent. per annum" from a time specified. On 4th September in the same year another Act, the *Darling Harbour Wharves Resumption Act* 1900 (No. 10), had been assented to. That Act dealt with many subjects, as appears from its title: "An Act to validate certain notifications of appropriation and resumption in connection with a system of public wharves and approaches thereto; to provide for the appropriations and resumptions and purchases for the extension of such system; to provide for the compensation for resumptions and purchases made or to be made for those purposes, and for the raising of loans for such resumptions and purchases and in respect of certain public works and services; to authorize and sanction the commencing and constructing of certain public works; to fix the interest payable under the *Lands for Public Purposes Acquisition Act*; to amend the *Public Works Act* of 1888; and to validate certain proclamations of quarantine stations, and certain acts done within such stations." The 13th section provided that in the case of any resumption made before or after the commencement of the Act for any purpose mentioned in it, and any resumption for any purpose made after its commencement, the interest payable in pursuance of

sec. 16 of the *Lands for Public Purposes Acquisition Act* "shall, after the commencement of this Act, be at the rate of four per cent. per annum instead of six per cent." as mentioned in sec. 16 of the former Act. The result was that by this Act sec. 16 of the *Lands for Public Purposes Acquisition Act* was amended by substituting the rate of four per cent. for that of six per cent. per annum. The Act, as I have said, was assented to on 4th September. On 22nd September, eighteen days later, the *Public Works Act* was assented to, containing the sec. 119 to which I have already referred. The question then is whether sec. 25 of the *Interpretation Act* governs the case.

In my opinion, sec. 25 does not apply to a case where the only reference to a Statute is in a section repealing or amending its provisions. The words of sec. 25 are "references in any other Act." In one sense the words include every mention in one Act of any provisions of another Act. You cannot repeal or amend an Act without referring to it. It is usually done by mentioning the section intended to be repealed or amended. Or it may be done in a general way by throwing together in one comprehensive expression all the provisions inconsistent with the repealing Act and repealing them. In my opinion, the word "references" in sec. 25 does not mean a mere mention of that sort. It applies to a case in which the Act which makes the reference is incomplete in itself and requires the provisions of the Act referred to to be read into it to show the intention of the legislature; that is, to cases where for the purpose of understanding one Act the provisions of some other Act have to be read into it. But in the case of an amending or repealing Act you do not read the provisions of the Act amended or repealed into the amending or repealing Act for the purpose of understanding it. The reference is for a different purpose. In my opinion, when an Act has been amended, and is subsequently re-enacted in terms repugnant to the amending Act, sec. 25 has no application. There is clearly a repugnance between the Acts No. 10 and No. 26 of the year 1900, and the rule is clear that, when two Acts are repugnant, the provisions of the later Act must prevail. It is suggested that that cannot have been the intention of the legislature; that it is most probable that the *Public Works Act* was prepared

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before the *Darling Harbour Wharves Resumption Act* was passed through Parliament. No doubt that is extremely probable. It is also very probable that after the *Darling Harbour Wharves Resumption Act* had been passed, the other Act, being regarded by the Parliament as a mere consolidation, was passed without noticing that it was quite inconsistent with the Act passed a few days before. But that is mere conjecture, and there is no room for conjecture in construing Acts of Parliament. It is quite conceivable, though not probable, that the legislature in the interval of eighteen days between the passing of the Acts changed their minds and thought they had made a mistake in fixing the rate of interest at 4 per cent., and as the law had only been in force a few days decided to make a different provision. In my opinion, this Court cannot concern itself with any such matters of conjecture. We have to look at the language of the legislature, and where we find that the legislature has expressed itself in clear and unmistakable language, we must give effect to that language, although we may conjecture that it was used through inadvertence.

For these reasons I think that the contention of the respondent, which was accepted by the Supreme Court, fails.

Reference was made to the case of *Morisse* v. *Royal British Bank* (1), in which it was held that an Act which modified the operation of the general provisions of the *Bankruptcy Act* 6 Geo. IV. c. 11 was not repealed by the mere re-enactment of those general provisions by a later Act. That case was, however, quite different from the present. There were three Acts, first, an Act making certain provisions affecting creditors generally in regard to proof in bankruptcy; secondly, an Act which provided, in effect, that the provisions of the first Act should not extend to prejudice rights against members of joint stock companies; and thirdly, an Act repealing and re-enacting the provisions of the first Act. The case is no authority for the proposition that an Act which contains an enactment directly contrary to an earlier Act does not repeal it.

Another argument put forward for the respondent was founded on the fact that since 1900 the legislature on three separate occasions have incorporated the provisions of the *Public Works Act* of

(1) 1 C.B.N.S., 67.

that year with respect to land acquired by resumption, sometimes by the Government, sometimes by other bodies, and in each case have adverted to the fact that the rate of interest payable was 6 per cent., and have said that, notwithstanding that, the rate should be 4 per cent. in certain specified cases. I do not think very much weight is to be given to that argument. But what weight it has is rather in favour of the appellant.

For the reasons I have given, and with every inclination to come to a contrary conclusion, I feel compelled to hold that, as there is no ambiguity in sec. 119, the legislature intended what it said, and that effect must be given to the literal meaning of the language used.

In my opinion, therefore, the appeal must be allowed.

O'CONNOR J. It is, I think, impossible to escape the conclusion that the appellant's contention is right. The resumption was made under the *Public Works Act* 1900, which came into force on 22nd September of that year. It embodies a complete set of provisions for dealing with the acquisition of land for public purposes generally and the assessment and payment of compensation, together with interest, which by sec. 119 it fixes at 6 per cent. It is a consolidating Act which re-enacts in an orderly form the various Statutes embodying the law on the subject. I may adopt Lord *Macnaghten's* words describing it in his judgment in *Williams* v. *Permanent Trustee Co. of New South Wales* (1):—"The whole law with respect to the acquisition of lands for public purposes is now to be found in the Act of 1900, and it is not necessary or proper to resort to, or consider, the earlier legislation on the subject."

Under these circumstances the plaintiff, perhaps not unnaturally, concluded that, her land having been resumed under that Act, all the rights thereby expressly conferred upon owners of lands resumed, including interest at 6 per cent., would follow. But it appears that in the *Darling Harbour Wharves Resumption Act* 1900, which came into force 18 days earlier, and the general purpose of which was to authorize certain resumptions for special public purposes and to provide for the payment of compensation

(1) (1906) A.C., 249, at p. 252.

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in respect thereof, there were introduced in one section, sec. 13, some words of general application fixing the amount of interest at 4 per cent. instead of 6 per cent., not only in respect of resumptions under that Act, but in respect of all resumptions on which interest on compensation money was payable by virtue of the *Lands for Public Purposes Acquisition Act* 1880. The Minister now claims that the plaintiff is not entitled to be paid at 6 per cent., the rate fixed by the *Public Works Act*, but at 4 per cent., the rate fixed by the *Darling Harbour Wharves Resumption Act*.

Apart from sec. 25 of the *Interpretation Act* 1897 such a contention would be plainly untenable, for the Court would necessarily come to the conclusion that interest was to be paid under the later Act which embodied the latest expression of the legislature's will. But the Government by their counsel contend that by virtue of the *Interpretation Act* 1897, sec. 25, the plaintiff's rights are to be found in the earlier and not in the later Statute, and that by its operation the *Darling Harbour Wharves Resumption Act*, passed on 4th September, must be taken to have repealed and amended the *Public Works Act* passed on 22nd September following. Such a result might, I suppose, be achieved by the use of appropriate language in the *Interpretation Act*. But it has certainly not been effected by the language actually used.

Before applying the *Interpretation Act* it will be well to consider the condition of the law immediately before the *Public Works Act* 1900 became law. Resumptions by *Gazette* notification were regulated by the *Lands for Public Purposes Acquisition Act* (44 Vict. No. 16). Payment of compensation money and interest was authorized by sec. 16, which provided for the rate of interest, the time from which it was to be paid, the authorization of payment from the Consolidated Revenue, the person to whom it was to be paid, and the conditions as to title which were to be complied with before payment. Then came sec. 13 of the *Darling Harbour Wharves Resumption Act* which enacted that after the commencement of that Act interest payable in pursuance of sec. 16 of the *Lands for Public Purposes Acquisition Act* should "be at the rate of four per centum per

annum instead of at the rate of six per centum per annum as in the said section mentioned." Sec. 16 was thus impliedly amended as to the rate of interest, but in other respects it was left unaltered. From that time the rights of owners of resumed land to payment of interest on compensation money were to be found in these two Acts taken together.

Eighteen days after the passing of the *Darling Harbour Wharves Resumption Act* the *Public Works Act* 1900 was enacted. It repealed sec. 16 of the *Lands for Public Purposes Acquisition Act* and re-enacted its provisions in another form, and, although it consolidated and repealed all other enactments dealing with the resumption of lands for general public purposes, it did not consolidate, repeal, or in any way refer to the *Darling Harbour Wharves Resumption Act.* The ordinary consequence of such legislation would be the implied repeal of the *Darling Harbour Wharves Resumption Act* in so far as it fixed the rate of interest on resumptions generally at 4 per cent.

The question for our consideration is, has that consequence been prevented by sec. 25 of the *Interpretation Act*? In my opinion the section is not applicable to the condition of things that has arisen. The words "references in any other Act to the provisions so repealed" were not intended to apply to cases where the reference was merely for the purpose of repealing and amending. No doubt every Act repealing a previous Act refers to it, but to extend the meaning of the word "references" to all such cases would lead to endless absurdities. There are many Acts which do not in themselves embody the procedure necessary for their administration, but they sometimes effect the same object by reference to procedure Acts, thus embodying by a few words of reference a whole code of procedure. That is an illustration of one class of cases to which the section was intended to apply. In other words, the object of the legislature was to substitute the consolidated Act for the separate Statute or Statutes where in any Act reference was made to another for the purpose of embodying provisions. But that is a very different thing to reference for the purpose of repealing or amending. To interpret the word "references" as

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extending to the latter class of cases would be going far beyond the obvious intention of the interpreting Statute.

From what has been urged in argument one may gather that the legislature has not in the *Public Works Act* 1900 expressed its real intention, but a Court has no means of ascertaining the intention of the legislature except from the words it has used in its enactments.

For this reason I agree that the appeal must be upheld.

ISAACS J. read the following judgment:—

Up to 4th September 1900 the rate of interest payable in the case of Government resumption under the *Lands for Public Purposes Acquisition Act* 1880 was 6 per cent. On that date the *Darling Harbour Wharves Resumption Act* No. 10 of 1900 by sec. 13 reduced the rate of interest to 4 per cent. The section has already been read. A few days later, on 22nd September 1900, an Act No. 22 of that year was passed to consolidate the Public Works Acts, and by sec. 119 of that Statute it was declared that the rate of interest should be 6 per cent. The only question is which Act is to prevail?

Ordinarily no difficulty could possibly arise. But it is contended for the Minister, and has been so held by the Supreme Court of New South Wales, that sec. 25 of the *Interpretation Act*, No. 4 of 1897, operates so as to retain the 4 per cent. by making the 13th section of the *Darling Harbour Wharves Resumption Act* modify the 119th section of the *Public Works Act* in the same way as it formerly modified the repealed Act.

I do not see how this proposition can be maintained. Assuming, without deciding, that the mention of the repealed Act in sec. 13 of the *Darling Harbour Wharves Resumption Act* is a reference within the meaning of the *Interpretation Act*, the only effect is to alter the wording and construction of that section, by substituting in it a reference to sec. 119 of the *Public Works Act* 1900 for sec. 16 of the repealed Act. But there is nothing in sec. 25 of the *Interpretation Act* to affect the wording or construction of the later Act. That Act if modified at all must be modified by the operation of sec. 13 of the *Darling Harbour Wharves Resumption Act* when interpreted as directed. But

even when so interpreted—even when read as if it were originally passed with a reference not only to the *Lands for Public Purposes Acquisition Act* but with these words added, "or any subsequent Act repealing and re-enacting the said Act"—it would still be earlier than the *Public Works Act*. We have, therefore, by force of the *Interpretation Act* two Statutes co-existent and speaking on the same subject with discordant voices. They are inconsistent with each other, their provisions are repugnant, and, it seems to me, the inevitable consequence follows that the earlier enactment must give way. *Leges posteriores priores contrarias abrogant.* This principle has been and must be consistently adhered to. In the leading case on this subject, *Attorney-General* v. *Chelsea Waterworks Co.* (1), a proviso was held to impliedly repeal even the purview of an Act because directly repugnant, and in various cases of which *R.* v. *Middlesex, Justices of* (2) and *Paget* v. *Foley* (3) are examples, the rule has been illustrated. In the *Middlesex Case* (2) it was held that where two Acts of Parliament passed during the same session, and to come into operation on the same day, are repugnant to each other, that which last received the Royal assent must prevail and be considered *pro tanto* a repeal of the other. The later Act prevailed because "it speaks the last intention of the makers" (4).

Reliance was placed on the fact of the *Public Works Act* 1900 being a consolidation Act, and it was argued that we should therefrom deduce the intention of the legislature not to alter the law. But where the enacting words are clear and unambiguous, the title, or headings, must give way, and full effect must be given to the enactment. *In the Estate of Groos* (5) is a late example. With respect to the mode of construing consolidation Acts, it must be remembered that they, like all other Acts, speak as from the passing, unless some other date is expressly fixed, and so speaking the law must be taken as therein declared. In *Administrator-General of Bengal* v. *Prem Lal Mullick* (6) Lord *Watson* in delivering the judgment of the Privy Council said:—"The very object of consolidation is to collect the statutory law

(1) Fitzg., 195.
(2) 2 B. & Ad., 818.
(3) 2 Bing. N.C., 679.
(4) 2 B. & Ad., 818, at p. 821.
(5) (1904) P., 269.
(6) L.R. 22 Ind. App., at p. 116.

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bearing upon a particular subject, and to bring it down to date, in order that it may form a useful code applicable to the circumstances existing at the time when the consolidating Act is passed." In accordance with that are the observations of *A. L. Smith* L.J. in *The Fulham* (1). In *Rex* v. *Abrahams* (2) Lord *Alverstone* C.J. speaking of the *Merchant Shipping Act* said :—"If the language of sec. 219 of the Act of 1894 had been quite clear, it is not suggested that we can put a different construction upon it merely because the Act is a consolidating Act." But as late as last year Lord *Macnaghten* in *Williams* v. *Permanent Trustee Co. of N.S.W.* (3), speaking of the very Act now under consideration, the *Public Works Act* 1900, and after adverting to the fact that in spite of its title it is not purely a consolidating Act said :—"The Act of 1900 must, in their Lordships' opinion, be read and construed as it was enacted." Now here sec. 119 of the *Public Works Act* is quite clear, and there is no room for construing 6 per cent. as 4 per cent., and this notwithstanding the Act is a consolidating Act.

Sec. 25 of the *Interpretation Act* contains the saving words "unless the contrary intention appears." These words are not really necessary because if the later Act shows a contrary intention the earlier enactment cannot control it. But they remind us of the rule. It is perhaps merely stating the former position in another way, but it appears to me to bear an inescapable conclusion that when the legislature, which is presumed to know that the rate of interest was by reason of combined legislation reduced to 4 per cent., enacted in plain and unequivocal terms that it should henceforth be 6 per cent., it did evince a contrary intention.

Under the circumstances we have no course open but to follow the words of Parliament. Possibly the legislature intended to say something different, but after all that is only conjecture, and a Court is not at liberty to speculate on what the legislature intended to say. As was justly observed by *Jervis* C.J. in *York and North Midland Railway Co.* v. *The Queen* (4), "Courts of justice ought not to depart from the plain meaning of words

(1) (1899) P., 251.
(2) (1904) 2 K.B., 859, at p. 863.
(3) (1906) A.C., 249, at p. 253.
(4) 1 El. & Bl., 858, at p. 864.

used in Acts of Parliament: when they do so, they make, but do not construe, the laws."

So in this case we have only to concern ourselves with what Parliament has said, and when that is fairly and faithfully construed it leaves no course possible except to give effect to the unmistakable meaning of the later Act.

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Solicitor, for the appellant, *C. L. Tange.*

Solicitor, for the respondent, *The Crown Solicitor for New South Wales.*

C. A. W.

[HIGH COURT OF AUSTRALIA.]

THE WESTERN AUSTRALIAN BANK . APPELLANTS;

AND

THE ROYAL INSURANCE COMPANY . RESPONDENTS.

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PERTH, *Nov.* 3, 10.

Griffith C.J.

IN CHAMBERS.

Practice—Costs—Review of Taxation—Costs of sending solicitors' managing clerk from State where appeal set down to another State to which hearing transferred by order of Court.

Where the hearing of an appeal other than on a question of abstract law has been transferred, by order of the Court acting on its own initiative and not at the request of parties, to a State other than that of origin, the successful party to whom costs were given, may in a proper case be allowed the costs and expenses of sending the managing clerk of their solicitors in the State of origin to instruct counsel at the hearing of the appeal. The matter is primarily one for the exercise of the taxing officer's discretion, but this discretion will be freely reviewed by the Court employing its own knowledge of the special circumstances of the case.

Principles suggested for the guidance of the Taxing Officer in arriving at the amount of costs to be allowed.