[HIGH COURT OF AUSTRALIA.]

LUKEY . . . . . APPELLANT;
PLAINTIFF,

AND

EDMUNDS AND OTHERS . . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1916.

SYDNEY, *April* 5, 6, 11.

Griffith C.J., Barton, Isaacs, Gavan Duffy and Rich JJ.

Statute—Interpretation—Generalia specialibus non derogant—"Gas"—"Necessary commodity"—Gas Act 1912 (*N.S.W.*) (*No.* 71 *of* 1912), *secs.* 15-20, *Sched.* 1 *—Necessary Commodities Control Act* 1914 (*N.S.W.*) (*No.* 18 *of* 1914), *secs.* 1, 2, 7, 8.

Secs. 15 to 20 of the *Gas Act* 1912 (N.S.W.), which are applicable only to three companies mentioned in the first Schedule and such others as might be added by Statute, establish a standard price for gas and permit the companies so long as they supply gas at that price to pay a dividend up to a certain rate. These companies were also authorized to capitalize within six months from the passing of the Act their reserves and premium capital, with a limitation of the amount which might be so capitalized by one of the companies. The sections also contained provisions for increasing the standard price under certain circumstances, and provided that if a company reduced the price charged by it below the standard price, it might pay an increased dividend according to a sliding scale, and that if they charged more than the standard price the dividend that might be paid was to be reduced in a prescribed proportion. A limitation was also placed on the funds which might be accumulated by any one of the companies.

Sec. 1 of the *Necessary Commodities Control Act* 1914 (N.S.W.) provides that the duration of the Act is limited to the continuance of the War and not more than six months afterwards. Sec. 2 provides that "necessary commodity" means "(*b*) gas for lighting, cooking, or industrial purposes." Sec. 7 empowers a Commission to inquire and report to the Governor as to what

should be the highest selling price for the State of any necessary commodity, and sec. 8 provides that the Governor may, by notice in the *Gazette*, declare the maximum price at which any necessary commodity may be sold for consumption in the State.

Held, by the whole Court, that, notwithstanding secs. 15 to 20 of the *Gas Act* 1912, gas supplied by the companies mentioned in the first Schedule to that Act is a "necessary commodity" within the meaning of the *Necessary Commodities Control Act* 1914, and, therefore, that its highest selling price may be inquired into and reported upon by a Commission appointed under the latter Act.

By *Griffith* C.J.—The principle expressed in the maxim *Generalia specialibus non derogant* is a subsidiary rule of construction which may often be usefully applied in considering the intention of the Legislature. But regard must first be had to the paramount rule laid down in *Heydon's Case*, 3 Rep., 7, that the Court must consider the occasion of the passing of the later Act, the matter which was regarded as requiring an alteration of the law, and the nature of the remedy provided. From that point of view, the circumstances existing when the *Necessary Commodities Control Act* 1914 was passed, the distribution of population in New South Wales, and the temporary character of the law, show that Parliament did not intend to exempt the companies to which secs. 15 to 20 of the *Gas Act* 1912 applied from the general provisions of the later Act.

By *Barton* J.—The existence of the principle *Generalia specialibus non derogant* does not relieve the Court from the duty of determining the question whether the word "gas" in the *Necessary Commodities Control Act* 1914 includes gas supplied by the companies to which secs. 15 to 20 of the *Gas Act* 1912 apply. The answer depends upon the intention of the Legislature, which is to be collected from the cause and necessity of the Act being made, from a comparison of the several parts of the Act, and from extraneous circumstances so far as they can justly be considered to throw light upon the question. Taking those matters into consideration, the intention of the Legislature was that gas supplied by those companies should be treated as a necessary commodity within the meaning of the later Act.

By *Isaacs* and *Duffy* JJ.—(1) The *Gas Act* 1912 and the *Necessary Commodities Control Act* 1914 both expressly and specifically deal with the same subject matter, namely, gas, and with it in relation to the price to be charged for it to the consumer; and, therefore, the principle *Generalia specialibus non derogant* does not apply: nor does the fact that special provision was made in secs. 15 to 20 of the *Gas Act* 1912 in respect of the companies to which those sections apply justify the cutting down of the generality of the *Necessary Commodities Control Act* 1914 so as to exclude those companies, because the words of the latter Act are unambiguous. (2) The rule of construction in *Heydon's Case*, 3 Rep. 7, as to limiting the provisions of an Act to the public mischief to be corrected is not applicable where the words of the Act are in themselves clear and unambiguous.

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Decision of the Supreme Court of New South Wales (*Simpson* C.J. in Eq.), affirmed.

APPEAL from the Supreme Court of New South Wales.

A suit was brought in the Supreme Court in its Equity Jurisdiction by Robert John Lukey, on behalf of the Australian Gas Light Co., against the Honourable Walter Edmunds, Michael Joseph Connington and William White, the members of a Commission appointed in pursuance of the *Necessary Commodities Control Act* 1914 (N.S.W.), and the Attorney-General for New South Wales, claiming (*inter alia*) (1) a declaration that, notwithstanding the provisions of the *Necessary Commodities Control Act* 1914, secs. 15 to 20 of the *Gas Act* 1912 are still in full force and effect and regulate the price of gas supplied by the Australian Gas Light Co. ; (2) a declaration that the gas supplied by that company is not a necessary commodity within the meaning of the *Necessary Commodities Control Act* 1914 and that such gas cannot be made a necessary commodity by any resolution under sec. 2 (*e*) of such Act ; and (3) an injunction restraining the members of the Commission from proceeding with or making any inquiry or report relating to the price of gas supplied by the Company or as to the question whether such gas should be a necessary commodity for the purposes of the *Necessary Commodities Control Act* 1914.

On a motion by the plaintiff for an interim injunction, which was heard by *Simpson* C.J. in Eq., that motion was, by consent, converted into a motion for a decree, and the defendants by their counsel demurred *ore tenus* to the statement of claim. The demurrer was allowed.

From that decision the plaintiff now appealed to the High Court.

Knox K.C. and *Blacket* K.C. (with them *Maughan*), for the appellant. Secs 15 to 20 of the *Gas Act* 1912 contain a complete code for preventing excessive profits being made by the companies to which they apply and for preventing those companies from charging an excessive price for gas. Nothing is said in the *Necessary Commodities Control Act* 1914 about the *Gas Act* 1912, but if gas supplied by those companies is within the later Act, then it must have the effect of repealing secs. 15 to 20 of the earlier Act. The operation

of those sections cannot be affected unless they are repealed or amended; they cannot be suspended. The provisions of the *Necessary Commodities Control Act*, if given their full meaning, are inconsistent with those of secs. 15 to 20 of the *Gas Act*, and both cannot be given effect to. The principle applies which is expressed in the maxim *Generalia specialibus non derogant*, namely, that where general words in a later Act are capable of a reasonable interpretation without extending them to a subject specially dealt with by an earlier Act, those general words should be interpreted as not applying to that subject. See *Fitzgerald* v. *Champneys* (1); *Garnett* v. *Bradley* (2); *Hawkins* v. *Gathercole* (3). The word "gas" in the *Necessary Commodities Control Act* is capable of a meaning which would not include gas supplied by the companies to which secs. 15 to 20 of the *Gas Act* apply, that is, gas supplied by other persons or corporations. Certain rights are conferred by those sections, and the later Act should not be construed so as to take away those rights in the absence of any words in the later Act indicating an intention to take them away.

Leverrier K.C. (with him *Beeby* and *Macken*), for the respondents. The gas supplied by the companies to which the *Gas Act* applies forms by far the greater portion of all the gas supplied in the State. The Courts have never given effect in such a case to the principle of not cutting down the provisions of a special Act by words in a later general Act. The question is what was the intention of the Legislature when they used the word "gas" in the *Necessary Commodities Control Act*. It is impossible to conceive that they intended that word to apply only to the extremely small portion of gas which is supplied by other persons or companies. There are other gas companies, each of which is governed by a special Act in which provision is made for fixing a maximum price to be charged for gas. If the principle were applicable to this case, it would also be applicable to the case of those companies. The provisions of secs. 15 to 20 of the *Gas Act* can stand, and effect can be given to them, even if the *Necessary Commodities Control Act* applies to gas supplied by companies to which those sections apply.

(1) 2 John. & Hem., 31, at p. 53. (2) 3 App. Cas., 944, at p. 952.
(3) 6 De G. M. & G., 1.

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Blacket K.C., in reply. The fact that the gas upon which the *Necessary Commodities Control Act* can operate, if its operation is limited, is only a small portion of the gas supplied in the State is immaterial: as there may be some gas upon which it can operate, the general words of that Act should be deemed to apply only thereto.

Cur. adv. vult.

April 11.

GRIFFITH C.J. read the following judgment:—

This suit is brought to obtain a declaration that the provisions of the *Necessary Commodities Control Act* 1914 do not extend to or affect the Australian Gas Light Co. That company was incorporated by an Ordinance passed in the year 1837, and its operations are carried on upon a very large scale in the City of Sydney and its suburbs lying to the south of Port Jackson and the Parramatta River. In 1912 an Act called the *Gas Act* 1912 was passed which contains general provisions, principally relating to the quality of gas, which are applicable to all persons corporations or companies supplying gas within the State, and also contains special provisions, embodied in secs. 15 to 20, applicable only to the companies mentioned in the first Schedule to the Act and such others as may afterwards be added by Statute. The companies named were the plaintiff company and two others, one of which supplies with gas practically the whole of the suburbs of Sydney lying to the north of Port Jackson and the Parramatta River, and the other supplies with gas the City of Newcastle, which is by far the largest provincial town in the State. These special provisions relate entirely to matters of internal finance. They establish what is called a "standard price," and allow the scheduled companies so long as they supply gas at that price to pay a dividend up to 10 per cent. on their original capital paid up before the passing of the Act, and 7 per cent. on paid-up capital issued as ordinary capital, and 5 per cent. on paid-up capital issued as preference capital, after the passing of the Act. The scheduled companies were also authorized to capitalize within six months from that date their reserves and premium capital. But the amount which might be so capitalized by the plaintiff company was limited to £425,000. The "standard

price " to be charged for gas supplied to private consumers by such companies is to be 3s. 6d. per 1,000 feet. If the cost of production should be increased by an alteration in labour conditions consequent upon an award made under the *Industrial Arbitration Act* 1912, a company were entitled to have the standard price chargeable to consumers raised. If a company reduced the price charged by them below the standard price they were entitled to pay an increased dividend according to a sliding scale, and, conversely, if they charged more than the standard price, the dividend that might be paid was to be reduced in a prescribed proportion. A company are not allowed to accumulate any funds beyond such amount as is required for certain special reserves, the permitted amount of which is limited, and for the payment of the permitted dividends.

The *Necessary Commodities Control Act* 1914 is a temporary Act, its duration being limited to the continuance of the present state of war and not more than six months afterwards. It empowers a Commission, of which the defendants, other than the Attorney-General, are the present members, to regulate the highest selling prices of necessary commodities in different parts of the State. The term " necessary commodity " is defined to include, *inter alia*, " coal," " or other fuel," " gas for lighting, cooking, or industrial purposes," and " any article of food or drink for man or for any domesticated animal."

The plaintiff company's contention is based on the rule of construction expressed by the maxim *Generalia specialibus non derogant*, which is thus formulated by the *Earl of Selborne* L.C. in the case of *Seward* v. *The Vera Cruz* (1) :—" Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

They contend that the provisions of the *Necessary Commodities Control Act* are inconsistent with the special provisions of secs. 15-20 of the *Gas Act*, and are capable of reasonable and sensible

(1) 10 App. Cas., 59, at p. 68.

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Griffith C.J.

interpretation without extending them to the subjects and the companies specially dealt with by those sections.

In the statement of claim they alleged, apparently for the purpose of showing that if their contention is accepted there would be something left for the provisions of the later Act relating to gas to operate on, that " There were at the respective dates of the Acts mentioned in pars. 4 and 5 hereof "—*i.e.*, the *Gas Act* 1912 and the *Necessary Commodities Control Act* 1914—" and there are at the present time a large number of companies persons and corporations supplying gas for public consumption in various parts of New South Wales other than the three companies named in Schedule One of the *Gas Act* 1912."

In my opinion this fact, regarded as a fact, is not matter pleadable as controlling the construction of the later Act. But the Court is bound to take notice of any laws in force by which the supply of gas by other persons or corporations is regulated. There are eleven special Acts in force regulating the supply of gas in New South Wales by as many companies, in nine of which the maximum price to be charged is fixed. By the *Local Government Act* 1906 (No. 56) municipal councils are allowed to carry on the business of the manufacture and supply of gas, and an Ordinance has been made under the Act by which the councils are authorized to fix the price of the gas supplied by them. These are matters of law of which the Court must take judicial notice, and are, I think, relevant to the present case. The Court may also, I think, take judicial notice of the fact that about half of the population of the State, and probably a much larger proportion of gas consumers, is concentrated in the two cities of Sydney and Newcastle. But a comparison of the number of companies or corporations which actually supplied gas at the date of the passing of the *Necessary Commodities Control Act* (which would be the relevant date if the inquiry were permissible) with the number of scheduled companies is, in my opinion, not relevant to the question to be determined.

The rule relied upon by the plaintiff company is not a rule of law, but a subsidiary rule of construction which may often be usefully applied in considering the intention of the Legislature. In many—perhaps nearly all—of the cases which literally fall within

the rule as stated by Lord *Selborne* L.C., that rule is sufficient to determine the matter. But it is the duty of the Court not to confine itself to the mere verbal or literary effect of the provisions, as if applied to an abstract subject. It must, in the first place, have regard to the paramount rule laid down in *Heydon's Case* (1), that the Court must consider the occasion of passing the Statute, the matter which was regarded as requiring an alteration of the law, and the nature of the remedy provided for the evil which required alteration.

Applying this rule, I find that it was a well known fact at the date of the passing of the *Necessary Commodities Control Act* that the existing state of war had disturbed the ordinary operations of commerce, and affected not only the cost of the production or importation of necessary commodities but also the ability of many persons to buy them.

In this state of things Parliament might well have thought it desirable to endeavour to prevent persons who had derived an advantage from the temporary conditions from unduly profiting by it at the expense of their less fortunate neighbours by charging a greater price for necessary commodities sold by them than was fair, having regard to the necessities and abilities of the consumers, notwithstanding that such a law might impose hardship upon the sellers of a commodity by obliging them to sell, if they sold at all, at a price even less than the actual cost of the commodity to them.

This, then, being the occasion of the passing of the law and the probable effect of its provisions, the question arises whether it ought to be inferred that Parliament intended that all persons and companies in the State engaged in the business of supplying gas should bear their share of the common burden, and that all consumers of gas should have the benefit of the burden so imposed, or whether they intended to exclude from that benefit a full half of such consumers by exempting the scheduled companies from the burden.

Considering the matter from this point of view, I come to the conclusion that the circumstances existing when the *Necessary*

(1) 3 Rep., 7.

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Griffith C.J.

Commodities Control Act was passed, the local distribution of population in the State, and the temporary character of the law, are sufficient to show that Parliament did not intend to exempt the scheduled companies from its general provisions, even though they should have the effect of reducing the dividends permitted by the special provisions of secs. 15-20 of the *Gas Act*.

The appeal therefore fails.

BARTON J. read the following judgment :—

The question is really whether the *Necessary Commodities Control Act* 1914 empowers the Commission appointed thereunder to inquire and report to the Governor, as to what should be the highest selling price to be charged for gas by the Australian Gas Light Co. Such a power was conferred by sec. 7 with respect to any " necessary commodity " and that term by sec. 2 means, *inter alia*, (*b*) " gas for lighting, cooking, or industrial purposes," and (*e*) " any article which, after a report of the Commission, has by resolution of both Houses of Parliament been declared to be a necessary commodity." We need not concern ourselves with the second of these definitions.

The plaintiff and appellant, who is the secretary of the Australian Gas Light Co. suing on its behalf, seeks to have it declared that, by reason of secs. 15 to 20 inclusive, of the *Gas Act* 1912, the gas supplied by the Company is not, and cannot be made by resolution, a necessary commodity within the meaning of the definition quoted. He also seeks an injunction against an inquiry or report by the Commission, which he alleges the defendant Commission threaten and intend.

There is no need to set out fully the provisions of secs. 15 to 20 of the *Gas Act*. The standard price to be charged to consumers, for gas supplied by either of the three companies mentioned in the first Schedule, is 3s. 6d. per thousand feet ; subject to be increased above that rate by the Executive upon a Judge's certificate that greater cost of production has been caused by an industrial award, and subject, after any such increase, to be decreased for similar causes down to, but not below, the standard rate. There are provisions defining the limits of divisible profits, authorizing the capitalization of reserves, and permitting a limited appropriation

out of revenue to meet expenses incurred through accidents, strikes, or the necessity to remove plant or works. Where the dividend exceeds the standard rate, through a reduction of price below the standard already mentioned, funds may be apportioned to the reserve within certain limits. The other provisions need not be mentioned, except to say that the whole of the six sections mentioned constitute a strict regulation of the operations and profits of the three scheduled companies.

Now, while these six sections apply only to the scheduled companies, operating in Sydney and Newcastle, the Act is in the rest of its provisions a general one for the purpose of regulating in regard to all gas supplied, whether by companies, local authorities, or persons, the standards of illuminating power, purity, and pressure, and the accounts and audits of suppliers ; and also for other purposes usual in similar Acts passed elsewhere.

We do not know how many gas suppliers there are in New South Wales, but we know that there are many others besides the scheduled three. For we take judicial notice that there are eleven special Statutes incorporating companies in New South Wales for the supply of gas. In nine of these Acts a maximum price is fixed. An Ordinance (No. 53) of the Governor in Council, made under the *Local Government Act* 1906, with the force of law, empowers municipalities to fix the price of gas which they supply to customers. Further, the populations of Sydney, its many suburbs, and Newcastle, served by the scheduled companies, together number little less than half of the entire population of this State.

It is argued on behalf of the appellant that the three scheduled companies at least are exempt from the operation of the *Necessary Commodities Control Act* in respect of the price of gas. Reliance is placed on the maxim *Generalia specialibus non derogant* : it is urged that the special provisions of the Act of 1912 as to the standard price of gas when sold by any of the scheduled companies are the *specialia*, from which the general terms of secs. 7 and 2 of the *Necessary Commodities Control Act* are not intended to derogate ; that when the Legislature of this State included gas among necessary commodities it had no thought of the gas supplied by the three companies. If we are to regard the provisions of the Act of 1912

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Barton J.

as to price as *specialia*, it is a question whether we must not regard in the same way the nine special Acts so far as they relate to price, and the power given to gas-supplying municipalities by the Local Government Ordinance. If we do, and if we apply the appellant's argument to them, there is extremely little subject matter, if there is any, on which the provisions of the *Necessary Commodities Control Act* in this behalf can operate.

The existence of the maxim does not relieve us of the duty of determining the question before us "upon the intent of the Legislature" to be collected from "the cause and necessity" of the Act being made, from a comparison of the several parts of the Act, and from "foreign" (meaning extraneous) "circumstances," so far as they are properly before us and can justly be considered to throw light upon the question. The law laid down to this effect in *Stradling* v. *Morgan* (1) has the endorsement of the high authority of *Turner* L.J. in *Hawkins* v. *Gathercole* (2) and of Lord *Hatherley* in *Garnett* v. *Bradley* (3).

Now, the *Necessary Commodities Control Act* was passed to make special provision, during the present war and for not more than six months thereafter, against excessive charges. That is its cause and necessity as shown in sec. 1, and the reason why its operation is to be only temporary. From a comparison of its several parts I deduce that the intention of the Legislature was to include in its operation all the articles enumerated, wheresoever and howsoever produced in New South Wales, in order to meet the cause and necessity which were *ex facie* the reasons for its enactment. It was not intended to impair the general relief aimed at by allowing the continuance of any special privilege in price which might obstruct the fair extension of the protection of the Act in this time of war to all localities and classes. The purpose of the Act is an economic regulation which may fail to be effective if exceptions from it are allowed. I do not think it was intended to allow such exceptions, having regard to the circumstances within our judicial knowledge which have led to the enactment.

A report from the Commission to the Governor (sec. 7) furnishes

(1) 1 Plowd., 199, at p. 204. (2) 6 De G. M. & G., 1, at p. 22.
(3) 3 App. Cas., 944, at p. 952.

to the Executive the information on which doubtless it will decide to notify in the *Gazette* the maximum price (sec. 8). There is nothing to show that the maximum in respect of any particular commodity when declared will be so low as to paralyze profitable production, but our common sense tells us that such legislation as this, if it is to achieve its avowed purpose, must lead to some sacrifices for the general welfare.

I cannot think it was the intention of Parliament to exempt the plaintiff's company and its two associates in the Schedule from any such sacrifices if the need for them really arises. As to any such necessity, nothing is further from my mind than to express an opinion.

But the cause of the Act, the context, and the surrounding circumstances concur in impelling me to the conclusion that it was the intention of the Legislature that the gas supplied by this company should take its place as one of the necessary commodities the maximum price of which is to be regulated as the public interest may appear to the Governor in Council to dictate while the War lasts.

I am therefore of opinion that the gas supplied by the plaintiff's company is a necessary commodity within the meaning of the Act. It follows that the judgment of the learned Chief Judge in Equity upon the demurrer must be sustained.

ISAACS J. read the following judgment :—

The *Necessary Commodities Control Act* 1914 provides that during what may be called "the war period," the Governor in Council, acting on the report of a Commission, may from time to time, fix the maximum price at which necessary commodities may be sold for consumption in New South Wales. "Necessary commodity" is, by sec. 2, declared to mean, except where inconsistent with the context, certain things including "(*b*) gas for lighting, cooking, or industrial purposes."

The appellant contends that "gas" there must be read to mean "gas other than gas sold by the Australian Gas Light Co., the North Shore Gas Co. Ltd., and the City of Newcastle Gas and Coke Co. Ltd." That is a formidable alteration of the literal

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Isaacs J.

phraseology of the Act; but it is said that the Court ought to adopt it on practically two grounds, which to some extent run into each other, but are really distinct. One is that the maxim *Generalia specialibus non derogant* applies, because the three companies named are already dealt with as to price by the *Gas Act* 1912. Therefore, it is said, there being no reference to that Act, or to those companies, in the Act of 1914, it must be taken that Parliament did not intend to alter its special regulation with regard to those companies. The other ground is, that the rule in *Heydon's Case* (1) is applicable: that the Court should look beyond the mere words of the Act of 1914, to the intent of the Parliament in passing it, which is to be found by ascertaining the mischief to be remedied. When this is done, so runs the argument, it is seen there was no mischief in respect of prices to be remedied in relation to these three companies. Consequently they should be regarded as outside the scope of the enactment when it is thus properly construed.

The first ground mentioned rests on a well-recognized principle which is, after all, this—that when Parliament has once solemnly expressed its will on any subject, that stands until it is clearly shown to be superseded by a change of intention.

The principle has been stated by the Privy Council in *Barker* v. *Edger* (2), and so is beyond discussion by me. It is expressed in these terms:—"The general maxim is, *Generalia specialibus non derogant*. When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly." And then their Lordships add:—"Each enactment must be construed in that respect according to its own subject matter and its own terms."

It is, of course, possible, but quite unprofitable, to examine the various cases cited and others of a like nature in order to ascertain why in each instance the Court came to its conclusion for or against the alteration of the law as enacted in the special Statute. Once the principle is found and stated, other cases have served their

(1) 3 Rep., 7.

(2) (1898) A.C., 748, at p. 754.

purpose. The problem is how to apply it to the enactments we have before us.

And, in doing this, there is a passage in the judgment of *Willes* J. in *Daw* v. *Metropolitan Board of Works* (1) which it is very important to remember. That learned Judge, after acknowledging the force of the general maxim, proceeded to distinguish the case before him, and said:—"So soon as you find the Legislature is dealing with the same subject matter in both Acts, so far as the later Statute derogates from and is inconsistent with the earlier one, you are under the necessity of saying that the Legislature did intend in the later Statute to deal with the very case to which the former Statute applied."

Now, the *Gas Act* 1912 is, as to all except the group of sections 15 to 20 inclusive, an Act of general application to all companies, corporations, firms or persons in New South Wales supplying any gas "for lighting, heating, motive power, or other purpose" for profit. It further applies to any municipal council which supplies gas in competition with any other gas supplier, but apparently does not apply to any municipality being the sole supplier in any place. As to the group of secs. 15 to 20 inclusive, they are in the nature of a standing form, which Parliament has already applied to the three companies named and may, in the contemplation of the Statute itself, at any future time specifically apply to any other company as defined by the Act.

But the central point to be observed in this connection is not so much a distinction between a general Act and a special Act as the distinction as to subject matter. Is it "gas its purity and price," on the one hand, as the main subject matter dealt with—the provisions as to company profits and dividends being incidental to the main purpose, and introduced only for their relation to the general public; or is it the "companies" themselves, on the other hand, as the main subject matter, with profit and dividend provisions introduced as part of the social compact between the shareholders, the general public having no concern in those provisions? The answer is that the subject matter of the Act of 1912 is "gas," not

(1) 12 C.B. (N.S.), 161, at p. 179.

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Isaacs J.

"companies." (See *per* Lord *Selborne* in *Seward* v. *The Vera Cruz* (1).)

That group of sections is, with necessary local modifications, substantially based on English precedents—principally the *Gasworks Clauses Act* 1847, the *South Metropolitan Gas Act* 1900, the *Commercial Gas Act* 1902 and the *Model Gas Bill* 1910. (See *Michael and Wills on the Law relating to Gas and Water*, 6th ed., p. 361.) It contains, however, some important additions, notably sec. 19.

So far as material here, it may be said that it provides that an increase of dividend beyond the standard rate involves a proportionate reduction of price, and that an increase of price beyond the standard price involves a proportionate reduction of dividend. But maintenance of the standard rate of dividend entitles the companies to maintain the statutory standard of price, with statutory increase in a particular instance, subject to statutory reduction back to normal standard in a stated event, immaterial here.

It is true that sec. 19 is a stringent section, and stimulates to some extent the inducement to reduce prices which it created by other sections. But I am not prepared to say how far its intended effect is complete even under ordinary peace conditions.

The profits of the Company are dependent on many considerations besides the price it charges for the gas supplied. And I am not at all sure what is meant by the phrase in sec. 19 "paying moneys from profits," or when or how or by whom the amount of "profits" there referred to is to be ascertained.

One thing is clear, namely, that although the Act of 1912 does deal with the price of gas as a subject matter yet the Act provides no method by which an individual consumer can obtain direct and expeditious and certain relief from what may be an excessive charge for the gas he consumes.

But the mere fact that the two Acts, that of 1912 and that of 1914, do expressly and specifically deal with gas, and deal with it in relation to the price to be charged to the consumer, brings into play the observations of *Willes* J. in the passage I have quoted, and renders inapplicable the maxim relied on. Once the subject matter

(1) 10 App. Cas., 59, at p. 66.

is shown to be identical, the whole foundation of the maxim disappears.

The second contention is also based on the fact of the special provision made by the Act of 1912, but on a different ground from that just dealt with. It is that the mere fact of a special provision being made establishes that there was no public mischief to be dealt with in relation to these companies, and the generality of the later Act should be cut down accordingly on the authority of *Heydon's Case* (1). The principle of that case is very frequently invoked to restrict the general words of a Statute.

But it cannot be too carefully borne in mind that that principle, valuable as it is in its proper place, is wholly inapplicable where the words of the enactment are in themselves unambiguous. Read the Act itself in the first place ; if it is clear and unambiguous it is its own expositor. If its language is ambiguous, resort must be had to recognized canons of construction to discover which of the meanings of which the ambiguous words are reasonably capable is the true one. Some recent cases of the highest authority show how firmly this principle is to be applied.

In *Vacher & Sons Ltd.* v. *London Society of Compositors* (2) Lord *Macnaghten*, after quoting the well known words of Lord *Wensleydale* in *Grey* v. *Pearson* (3) and recognizing the duty of construing Acts according to the "intent of the Parliament" which passes them, refers to what he calls the note of warning given by *Tindal* C.J. in the *Sussex Peerage Case* (4). There the Lord Chief Justice used these words :—"If the words of the Statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver." Then Lord *Macnaghten* adds for himself this passage :—"Nowadays, when it is a rare thing to find a preamble in any public general Statute, the field of inquiry is even narrower than it was in former times. In the absence of a preamble there can, I think, be only two cases in which it is permissible to depart from the ordinary and natural sense of the words of an enactment. It

(1) 3 Rep., 7.
(2) (1913) A.C., 107, at pp. 117, 118.
(3) 6 H.L.C., 61, at p. 106.
(4) 11 Cl. & F., 85, at p. 143.

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Isaacs J.

must be shown either that the words taken in their natural sense lead to some absurdity or that there is some other clause in the body of the Act inconsistent with, or repugnant to, the enactment in question construed in the ordinary sense of the language in which it is expressed."

In a later case in the same volume (*Inland Revenue Commissioners* v. *Herbert* (1)) Lord *Haldane* L.C. observed, with special appositeness to the present case :—" My Lords, in approaching the controversy as to the meaning of these sections I think it worth while to recall a principle which must always be borne in mind in construing Acts of Parliament, and particularly legislation of a novel kind. The duty of a Court of law is simply to take the Statute it has to construe as it stands, and to construe its words according to their natural significance. While reference may be made to the state of the law, and the material facts and events with which it is apparent that Parliament was dealing, it is not admissible to speculate on the probable opinions and motives of those who framed the legislation, excepting in so far as these appear from the language of the Statute. That language must indeed be read as a whole. If the clearly expressed scheme of the Act requires it, particular expressions may have to be read in a sense which would not be the natural one if they could be taken by themselves. But subject to this the words used must be given their natural meaning, unless to do so would lead to a result which is so absurd that it cannot be supposed, in the absence of expressions which are wholly unambiguous, to have been contemplated."

In *City of London Corporation* v. *Associated Newspapers Ltd.* (2) Lord *Atkinson* reaffirmed the view of Lord *Macnaghten* in *Vacher & Sons' Case* (3). Again, Lord *Haldane* L.C., in *Watney, Combe, Reid & Co.* v. *Berners* (4), said that " the intention " of Parliament " must be found in the language finally adopted in the Statutes under construction, and in that language alone. No doubt general words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the Legislature, read in its entirety, points to consistency

(1) (1913) A.C., 326, at p. 332.
(2) (1915) A.C., 674, at p. 692.
(3) (1913) A.C., 107.
(4) (1915) A.C., 885, at p. 891.

as requiring the modification of what would be the meaning apart from any context, or apart from the purpose of the legislation as appearing from the words which the Legislature has used, or apart from the general law."

In *Drummond* v. *Collins* (1) Lord *Loreburn* applied these principles to the Income Tax Acts.

I consequently decline to go outside the four corners of the Act of 1914 for the purpose of discovering its meaning, unless I first see that its language read as a whole is ambiguous. The passage as to extraneous circumstances read and relied on by learned counsel from the judgment of *Turner* L.J. in *Hawkins* v. *Gathercole* (2) is inapplicable unless, as in that case, the Court first finds ambiguity in the words of the Act, read alone. Indeed, that ambiguity was the foundation of the other part of the same case, the part referred to by Lord *Selborne* in *Seward* v. *The Vera Cruz* (3). In the celebrated passage on page 68, the Lord Chancellor postulates the case of a later Act in which there are general words capable of reasonable and sensible application without attributing to them a sense wide enough to extend to the subject of the earlier legislation. In other words, he postulates that the words are reasonably susceptible of two constructions. That, then, excludes the case of words of precision and unequivocal signification.

Turning then to the Act of 1914 and reading it by the dry light of its own language, I am unable to find any ambiguity whatever in the relevant words, whether they are read alone or in conjunction with the context. Sec. 1, by restricting the operation of the Act to the war period, and a limited time afterwards during which its effects may be expected to continue, indicates clearly that the purpose of the Legislature is to provide for new events common to the whole State—one of which strongly disturbs the ordinary current of business. The whole community is at war and the whole community is affected by it, and that abnormal event is the basis of the legislation. The immediate object of legislative solicitude is to guard the whole community from excessive cost of the prime necessities of life and industry. Then come the words with which we are immediately

(1) (1915) A.C., 1011, at pp. 1017, 1018.

(2) 6 De G. M. & G., 1, at pp. 21, 22.

(3) 10 App. Cas., 59, at p. 68.

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Isaacs J.

concerned, namely, "gas for lighting, cooking, or industrial purposes," which are unqualified. Taken alone in their natural sense and independently of any aid from the preceding words, they are precise and universal, and unless the context introduces some departure from that comprehensiveness, which it does in one respect only, the universality remains. I examine the context both precedent and subsequent only to inquire whether the inherent comprehensiveness of these words is limited.

The Commission, by sec. 7, is to report from time to time as to what should be the highest selling prices, having reasonable regard to market conditions, "for the State of New South Wales"—that is, for the whole State without exception.

It may differentiate having regard to the sale or supply under differing terms and conditions or in different parts of New South Wales—and again no exception is made.

By sec. 8 the Government may declare the maximum price at which any necessary commodity may be sold for consumption in New South Wales. There is not only no exception as to the area, but there is distinct evidence in that provision that the mind of the Legislature was directed to considering how far the generality of its enactment should in any way be limited. It expressly stopped short of interference with inter-State and foreign trade; but otherwise left its provision universal. The one instance of limitation bears its own significance. By sec. 8 also the Governor may differentiate as to different parts of the State.

Thus, with the one exception mentioned, the unrestricted generality of the words immediately relevant is in no way lessened, but on the contrary is confirmed, by the context.

It would, indeed, be surprising if the Legislature, avowedly resting the measure upon the basis of a great national emergency calling for the revision and adjustment by the State itself of private commercial interests, for the sake of the general welfare, so far as prime necessities of the people are concerned, had exempted from the common but temporary obligation these great companies, really public utilities, enjoying by the gift of the State considerable statutory privileges and by their products entering so largely into the daily life of the population. It would be still more surprising if,

as is contended for by the appellant, the Legislature had at the same time permitted them to share all the benefits of the scheme of readjustment from contributing to which they were relieved. Coal, for instance, it is said, may be cheapened for their benefit, but their own prices must remain unchallengeable. Those industrial enterprises which utilize the gas supplied by these companies are, by the same argument, to be subject to reduction of prices for the necessary commodities they produce, but the source of the energy they employ cannot be checked. In other words, above them and below them the Act is to operate, but they are to rest unmolested upon an oasis of privilege. For myself it would require the most express language to induce me to give effect to such an argument.

It was said for the appellant that, independently of the definite fixation of a normal standard of price by the Act of 1912, a specific additional right was given by the Statute to have that standard price increased in the manner provided, if an award as to labour conditions increased the cost of production. This right, it was urged, was an important one, and would be unjustly lost if the new Act applied. Even if there were substance in the argument, it could not avail in view of the plain words of the Act. The same difficulty might confront anyone else who had no tribunal to appeal to. But, in truth, there is no substance in it, because under the Act of 1914 the Commission is at liberty to consider all circumstances which influence cost, and the factor referred to, if it occurred, would naturally be relied on by the companies as one of the elements in support of their claim before the Commission to a certain price.

During the argument various other Acts and a certain Local Government Ordinance were referred to relating to a maximum price for gas supplied by other companies and by municipalities. The plain construction of the Act of 1914 renders a consideration of these circumstances superfluous, but they do certainly point very convincingly to the reason why the Legislature made its enactment as broad as it is. So far as I can see, the companies operating under the other Acts, and the municipalities under the Ordinance, are as much entitled to exemption as the three companies scheduled to the Act of 1912. The reference to gas in the Act of 1914 would

H. C. OF A. 1916.

LUKEY v. EDMUNDS.

Isaacs J.

then be a mere shadow. And, even apart from those other enactments, when we remember that the whole population of New South Wales in August 1914 was about 1,850,000, the exclusion of practically the whole of Greater Sydney, representing a population of about 760,000, and of Newcastle, representing a population of about 58,000, would leave so enormous a gap in the scheme of relief, besides creating and enhancing the relative injustice I have referred to, as, in the absence of express words, to make the position unthinkable.

I am clearly of opinion that the action is unsustainable, and that the appeal should be dismissed.

GAVAN DUFFY J. I agree with the judgment which has just been delivered.

RICH J. I agree that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Allen, Allen & Hemsley.*

Solicitor for the respondent, *J. V. Tillett,* Crown Solicitor for New South Wales.

B. L.