the construction of the particular document in question in this case. The special leave was therefore rescinded, and the appeal dismissed with costs.

H. C. OF A. 1910.

MITCHELL v. BROWN.

Appeal dismissed.

Solicitors, for the appellant, *Hooke & Mein*, Dungog, by *Bowman & Mackenzie.*

Solicitors, for the respondent, *Logan & Carlton*, West Maitland, by *Sly & Russell.*

C. E. W.

[HIGH COURT OF AUSTRALIA.]

THE COMMONWEALTH AND THE POST-MASTER-GENERAL . . . . . } PLAINTIFFS;

AND

THE PROGRESS ADVERTISING AND PRESS AGENCY COMPANY PROPRIETARY LIMITED . . . . . } DEFENDANTS.

Post and Telegraph Act 1901 (*No.* 12 *of* 1901), *sec.* 97—*Telephone—Regulations—Prohibition of publication of telephone lists.*

H. C. OF A. 1910.

MELBOURNE, *June* 1, 6.

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

Regulation 126A of the Telephone Regulations (Statutory Rules 1908, No. 87), imposes a penalty on any person who, without the authority of the Postmaster-General or of the Deputy Postmaster-General of a State, prints, publishes or circulates, or authorizes the printing, publishing, or circulation of, any list of all or any of the subscribers connected with any telephone exchange, and provides that all lists published in contravention of the Regulation shall be forfeited to the Postmaster-General and shall on demand in writing be delivered up to him.

Held, that the Regulation is not authorized by sec. 97 (*r*) of the *Post and Telegraph Act* 1901 and is *ultrâ vires* the Governor-General.

Held, also, that the Act confers no exclusive right on the Postmaster-General to print or publish such lists.

H. C. OF A. 1910.

THE COMMONWEALTH AND THE POSTMASTER-GENERAL v. THE PROGRESS ADVERTISING AND PRESS AGENCY CO. PROPRIETARY LTD.

SPECIAL case stated for the opinion of the Full Court.

An action was brought in the High Court by the Commonwealth and the Postmaster-General of the Commonwealth against The Progress Advertising and Press Agency Co. Proprietary Ltd., the claim endorsed on the writ being:—

(1) For a declaration that the Commonwealth or the Postmaster-General has the sole right of printing, publishing and circulating in Australia all lists of subscribers connected with any telephone exchange.

(2) For a declaration that Regulation 126A of the Telephone Regulations (Statutory Rules 1908, No. 87) is valid and *intra vires*.

(3) For an injunction restraining the defendants, their servants and agents, and each and every of them from printing, publishing or circulating, or authorizing the printing, publishing or circulating of, any lists of subscribers connected with any telephone exchange in Australia or any advertising or other telephone directory.

(4) For such other relief or remedy as may be just.

Regulation 126A of the Telephone Regulations referred to above is as follows:—

"(1) Any person who, without the authority of the Postmaster-General, or of the Deputy-Postmaster-General of the State, prints, publishes, or circulates, or authorizes the printing, publishing, or circulating of, any list of all or any of the subscribers connected with any Telephone Exchange shall be guilty of an offence, and shall be liable to a penalty not exceeding Ten pounds.

"(2) All lists published in contravention of this Regulation shall be forfeited to the Postmaster-General, and shall on demand, in writing, be delivered up to him."

The parties by consent stated a special case setting out certain facts, which are sufficiently stated in the judgments hereunder, and asking the opinion of the High Court on the question whether on the facts the plaintiffs had a good cause of action against the defendants, and were entitled to the relief or any of it claimed in the writ.

McArthur, for the plaintiffs. Regulation 126A is authorized by

sec. 97 (*r*) of the *Post and Telegraph Act* 1901. The exclusive right to publish the telephone lists is necessary to the working of the Department and the efficient administration of the Act. Telephone lists which are published by other persons must necessarily become incorrect, and they will then interfere materially with the efficient working of the telephone system. The Postmaster-General is, by sec. 80, given a monopoly of telephone business, and that necessarily includes the exclusive right to publish telephone lists and supply them to his customers. That is an incidental service. [He also referred to sec. 120.]

Mitchell K.C. (with him *Ah Ket*), for the defendants. Sec. 97 (*r*) does not authorize the regulation in question. The regulations authorized by sec. 97 all deal with the internal management of the Department or direct interference with property of the Department. If sub-sec. (*r*) is as wide as is contended, it would render a number of sections in the Act superfluous, such as many of the sections in Part VI.

McArthur in reply.

Cur. adv. vult.

The following judgments were read:—

June 6.

GRIFFITH C.J. The substantial question for decision is whether regulation 126A of the Regulations under the *Post and Telegraph Act* 1901 is *intra vires*. If it is, the plaintiffs are entitled to the relief claimed. It is not contended that the second paragraph of the regulation can be supported, but the plaintiffs maintain that the first paragraph is within the power conferred upon the Governor-General by sec. 97, pl. (*r*), of the Act to make regulations for "all other matters and things which may be necessary for carrying out this Act or for the efficient administration thereof." They say that it is an essential part of the telephone system that accurate information should be given to the subscribers as to the names and office numbers of other subscribers, and that, if it is not given or if misleading information is given, great delay and inconvenience are occasioned to the operators in the telephone exchange, and the special case states that such

H. C. OF A. 1910.

THE COMMONWEALTH AND THE POSTMASTER-GENERAL v. THE PROGRESS ADVERTISING AND PRESS AGENCY CO. PROPRIETARY LTD.

Griffith C.J.

inconvenience has actually been occasioned in the past by the issue of inaccurate lists by unauthorized persons. From this the Court is asked to infer that it is, or may be, necessary for the efficient administration of the Act so far as regards telephones to anticipate and prevent such inconvenience. It may be conceded that it is desirable to do so, but the question is whether the provisions of sec. 97, pl. (*r*), cover such a matter. That is a matter of construction. The section enumerates 20 different purposes for which Regulations may be made, nearly all of which relate to what may be called the internal or domestic management of the Department or its direct relations with the public. Pl. (*o*) is "(For) securing the telegraph lines and works of the Postmaster-General from interference or injurious affection by electric lines or works." This, it is true, does not relate to internal management, but it does relate to a direct interference with the property of the Postmaster-General by strangers. The Act contains in Part VI. a series of elaborate and detailed provisions for protecting the property of the Postmaster-General from injury, and the officers of the Department from interference or hindrance in the exercise of their duties.

In my opinion the *primâ facie* meaning of the words now in question is limited to matters of internal administration and matters with respect to which the Department comes in direct contact or relationship with the public, and does not extend to acts done by individuals outside the operations of the Department and in which they are not brought into such contact or relationship. Even if the words could be strained so as to include such acts, I think that the general scheme of the Act, which makes express provision as to such matters, would be sufficient to show that the extended meaning should not be accepted. In case of ambiguity the presumption is always in favour of liberty. And if this extension of meaning were conceded, it is hard to see where it would stop. In the present case, for example, it is sought to extend it to institute a new sort of copyright law. In like manner it might be extended to include all sorts of trespasses which would give rise to an action for damages, so as to turn them into offences punishable by fine and imprisonment.

For these reasons I am of opinion that Regulation 126A is *ultra vires* and invalid.

The plaintiffs alternatively contend that they are entitled to an injunction on the ground that the Postmaster-General is charged by law with the duty of carrying on a great undertaking for the benefit of the public, and that he is entitled to the aid of the Court to prevent any interference with his efficient discharge of this duty. Assuming that this proposition can be maintained without qualification, the present action, so regarded, is an action *quia timet*, in which the plaintiffs must show that what the defendants propose to do will cause immediate and substantial damage to the plaintiffs' property or business. (See the cases cited in the *Bendigo and Country Districts Trustees and Executors Co.* v. *Sandhurst and Northern District Trustees, Executors, and Agency Co.* (1)).

I do not think that the special case was stated from this point of view at all, but, if it was, the only evidence upon which the Court can act is contained in paragraphs 6 and 7, the effect of which is that experience shows that the publication of incorrect lists of telephone subscribers has caused in the past, and is likely to cause in the future, great trouble, inconvenience and delay in the work of the Department, and that any list, even if correct when published, must, from the continual changes among the subscribers, very soon become incorrect. This difficulty or objection also applies to the departmental lists, which are published quarterly with intermediate supplementary lists, although the period of circulation of an incorrect list may be shorter. The defendants say that they intend to take all possible care that their lists shall be correct when published. Whether the inconvenience and damage, likely to be caused to the Department by the publication of the defendants' lists during the short periods during which they are no longer correct, will be substantial is a question of fact upon which it is, I think, premature to form a conclusion.

I think, therefore, that the action cannot be maintained upon either ground.

(1) 9 C.L.R., 474.

H. C. OF A. 1910.

THE COMMONWEALTH AND THE POSTMASTER-GENERAL v. THE PROGRESS ADVERTISING AND PRESS AGENCY CO. PROPRIETARY LTD.

O'Connor J.

O'CONNOR J. It is quite clear that the plaintiffs must fail in this action, unless they succeed in establishing the ground of relief founded on the by-law of August 1908. On that ground also they must fail if the by-law is invalid. The only authority for the by-law is sec. 97, sub-sec. (*r*); under no other provision of the *Post and Telegraph Act* 1901 can it be justified. Before adverting to the words of the sub-section it will be well to look at the class of facts against which the by-law is directed. An advertising company in the course of its business prints, and proposes to publish and circulate, a list of telephone subscribers with their numbers. It will probably be extensively used by subscribers, and it may be conceded that it will be necessarily inaccurate to an extent that may render its use by subscribers a substantial cause of confusion and delay in the working of the telephone system. The by-law takes authority to prevent the possibility of such a state of things occurring by prohibiting under penalty any person from printing, publishing, or circulating without consent of the Postal Department any list of all or any telephone subscribers connected with any telephone exchange. It is obvious that the real ground on which the by-law was framed is that the Department has the exclusive right to publish the list, as it has the exclusive right to construct and operate public telephone services. On that ground the position of the plaintiffs is obviously untenable. But in the argument they have relied on the sub-section of sec. 97 that I have mentioned. The applicability of the sub-section involves the assumption that the Government are empowered to limit and control the businesses of persons unconnected with the Postal Department officially, contractually, or otherwise, in so far as they are likely to interfere with the effective working of the Post and Telegraph Department. The words which it is alleged give authority for this interference are as follow:—"The Governor-General may make regulations for . . . . all other matters and things which may be necessary for carrying out this Act or for the efficient administration thereof." The other sub-sections of sec. 97, leaving sub-sec. (*r*) out of consideration, deal with persons outside the Department in one aspect only, that is to say, lay down the terms on which contractual relations between the

Department and persons not officers may be established. In none of the provisions as to specific matters is there any indication of an intention to control in any other respect the actions of persons who are not officers of the Department. In Part VI. there are a series of provisions beginning with sec. 98, dealing with Post Office offences. Amongst other things made punishable is fraudulent conduct on the part of any person with regard to the property and the operations of the Department. Several of the sections, however, do not deal with criminal acts in the ordinary sense. They are apparently intended to secure the efficient working of the Department, and they render punishable as offences many things done or omitted to be done by persons not under departmental control which would not otherwise be punishable. For instance, under sec. 117 a person who without authority allows to remain on the walls of his house the words "Post Office," or to remain on any vehicle or vessel under his control the words "Royal Mail," becomes liable to a penalty. Some of the provisions of sec. 121, intended for the protection of postal pillars, are of the same kind. Sec. 128 makes it an offence to set up or use private telegraph posts on Crown lands or public roads without authority. By sec. 129 a person using a telegraph line under agreement with the Department may not under penalty make a charge to any other person for use of the line. I need not multiply instances, but it may be taken generally that all through Part VI. the intention of the legislature is obviously to protect the property of the Department, and to secure the efficiency of its operations by making punishable as offences certain specific acts of commission or omission on the part of individuals who are not under departmental control. The fact that certain acts of omission or commission on the part of persons outside the Department likely to prejudice its working are thus specifically dealt with makes it unlikely that the legislature should have left open for control under by-laws the wide field which sub-sec. (*r*), as the plaintiffs seek to interpret it, would cover. If the defendants' contention is right every operation of private business which might prejudicially affect the working of the Department may be controlled by by-laws of the Postal Department. I can see no differ-

H. C. OF A. 1910.

THE COMMONWEALTH AND THE POSTMASTER-GENERAL v. THE PROGRESS ADVERTISING AND PRESS AGENCY CO. PROPRIETARY LTD.

O'Connor J.

ence in principle between the by-law in question and one which would prohibit under penalty the making of street noises likely to interfere with the efficient working of a telephone exchange. Assuming that the words of the sub-section, interpreted in the widest sense, are capable of covering the circumstances under consideration, the question still remains whether the legislature has used them with that meaning or with the more restricted meaning for which the defendants are contending. In ascertaining what was the real intention of the legislature two well known principles of interpretation must be applied. The first is that, as every citizen is at liberty *primâ facie* to carry on his business in his own way within the law, it will not be held that the legislature has intended by any Statute to impair that liberty unless it has expressed that intention by plain words or by necessary implication from the language it has used. The second rule is that general words in a Statute will ordinarily be construed with no wider meaning than is necessary to carry into effect its object and purpose. Applying those rules to the sub-section under consideration, I am of opinion that it must be read as giving no further authority than to make by-laws for securing the efficient administration of the Department in so far as that may be carried out by officers of the Postal Department, or by persons not officers, who have been brought under departmental control either by provisions of the Act, or by their own contracts. In respect of the acts or omissions of persons not under such control the legislature has, in my opinion, given all the powers it intended to give in the special provisions of Part VI. It would be extending the general words of the sub-section beyond the necessities of the Act to construe them as giving authority to make by-laws restricting the ordinary operations of business in the circumstances that have arisen in this case. For these reasons I am of opinion that the by-law is invalid, and that the plaintiffs have entirely failed in establishing any ground for relief.

ISAACS J. The regulation is in my opinion *ultra vires* as being outside the range of the powers granted to the Executive by sec. 97. Its terms prohibit all persons, even though complete

strangers to the Department, from issuing information which may be correct, and may even be indirectly helpful to the administration of the Act, as well as advantageous to those who receive it. What it does in effect is to erect a fence enclosing not merely the field of the Department's own immediate operations, but also its sphere of invitation, and even the whole private ground occupied by those who are, or wish to be in working relation to it; and it forbids under penalty any person from crossing the fence whatever the motive and whatever the result. In short, it is the creation by regulation of a monopoly of issuing information. We are not concerned with what Parliament could do if it thought proper, but with what it has chosen to do. Has it included this power in its grant of administrative powers?

A careful examination of the Act satisfies me it has not. So far as any matter or thing falls within the scope of sub-sec. (*r*), which is the only possible justification, it would be a most exceptional and extraordinary case which could warrant the interference of the Court, or enable it to declare that what the Executive and the two Houses of Parliament considered necessary for the public benefit was not so. But it is quite a different question whether the matter is within or without the possible limits of the power itself; and that is the point for our decision. The specific matters contained in sec. 97 are all in direct connection with the Department's officers, operations or property. Therefore so far as sec. 97 is concerned the power contended for, if included in sub-sec. (*r*), would be quite anomalous. Lord *Herschell* in *Cox* v. *Hakes* (1) said:—"It cannot, I think, be denied that, for the purpose of construing any enactment, it is right to look not only at the provision immediately under construction, but at any others found in connection with it, which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation." Now in the present case, this particular subsection is one of a group, which when looked at as a whole afford an indication that the mind of the legislature was not directed to so extensive an area of power as the regulation

(1) 15 App. Cas., 506, at p. 529.

H. C. of A. 1910.

THE COMMONWEALTH AND THE POSTMASTER-GENERAL v. THE PROGRESS ADVERTISING AND PRESS AGENCY CO. PROPRIETARY LTD.

Isaacs J.

assumes to occupy. It is true the sub-section refers to the whole Act, and therefore the rest of the Statute must be looked at to ascertain whether elsewhere than in sec. 97 a wider outlook is properly attributable than would appear from the section itself. But I can find no indication of the kind. The only ground on which the regulation was sought to be defended was that the acts prohibited would or might constitute an actual impediment to or interference with the telephone operations of the service, and that the prevention of any possibility of this happening, however conjectural, was permissible. The legislature, however, has manifestly considered this branch of the subject for itself and made its own dispositions so far as it deemed necessary. Part VI. of the Act is concerned with penalties and prohibitions. The prohibitions extend to the general public as well as to the official staff, and to persons in contractual relations with the Department. Without attempting a classification either precise or exhaustive, we find prohibitions directed against infringement of the monopoly created by sec. 80, against fraud and conduct likely to lead to the consummation of fraudulent acts, the sending of objectionable articles, official breaches of duty, injury to departmental property, misleading the public, and obstruction direct and indirect to departmental action. Sec. 130 includes provisions penalizing injury to property, and also by sub-secs. (*b*) and (*c*) the obstruction, interruption, and impediment to communication and the transmission of messages. The offences are indictable, but a Justice of the Peace on the preliminary examination, if he thinks right under the circumstances of a particular case, may deal summarily with it, and either inflict a fine not exceeding £25 or imprison for a term not beyond three months. The offence punishable under such a regulation as the present may be visited summarily with a fine of £50 if the framers choose to go to that limit. It seems very unlikely the legislature after dealing fully with offences, some of which concern those members of the public not in any privity with the Department, should have left this indirect and comparatively remote link in the chain of causation to be made the subject of penal consequences by the Executive.

The result then of examining other portions of the Act is that

no indication contrary to that afforded by sec. 97 is discoverable, but, on the other hand, the view suggested by the section itself is strengthened.

The regulation itself therefore cannot be supported, and, so far as the plaintiffs' case depends upon that, it fails.

Then it was argued that the intended publication of the list would be a violation of the monopoly created by sec. 80. But that section is careful to define the limits of the exclusive privilege. It is—with exceptions referred to in the section—the erection and maintenance of lines and the transmission of telegrams and other communications within the Commonwealth, and then are added these significant words "and performing all the incidental services of receiving collecting or delivering such telegrams or communications."

Therefore the section itself marks out the main lines of the monopoly and adds certain specified incidental services. In other words the legislature has expressed, and not left to implication or executive enlargement, what incidental services are to be included.

No doubt, as a practically convenient adjunct of the services, the supply of subscribers' lists is an appropriate act of the Department, but it is not one of the services either principal or incidental made exclusive by the legislature. It is rather a collateral means—one among many—for facilitating the performance of the services, and not part of these designated services themselves.

Some argument took place as to whether, in view of the necessary inaccuracies and incompleteness that must in all likelihood arise during the three months' interval intended by the defendants, the plaintiffs were not entitled on general principles to the relief claimed. I am quite clear that the special case, stated by agreement, was never meant by either party to cover such a case, and it would be unfair to deal with the matter on such a basis. I would only observe that such a case if ever raised would involve considerations entirely different from those which have so far engaged the attention of the Court. Parliament has done more than grant the monopoly of a business. It has imposed upon the Executive through the Postmaster-General the

H. C. of A. 1910.

THE COMMONWEALTH AND THE POSTMASTER-GENERAL v. THE PROGRESS ADVERTISING AND PRESS AGENCY CO. PROPRIETARY LTD.

Isaacs J.

performance of a public duty to the people of the Commonwealth. To its effective discharge all private considerations must bend. An actual impediment, or circumstances establishing a high degree of probability, or what is called a moral certainty, of impediment in the way of this public duty, by disseminating inaccurate information, even with the best intentions, for the express purpose of being used in connection with the telephone service, would present arguments for the Court's interposition much more serious than any that have arisen in the present case. It is sufficient for the present to say we are not now concerned with this phase of the question.

HIGGINS J. The regulation in question has been stated. It purports to create an offence, and to prescribe a penalty. The offence is the publishing, &c., of any list of all or any of the telephone subscribers. The Postal Department publishes a list also, and makes money by inserting advertisements therein. The special case alleges that in States other than Victoria lists published by private persons were found to be incorrect, and caused delay and inconvenience; and that, owing to the continual changes of residence, &c., private lists must become incorrect, even if they were correct at first. The defendants do not dispute that an injunction should follow an adverse declaration.

We have been drawn by the arguments of counsel to make a comprehensive survey of the *Post and Telegraph Act* 1901, and to study in particular sec. 97, the section which enables the Governor-General in Council to make regulations for specified purposes; but the case turns finally on sec. 97 (*r*). The Governor-General may make regulations for:—"(*r*) All other matters and things which may be necessary for carrying out this Act or for the efficient administration thereof." It is very difficult to mark the precise boundary of this power; it may be easier to say whether a given regulation is within the power. Has the Governor-General in Council a power to tell persons outside the post office that they must not carry on a publishing business relating to affairs of the Department? Has the Governor-General power to enact an addition to the *Copyright Act*—power to

create a new offence against copyright? The regulation is such that it might without any incongruity appear in a Copyright Act.

Now, the word "necessary" may be construed liberally, not as meaning absolutely or essentially necessary, but as meaning appropriate, plainly adapted to the needs of the Department—to "the carrying out" of the Act or its "efficient administration": *McCulloch* v. *Maryland* (1). But the power does not extend to everything which the Governor-General in Council *considers* to be necessary. The regulation must *be* necessary, in the sense which I have stated. It might be thought, and reasonably, that certain rules as to marriage, as to education, as to bankruptcy, would tend to the order and discipline of the service; but I do not think that the Governor-General could by regulation make such rules binding. The regulation in question can hardly be treated as necessary or appropriate for the "efficient administration" of the Act; it has more chance of being treated as coming under the wider alternative words "necessary for carrying out this Act."

This Act, by sec. 80 (see sec. 3) gives to the Postmaster-General a monopoly in the telephone business. Is this regulation necessary or plainly adapted for the carrying out of this provision? The defendants do not interfere with the monopoly in this business; they do prevent the Department from having a monopoly in the advertising business, so far as regards the telephone directories. To my mind, the best guide to the meaning of this power is to be found on the *ejusdem generis* principle. "All other matters and things": we must examine the purposes which precede the purpose in question, from (*a*) to (*q*), and treat (*r*) as referring to matters and things of an analogous character of the same class. Now looking at the purposes (*a*) to (*q*), I find that 14 of them relate to the internal working of the Department; one to post office property—the protection of telegraph lines from interference by electric lines; one to rates for vessels carrying mails; one to agreements with persons for the construction and maintenance of telegraph lines for the exclusive use of such persons (under sec. 82, &c.). There is not one instance of a power to interfere

(1) 4 Wheat., 316, at p. 421.

H. C. OF A. 1910.

THE COMMONWEALTH AND THE POSTMASTER-GENERAL v. THE PROGRESS ADVERTISING AND PRESS AGENCY CO. PROPRIETARY LTD.

Isaacs J.

with the liberty of outside persons to undertake any enterprise that they choose, or of any power of an analogous nature.

I am clearly of opinion that the question should be answered in the negative; and it follows—even if we treat the procedure as right—that the plaintiffs are not entitled to any of the relief claimed.

Question answered in the negative. Judgment for the defendants with costs, the plaintiffs not objecting.

Solicitor, for the plaintiffs, *Charles Powers*, Commonwealth Crown Solicitor.

Solicitors, for the defendants, *Fink, Best & Hall.*

B. L.

[HIGH COURT OF AUSTRALIA.]

GOLDSBROUGH, MORT & CO. LTD. . . APPELLANTS;
DEFENDANTS,

AND

TOLSON . . . . . RESPONDENT.
PLAINTIFF.

H. C. OF A. 1909.

BRISBANE, *Dec.* 2, 3. SYDNEY, *Dec.* 18.

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

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

Meat and Dairy Produce Encouragement Act 1893 (57 *Vict. No.* 11) (*Qd.*)—*Meat and Dairy Prodnce Encouragement Act* 1895 (59 *Vict. No.* 6) (*Qd.*)—*Certificates for payment of taxes—Conveyance—Chattels and effects.*

The respondent, who was the holder of certain grazing properties, paid taxes under the *Meat and Dairy Produce Encouragement Acts* 1893, 1895, and received certificates therefor. By mortgage deeds he assigned his rights in