

H. C. OF A. my brother *Isaacs*, and I do not think that I can usefully add
1915. anything to them.

WILKINSON
v.
OSBORNE.

*Appeal allowed. Order appealed from dis-
charged.*

By consent the hearing of an appeal by the appellant from an adjudication of bankruptcy which had followed upon the bankruptcy notice was ordered to be expedited and to be heard *instantly*.

PER CURIAM. The appeal will be allowed.

Appeal allowed. Adjudication set aside.

Solicitor for the appellant, *J. M. Proctor*.
Solicitor for the respondents, *E. W. Warren*.

B. L.

[HIGH COURT OF AUSTRALIA.]

CARNARVON ELECTRIC LIGHT AND } APPLICANTS;
POWER CO. LTD. }
DEFENDANTS,

AND

BOOR RESPONDENT,
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF
WESTERN AUSTRALIA.

H. C. OF A. *Practice - High Court - Appeal from Supreme Court of a State - Special leave -*
1915. *Supply of Electricity - Implied Contract - Breach - Electric Lighting Act 1892*
(W.A.) (55 Vict. No. 33), secs. 2, 29.

PERTH,
October 21.

Griffith C.J.,
Gavan Duffy
and Rich J.J.

Sec. 29 of the *Electric Lighting Act 1892* (W.A.) provides that "Where a supply of electricity is provided in any locality for private purposes, all persons within such locality shall on application be entitled to a supply on

the same terms as the terms on which any other person in such locality is under similar circumstances entitled to a corresponding supply.”

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In an action brought against an electric light and power company for damages for breach of contract and statutory obligation to supply the plaintiff with electric current in respect of certain premises, the presiding Magistrate, who awarded the plaintiff damages, held that there was an implied contract between the parties for the supply of current by the defendants to the plaintiff, and that there had been a breach of such contract by the defendants. The Supreme Court of Western Australia, on appeal, upheld the decision of the Magistrate. On application to the High Court for special leave to appeal from the decision of the Supreme Court,

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Held, that such application should not be granted.

Special leave to appeal from the decision of the Supreme Court of Western Australia refused.

APPLICATION for special leave to appeal from a decision of the Supreme Court of Western Australia.

An action was brought in the Carnarvon Local Court by John Arthur Boor against the Carnarvon Electric Light and Power Co. Ltd. for damages which the plaintiff alleged were caused by the defendants' neglect or refusal to supply him with electric current in respect of premises occupied by him at Carnarvon, and known as "Boor's Theatre," in breach of their contract with him for the supply of the same, and in neglect of their statutory obligation to supply the same under or by virtue of sec. 29 of the *Electric Lighting Act* 1892, whereby he was prevented from working his biograph machine at such theatre for some time prior and up to the issue of the summons herein, and also for damages for trespass by reason of defendants' servants or agents unlawfully breaking and entering the said premises for the purpose of cutting electric wires thereon. From the evidence it appeared (*inter alia*) that the Company's manager had, at the plaintiff's expense, installed certain electric appliances and fittings in the plaintiff's theatre, and that after electricity had been supplied for some time thereto, for which the plaintiff had paid, the Company's servants had cut the wires above referred to and had disconnected the electric current at the theatre. The presiding Magistrate held that there was an implied contract for the supply of the electric current by the defendants to the plaintiff and that there had been a breach of such contract, and also that there was

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an obligation upon the defendants under sec. 29 of the above-mentioned Act to supply the plaintiff with the current; and he awarded the plaintiff £82 damages and costs.

An appeal by the Company from this decision was dismissed by the Supreme Court on the ground that the Magistrate was right in concluding that there was an implied contract between the parties, and there was nothing in the evidence to show that the circumstances were such as to justify the defendants in putting an end to it.

The Company now applied for special leave to appeal from the decision of the Supreme Court.

Pilkington K.C. (with him *Hale*), for the applicants. The importance of this case depends upon the fact that the question of the relationship of supplier and consumer under such an Act as the *Electric Lighting Act* 1892 is involved. The matter affects or may affect a considerable number of persons, as sec. 29 has reference to all persons within the locality where a supply of electricity is provided. Looking at the evidence before the Magistrate as a whole, he was not justified in finding that an implied contract existed between the parties. [Counsel referred to *Hoddesdon Gas and Coke Co. v. Haselwood* (1); *Addison on Contracts*, 11th ed., p. 38; *Halsbury's Laws of England*, vol. xv., p. 307, note (a); *Michael and Will on the Law relating to Gas and Water*, p. 27.]

GRIFFITH C.J. We do not see any reason to grant leave to appeal in this case, and, as for myself, I see no reason at all to doubt the correctness of the decision.

Special leave to appeal refused.

Solicitors for the applicants, *Northmore & Hale*.

R. T. G.

(1) 6 C.B. (N.S.), 239.