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HIGH COURT

[1923.

[HIGH COURT OF AUSTRALIA.]

THE BANK OFFICIALS' ASSOCIATION (SOUTH AUSTRALIAN BRANCH) . . . APPELLANT;

DEFENDANT,

AND

Melbourne, Mar. 6, 7, 8; June 6. Prosecutor,

Knox C.J., leaacs, Higgins, Rich and Starke JJ. ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

Industrial Arbitration—Industrial Court of South Australia—Jurisdiction—Savings
Bank of South Australia—Statute—Interpretation—Generalia specialibus non
derogant—Savings Bank Act 1875 (S.A.) (38 & 39 Vict. No. 22), secs. 2, 7-13, 16,
18, 48—Industrial Code 1920 (S.A.) (11 Geo. V. No. 1453), secs. 3, 5, 17, 34, 36,
43, 47, 48, 51, 52, 99, 104.

Held, by Knox C.J., Isaacs and Rich JJ. (Starke J. dissenting), that the Savings Bank Act 1875 (S.A.), which regulates the relationship between the Savings Bank of South Australia and its employees, is special legislation, and the Industrial Code 1920 (S.A.), which regulates the relationship between employers and employees generally (with immaterial exceptions), is general legislation, within the maxim Generalia specialibus non derogant, and that the latter Act is not to be construed so as to derogate from, repeal or alter the provisions of the former Act concerning the relationship which it regulates.

Per Higgins J.:—The Industrial Code 1920 contains nothing that is repugnant to or inconsistent with the Savings Banks Act 1875; and if both Acts stand together it does not derogate from the Savings Bank Act. The maxim states merely one of several presumptions; and the Industrial Code is obviously meant to aid all banking businesses.

Held, therefore, by Knox C.J., Isaacs and Rich JJ. (Higgins and Starke JJ. H. C. OF A. dissenting), that the Industrial Court had no jurisdiction under the Industrial Code 1920 to entertain a claim by an association of officers of the Savings Bank in respect of the salaries and conditions of service of those officers.

Decision of the Supreme Court of South Australia: In re Industrial Court; Association Ex parte Savings Bank of South Australia, (1921) S.A.S.R., 277, affirmed.

APPEAL from the Supreme Court of South Australia.

On 16th November 1920 the Bank Officials' Association (South Australian Branch), of which some of the officers, clerks and servants of the Savings Bank of South Australia were members, served on the Savings Bank a statement of claim in respect of the salaries and conditions of service of officers of the Bank. The trustees of the Bank did not grant the claim; and on 1st December 1920 the Bank was served with a summons issued by the Deputy President of the Industrial Court to attend at a conference to be presided over by him. The conference was held on 6th and 9th December, and the Deputy President referred the matter of the claim to the Industrial Court. The matter came on in the Industrial Court before the Deputy President on 21st December, when the Bank appeared under protest and objected that the Industrial Court had no jurisdiction on certain grounds. The Deputy President overruled the objection. and refused the request of the Bank that he should state a case for the opinion of the Supreme Court. The Bank on 3rd February 1921 obtained an order nisi calling upon the President and the Deputy President of the Industrial Court to show cause why a writ of prohibition should not issue to prohibit them from hearing or otherwise determining the matter of the claim on the following grounds: (1) That the Industrial Court has no power to make any award against or binding upon the Bank or the trustees thereof; (2) that the Savings Banks Acts (S.A.) are inconsistent with the application to the Bank of the Industrial Arbitration Act 1912 (S.A.) or the Industrial Code 1920 (S.A.) and are not repealed by, but remain in full force irrespective of, either of those two Acts; (3) that by sec. 7 of the Savings Bank Act 1875 (S.A.) the salaries and emoluments to be paid to officers, clerks and servants of the Bank are subject to

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H. C. OF A. the approval of the Governor, and it is inconsistent with that Act for the Industrial Court to exercise jurisdiction over the Bank or the trustees thereof in the matter of such salaries and emoluments: Association (4) that an award of the Industrial Court in respect of such salaries and emoluments could not be observed or obeyed by the Bank or the trustees thereof without the approval of the Governor, and the Industrial Court has no jurisdiction to make any award against the Bank which the Bank or the trustees thereof would not be bound to observe and obey irrespective of the approval of the Governor.

> On the return of the order nisi the Full Court made it absolute: In re Industrial Court: Ex parte Savings Bank of South Australia (1).

> From that decision the Association, by special leave, appealed to the High Court.

> The appeal was first argued in Adelaide before Knox C.J., Higgins, Duffy and Starke JJ. on 17th and 18th August 1922, and was directed to be reargued. It now came on for argument before Knox C.J., Isaacs, Higgins, Rich and Starke JJ.

Cleland K.C. and McGee, for the appellant. The Industrial Code 1920 applies to the Savings Bank and the officers employed by it. The Savings Bank is in no different position with regard to its powers, duties and liabilities towards its officers from that of an ordinary employer towards his employees; and it comes within the literal terms of the definition of "employer" in sec. 5 of the Industrial Code. There is no inconsistency between that Act and the Savings Bank Act 1875; for the effect of the Code is, not to compel an employer to pay the wages fixed by an award of the Industrial Court, but to compel him, if he employs employees of certain classes, to pay them those wages. Sec. 7 of the Savings Bank Act, which requires the approval of the Governor to the salaries to be paid to officers of the Savings Bank, does not raise an inconsistency, for the power of veto thus given to the Governor can still remain notwithstanding an award of the Industrial Court under the Industrial Code; similarly as to the power conferred by sec. 13 of the Savings Bank Act upon the

trustees of the Savings Bank to make rules for the control of the H. C. of A. officers subject to the approval of the Governor. If the two Acts are inconsistent, there is clear indication in the Industrial Code that it is to override the Savings Bank Act (see In re an Industrial Dispute: Corporation of Port Pirie v. Arnold (1)), and the maxim Generalia specialibus non derogant does not apply (Lukey v. Edmunds (2); In re Williams; Jones v. Williams (3)).

[Isaacs J. referred to Blackpool Corporation v. Starr Estate Co. (4); Barker v. Edger (5).]

The rights of the Crown under the Savings Bank Act are not affected by the Industrial Code. The power and authority given by the Savings Bank Act to the trustees over the officers of the Savings Bank go no further than the ordinary powers of a corporation over its servants, except that there is a restriction requiring the approval of the Governor in certain cases; but there is no protection given to the officers of the Savings Bank by the Savings Bank Act such as is given to employees by the Industrial Code. That is a reason for holding that the later Act overrides the earlier.

Piper K.C. and Napier K.C. (with them Davis), for the respondent. The Industrial Code does not apply to the Savings Bank and its officers. Under the Industrial Code the Industrial Court has no jurisdiction to enable any employer to do that which he could not lawfully do without the award of the Court, but its effect is to restrain the common law freedom of employers and employees. The Industrial Court cannot direct an employer to do something which is contrary to an Act of Parliament. The Industrial Code authorizes parties to make voluntary contracts and gives those contracts statutory effect (secs. 88 et seqq.). But the Savings Bank is limited in its competency to contract freely, and it is commanded to carry on its business for the benefit of the public.

[Higgins J. referred to Ashbury Railway Carriage and Iron Co. v. Riche (6).]

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<sup>(1) (1916)</sup> S.A.L.R., 161.

<sup>(2) (1916) 21</sup> C.L.R., 336, at p. 349.

<sup>(3) (1887) 36</sup> Ch. D., 573.

<sup>(4) (1922) 1</sup> A.C., 27.

<sup>(5) (1898)</sup> A.C., 748. (6) (1875) L.R. 7 H.L., 653.

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Sufficient effect can be given to the *Industrial Code* without applying it to the Savings Bank. Secs. 7 to 13 of the *Savings Bank Act* form a specific code for dealing with the officers of the Savings Bank. Rules made under sec. 13 have the same effect as if they had been in the Act, and it was not intended that the Industrial Court should have power to override them. It is not necessary that two Acts shall deal with the same subject matter in order to make applicable the maxim *Generalia specialibus non derogant*, but it is sufficient if in a particular case the two Acts produce conflicting results (*In re Smith's Estate*; *Clements* v. Ward (1)).

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[Knox C.J. referred to Seward v. Vera Cruz (2).]

The Savings Bank is not an "employer" within the meaning of the definition in sec. 5, for it does not carry on business for the purposes of gain; it is carrying on business for the purpose of performing its duty under the Act.

[Isaacs J. referred to Mersey Docks and Harbour Board v. Lucas (3).]

In that case the motive for carrying on business was held to be immaterial. Here the motive for carrying on business is a discrimen. (See also *Metropolitan Water Board* v. *Berton* (4).)

[Starke J. referred to Commissioners of Inland Revenue v. Forrest (5).]

The inclusion of the Railways Commissioner, the Metropolitan Abattoirs Board and the Fire Brigades Board in the definition of "employer" and the omission of the Savings Bank are an indication that it was not intended to include the Savings Bank in the definition. In the *Industrial Code* the Legislature was directing its attention to wage-earning employees; in the *Savings Bank Act* it was directing its attention to salaried officers.

Cleland K.C., in reply. The Savings Bank was established by Ordinance No. 15 of 1847 for the purposes of gain to the depositors, and that purpose was continued in the Savings Bank Act 1875.

<sup>(1) (1887) 35</sup> Ch. D., 589.

<sup>(2) (1884) 10</sup> App. Cas., 59, at p. 68.

<sup>(3) (1883) 8</sup> App. Cas., 891.

<sup>(4) (1921)</sup> I Ch., 299.

<sup>(5) (1890) 15</sup> App. Cas., 334.

[Isaacs J. referred to R. v. Whitmarsh (1); Bear v. Bromley (2); H. C. of A. Commissioners of State Savings Bank of Victoria v. Permewan, Wright & Co. (3); Moore v. Rawlins (4).]

Cur. adv. vult.

The following written judgments were delivered:

Knox C.J. This is an appeal by special leave from an order of the Supreme Court of South Australia directing that a writ of prohibition should issue, directed to the President and Deputy President of the Industrial Court of South Australia, prohibiting them from proceeding in a matter in that Court respecting the salaries and conditions of service of officers of the Savings Bank of South Australia, wherein the present appellant was a party and wherein it was ordered by the Industrial Court that the said Bank be summoned to appear as a party.

The question for decision is whether the Industrial Court has power under the Industrial Code 1920 to make any award binding on the Bank or on the trustees.

The jurisdiction of the Industrial Court was attacked on two grounds, namely, (1) that the Industrial Code 1920 does not bind the Crown and that the Industrial Court has therefore no power to override or take away the rights of the Governor in Council under the Savings Bank Act; (2) that the relationship between the trustees of the Bank and its employees was regulated by the Savings Bank Act and that in accordance with the maxim Generalia specialibus non derogant the Industrial Code should not, in the absence of any provision expressly relating to the Bank, be construed as derogating from, repealing or altering the provisions contained in the Savings Bank Act concerning that relationship. In the view which I take of the case it is unnecessary to decide whether the first of these propositions is well founded, and I proceed to consider the second.

The maxim relied on by the appellant has been expounded and applied in many cases. I refer to three in which the scope of the

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<sup>(1) (1850) 15</sup> Q.B., 600. (2) (1852) 18 Q.B., 271.

<sup>(3) (1914) 19</sup> C.L.R., 457.

<sup>(4) (1859) 6</sup> C.B.(N.S.), 289.

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H. C. of A. rule and the conditions in which it should be applied have been laid down by the highest authority. In Barker v. Edger (1) Lord Hobhouse speaking for the Judicial Committee said: "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." This statement was referred to with approval by Viscount Cave in Blackpool Corporation v. Starr Estate Co. (2); and in the same case (3) Viscount Haldane referred to the rule as "a rule of construction which has been repeatedly laid down and is firmly established," and expressed the rule in the following terms:-" Wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. . . . Individual rights arising out of individual treatment are presumed not to have been intended to be interfered with unless the contrary is clearly manifest." In Seward v. The Vera Cruz (4) the Lord Chancellor said: "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."

The questions for consideration may be stated as follows:—(1) Is the Savings Bank Act special legislation within the meaning of the rule? (2) Is the Code a general enactment within the meaning of the rule? (3) Would the full exercise of the powers conferred on the Industrial Court by the Code conflict with or derogate from the full exercise of the powers conferred on the trustees and the

<sup>(1) (1898)</sup> A.C., at p. 754. (2) (1922) 1 A.C., at p. 38.

<sup>(3) (1922) 1</sup> A.C., at p. 34. (4) (1884) 10 App. Cas., at p. 68.

Governor by the Savings Bank Act? (4) Can the Code be given H. C. of A. reasonable and sensible interpretation without extending it to the subject matter dealt with by the Act? In order that the maxim may be applied all these questions must be answered in the affirma- Association tive.

(1) The relevant provisions of the Savings Bank Act 1875 are contained in secs. 7, 8, 9, 10, 11, 12 and 13. The effect of secs. 7-11 is summarized by Murray C.J. in his reasons for judgment as follows (1):- "To secure economical management the salaries of officers, clerks and servants were made subject to the approval of the Governor in Council, but, as against this, to encourage faithful service, certain advantages were held out to the Bank's employees. After a certain number of years' service they might be declared to be on the fixed establishment of the Bank, which gave them the right on death, or retirement for any cause other than misconduct or pecuniary embarrasment, after being on the establishment for twenty years and attaining sixty years of age, to receive one month's salary for every year they had been on the establishment (sec. 8). Their salaries were protected against creditors (sec. 9), and they were given the expectation, which would no doubt be granted as a matter of course, of receiving three weeks' leave of absence for recreation, and up to three months' leave of absence in case of illness, or other pressing necessity, in each year (sec. 10), and, if on the fixed establishment, leave of absence for twelve months on half salary, or six months on full salary, after ten years' continuous service, and for twelve months on full salary, after twenty years' continuous service (sec. 11)." Sec. 12 provides that all questions arising respecting leave of absence or retiring allowances shall be settled by the trustees, whose decision shall be final. Sec. 13 empowers the trustees to make general rules for the guidance, control and information of agents, accountants, clerks and other officers, and requires that such rules shall be (a) certified by the Attorney-General to be in conformity with law, (b) approved by the Governor and (c) after such approval laid before Parliament. It provides further that such rules, if not disallowed by either House of Parliament, shall have the same force and efficacy

(1) (1921) S.A.S.R., at p. 282.

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H. C. of A. as if inserted in the Act. These provisions, in my opinion, authorize the trustees, with the approval of the Governor and, where required. of the Attorney-General, not only to appoint officers and fix the salaries to be paid to them, but to define by general rules all the conditions of employment so far as such conditions are not regulated by the Act itself; and give to general rules duly made and approved the same force and efficacy as if they had been inserted in the Act. Secs. 7-12 (inclusive) deal exclusively with the relationship between the Bank and its employees, their appointment and conditions of employment. Sec. 13 deals with the same subject matter among others. In these circumstances I think it is clear that the contracts of service between the Bank and its employees and the general conditions of their employment received special and individual attention at the hands of Parliament in the Savings Bank Act of 1875; that Parliament directed its attention to this individual case and provided for it, and that that Act must be regarded as special legislation within the meaning of the rule.

- (2) In my opinion it is clear that the Industrial Code of 1920 is a general enactment within the meaning of the rule. It empowers the Industrial Court to fix the wages and conditions of employment of every person in South Australia who is employed whether on wages or piece-work rates by any person or corporation in any business, trade, manufacture, or calling carried on by way of trade or for purposes of gain (except agriculture); or by the corporations or bodies of a public nature mentioned in sub-clause (b) of the definition of "employer" contained in sec. 5, and by sub-sec. vii. of that subclause it is capable of extension by resolution of both Houses of Parliament to the employees of any other person, firm, company or corporation. Indeed, if this be not a general enactment, I find it difficult to conceive what could answer that description.
- (3) Under the Savings Bank Act the trustees with the approval of the Governor may lawfully fix a maximum salary for a given position. Under the Industrial Code the Court may lawfully award that the minimum salary to be paid to an officer occupying that position shall be a sum greater than the maximum so fixed. The award is given binding force by the Code, and by sec. 47 (d) is to prevail over

any existing contract of service. The Industrial Court may, if the Code gives it jurisdiction over the trustees and officers of the Bank, alter in one direction or the other every condition of employment of such officers prescribed by the Act or by the rules duly made under Association it, and its award must be obeyed however inconsistent with the (South Australian decisions of the Governor in Council or the rules made under that Act, which are declared to have the force of law. In these circumstances I think it is impossible to doubt that the Code if construed as applying to the respondent derogates from the earlier Act. It is, of course, common ground that no express reference to the Savings Bank or to the trustees is to be found in the Code.

(4) I agree with the observation of Poole J. in the Supreme Court, that to this question there can be but one answer—an affirmative. Indeed, no argument to the contrary was addressed to us, or, so far as appears, to the Supreme Court.

For these reasons I am of the opinion that the appeal fails and should be dismissed.

ISAACS AND RICH JJ. The rule for prohibition was made absolute by the Supreme Court of South Australia on the ground that the Industrial Court was exceeding its jurisdiction inasmuch as the Industrial Arbitration Act 1912 had no application to the Savings Bank of South Australia. That conclusion was based on the view that, although the Bank came within the language of the Industrial Arbitration Act literally read, it ought to be held to be outside its operation, first, because the Crown was not bound by it, and, next, because of the maxim Generalia specialibus non derogant.

After the discussion had proceeded some distance before this Court, it was accepted that the matter depended, not upon the Industrial Arbitration Act of 1912 but upon the Industrial Code 1920, which became law on 9th December of that year. The industrial proceedings were started by a claim made by the appellant Association on 16th November 1920, and on 1st December 1920 the Bank was served with a summons issued by the Industrial Court. But though the proceedings began before the passing of the Act of 1920, which repealed the earlier Act, sec. 3 of the later Act provides

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H. C. of A. by sub-sec. 4 that "Any proceeding which at the passing of this Act is depending in any Court . . . may be proceeded with. heard, and determined, and the decision or any award, order, or determination may be enforced under this Act." Consequently it is the jurisdiction of the Court under the Act of 1920 which has to be considered.

> There is considerable difference between the definitions in the two Acts; and so the first question is whether the respondent Bank primarily comes within the new statutory jurisdiction. By sec. 17 it is enacted that "the Court shall have jurisdiction—(a) to deal with all industrial matters pursuant to this Part of this Act." "Industrial matters," within the meaning of that Part of the Act, include—it is not denied—all the matters claimed provided the appellant and the Bank are, within the meaning of the Act, respectively employees and employer in an industry. The matter ultimately turns on whether the Bank is engaged in an "industry" as that term is defined in sec. 5. The definition runs thus: "'Industry'-(a) means craft, occupation, or calling in which persons of either sex are employed for hire or reward—(I.) in any business, trade, manufacture, or calling carried on by way of trade or for purposes of gain (except agriculture)." "Agriculture" is by the same section extended to many things not usually called agriculture, but banking is not one of those things.

> The respondent contended that, laying aside the two grounds on which the Supreme Court acted, the Bank was outside the definition, because, as it was said, it did not on a proper construction of its Act carry on its "business" "for purposes of gain." That was supported by the argument that the scope and purpose of the Savings Bank Act was merely to encourage thrift and saving and to enable the Bank to pay interest to depositors, and not to make gains for the Bank itself. There are two answers to this. The first is that the words in the definition which follow the word "calling" are descriptive of that word, and not of the words "business, trade, manufacture." A "business," a "trade" or a "manufacture," as carried on by employers, is itself and without more an "industry." But there may be many "callings" of employers which have no

resemblance industrially to a "business," a "trade" or a "manu- H. C. of A. facture": therefore the succeeding words are added to include such callings as are cognate and exclude such as are not. It would be not a little absurd after specifically mentioning "business" and Association "trade" to stipulate that they must be carried on either by way of "trade" or "for purposes of gain." Therefore, if the Bank carries on a "business" it is engaged in an "industry." But even if it were necessary to attach to it the condition of carrying on its business "for purposes of gain," the authorities are clear that it does so when the powers of the Bank as stated in its Act (No. 22 of 1875) are looked at. Repeatedly, as in secs. 5, 7, 13, 16, 18, the "business" of the Bank is referred to. The business in the main, and broadly stated, is to receive deposits from any person (with specified exceptions) from 1s. up to £500, to pay the moneys so deposited into some approved bank or banks to the credit of the Savings Bank, to invest the moneys in mortgage or other named securities at interest, to establish a reserve fund, to pay annually out of the remainder of its profits such interest as the trustees determine, and to carry the balance undivided forward to the profit of the following year. One of its main purposes is to make profits by investing its funds; indeed, without that, the purpose of the Act would fail. The depositors are not members. The only corporators are the trustees (sec. 3). Therefore, the Bank receives moneys from persons who are strangers, it makes profits by investing its funds with persons who are strangers, and it pays to the depositors such portion of those profits as it determines subject to specific limitations, which are immaterial. The reasoning of Cockburn C.J. in Moore v. Rawlins (1), concurred in by Willes J., is greatly in point. (See also per Jessel M.R. in In re Arthur Average Association for British, Foreign and Colonial Ships; Ex parte Hargrove & Co. (2); and in In re Padstow Total Loss and Collision Assurance Association (3), and per Lindley L.J. (4): particularly see England v. Webb (5).)

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<sup>(1) (1859) 6</sup> C.B.(N.S.), at p. 315. (2) (1875) L.R. 10 Ch., 542, at pp.

<sup>(3) (1882) 20</sup> Ch. D., 137, at 145.

<sup>(4) (1882) 20</sup> Ch. D., at p. 149.

<sup>(5) (1898)</sup> A.C., 758, at p. 761.

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Prima facie, then, the Bank is within the jurisdiction of the Industrial Court. Is that prima facie construction overcome by either of the considerations referred to? As to the Crown, it is quite clear the Bank is not a Government Department. It is, as the Act in sec. 2 styles it, an "institution" known as "the Savings Bank of South Australia," and the section declares that it shall continue to be so designated. That "institution" had existed before. It was first established in 1847 by Ordinance No. 15, in which occurs the preamble quoted by Poole J. That ordinance enacted in its first section that "an Institution, to be called the Savings Bank of South Australia, shall be established" &c. Sec. 2 enacted that "the Governor of South Australia for the time being shall be President of the said Institution, and that the management of the affairs of the same shall be vested in twelve trustees, to be appointed by the said Governor one of whom shall be styled Vice-President." Clearly from that the Governor (ex officio President) was merely a persona designata, and his position was not as Executive of the Province. Sec. 14 of that ordinance showed the distinct demarcation between Bank and Crown. So did the amending ordinance No. 13 of 1848. In 1861, when the amending Act No. 8 was passed, the Governor dropped out as President and came in in another way as a confirming authority. In 1875 the present Act was passed, which governs the position. The "institution" still retains its non-governmental character; it is a corporation. For the security of depositors there is a provision introduced in 1912, by sec. 19 of Act No. 1083, that "if at any time the funds created by the investment of deposits are insufficient to meet the lawful claims of all depositors, the Treasurer, with the consent of the Governor, may pay the amount of the deficiency out of the general revenue of the State; which revenue is hereby appropriated so far as may be necessary for that purpose." That is only a power which depends for its exercise on an order in Council perfectly optional with the Government of the day. Whatever the moral or political effect of that clause may be, it is not a legal identification of the Bank with the Crown. It is a strong assertion to the contrary. There are provisions in the Act, particularly in sec. 7 and

sec. 13, subjecting the action of the trustees to Government control H. C. of A. and inspection, and enabling them to apply for Government assistance: but these do not convert the Bank into a Government agency. The control thus given is in relation to the appointment of officers, Association the fixation of salaries and emoluments and the general regulation of Australian the transactions and business of the trustees and the government and management of the Bank. The point, however, to be noted in this connection is that the initiative as to officers is entirely vested in the trustees. Nothing as to them is vested in the Government except approval or disapproval; in other words, there is a Governmental check to a great extent on the discretion of the trustees. The situation is not one to which, in our opinion, the rule of interpretation of statutes applies that statutes do not affect the Crown except by express reference or clear implication.

As to the second ground, namely, the maxim Generalia specialibus non derogant, the first requisite is to get a clear understanding of its meaning. In Barker v. Edger (1) it is said:—"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. Each enactment must be construed in that respect according to its own subject matter and its own terms." Now, the first thing we have to understand is what is the meaning of "separate subject" and "a subsequent general enactment." In Blackpool Corporation v. Starr Estate Co. (2) Viscount Haldane, as to that rule of construction, says :- "It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have

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<sup>(1) (1898)</sup> A.C., at p. 754.

<sup>(2) (1922) 1</sup> A.C., at p. 34.

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Isaacs J. Rich J. referred to. An intention to deal with them may, of course, be manifested, but the presumption is that language which is in its character only general refers to subject matter appropriate to class as distinguished from individual treatment. Individual rights arising out of individual treatment are presumed not to have been intended to be interfered with unless the contrary is clearly manifest." Viscount Cave, the present Lord Chancellor, quoted with approval (1) the rule in Barker v. Edger (2). Lord Cave also, for himself, said: "The rule is clear that a general statute will not, in the absence of clear words, be construed as derogating from special provisions in a previous statute." The language in those two cases and they are in accordance with previous authorities-shows that the subject matter in the earlier Act must be the same as that in the later Act before the maxim can have any possible application. If, for instance, there were found in the Savings Bank Act a provision specially directed to the settlement of industrial disputes between the Bank and its employees, that would have been an individual case specially provided for and presumably not to be interfered with by mere general words in the latest Act. The presumption even then might be overcome by consideration of the later Act as a whole. The strength of the presumption is very forcibly illustrated by the two cases cited. More especially is this shown by the Blackpool Case (3). Even the words "any statute" in the general Act were held by four out of five of the learned Lords to be insufficient to affect the earlier statute (the Blackpool Improvement Act 1917), though Lord Shaw thought otherwise, and gave his concurrence to the conclusion on another ground. On the other hand, in this case the subject matter of the later Act—the Industrial Code—might be entirely different. It might be limited entirely to the settlement of industrial disputes. The subject matter of the two Acts in that case could not be said to be the same. The first would look to the ordinary normal condition of affairs, to the times of industrial peace, when there was no apprehension of the public institution arresting its functions. The second would, in the case supposed, look to an

<sup>(1) (1922) 1</sup> A.C., at p. 38. (2) (1898) A.C., at p. 754. (3) (1922) 1 A.C., 27.

abnormal state of affairs when, the officials having sought improved H. C. of A. industrial conditions and having been refused, a possible danger of stoppage existed, and then, and then only, the jurisdiction of a public tribunal would arise to avert a public calamity—industrial war. The Act of 1912 included that jurisdiction, though its words might also have included a jurisdiction independent of industrial disputes. It is unnecessary now to say how that would have affected the present case, which is in fact one of industrial dispute. The supersession of the earlier Act by the later one is therefore important beyond the fact of definitions already adverted to. It is important as to the nature of the jurisdiction of the Court, in other words, of the subject matter of the legislation. Comparison of the two Acts discloses a radical distinction. "Industrial disputes" formed a very distinct and perhaps essential feature in the Act of 1912. That feature is, with one exception (and only one, so far as we can discern), completely eliminated from the scheme of the Act of 1920. The definition of "industrial disputes" is found in sec. 5, but its application, so far as we have traced it, is confined to sec. 104, which enacts penalties for picketing or inducing others to join in an industrial dispute or injure any party to such a dispute. The Court's jurisdiction under the Act of 1920 is in respect of "industrial By sec. 17 (1) "the Court shall have jurisdiction (a) to deal with all industrial matters pursuant to this Part of this Act." Sec. 36 (1) enacts: "The Court may exercise any of its powers on its own motion or on the application of any party to the industrial matter, or of any association or person bound by the award or order of the Court." Clause 3 of the definition of "industrial matters" in sec. 5 is in these terms: "In order to remove any doubt as to the meaning of the foregoing definition of the term 'industrial matters' it is hereby declared for all the purposes of this Part of this Act, that the jurisdiction of the Court or of the President over an industrial matter does not depend upon the existence of a dispute, or the making of a prior claim or demand in relation to such industrial matter." Tracing the various sections of the Act, it is clear that there has been a consistent and complete excision of the expression "industrial dispute" as an element of jurisdiction. The Act is no longer

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H. C. of A. an Act for abnormal conditions or for settlement of industrial disputes. It is a general Act for the regulation of "industrial matters." It is in terms extremely wide; but, however wide its operation may be, there is no doubt its subject matter is the fixation of wages, salaries, and other conditions of industry as between employers and employees. In other words, its subject matter, in general terms, is precisely what in the individual case of the Savings Bank the Legislature has provided for "in a special way by the special Act." The Savings Bank Act is sufficiently minute in its provisions to make it perfectly manifest that the Legislature had a positive intention to regulate the way in which salaries and emoluments, as well as appointments of officers (sec. 7), their retiring allowances (sec. 8), the nonassignability of salaries and retiring allowances (sec. 9), leave of absence (secs. 10, 11 and 12), days and hours of business (sec. 5), and general conduct of business (sec. 13), should be determined for the purpose of carrying on the business of the Bank. As a part of the scheme the intervention of the Crown-for in the Act of 1875 "Governor" means "Governor in Council" (see Acts Shortening Act 1872 (No. 9 of 1872), sec. 16)—is prescribed for in specific ways. In the Industrial Code the intervention of the Crown is prescribed for in a totally different way (sec. 34).

> As a result the case appears to fall plainly within the operation of the maxim Generalia specialibus non derogant, and therefore the rule for prohibition was, in view of sec. 52 of the Industrial Code, rightly made absolute, and the appeal should be dismissed.

> HIGGINS J. A claim was made on 16th November 1920 by the Association on the Savings Bank in a dispute as to wages and other conditions of service of the officials. The Deputy President of the Industrial Court held a conference of the parties under sec. 11 of the Industrial Arbitration Act 1912 on 6th and 9th December; and then referred the claim to the Court. The Bank contends that the Court has no power to make any award binding on the Bank. If this view is right, the Bank is not entitled to the benefit of the efforts of the President or Deputy President to reconcile the parties in conference, or subsequently in the Court; and, according to counsel

for the Bank, even the provisions forbidding strikes do not apply to H. C. of A. strikes of the Bank officials.

There was a new Act repealing the Act of 1912, passed on the same 9th December—the Industrial Code 1920; but under sec. 3 of the Code "any proceeding which at the passing of this Act is depending in any Court, or before any wages board or other authority, may be proceeded with, heard, and determined . . . under this Act." Counsel for the Bank contend that the provisions of this Code apply to the proceedings in this case. I think that the contention is right; at all events, I shall deal with this case on the assumption that it is right.

The Bank relies on the provisions of its special Acts as exempting it from the provisions of the Code; but counsel for the Bank admitted before the Supreme Court that, but for the special Acts, the words of the *Industrial Arbitration Act* of 1912 were wide enough to cover this dispute.

Under the Savings Bank Act of 1875, the Bank is managed by trustees appointed by the Governor in Council, and the trustees are incorporated under the name of the Savings Bank of South Aus-Under sec. 7 the trustees shall, as occasion may require, "and subject to the approval of the Governor," appoint all such officers, &c., as to them shall seem necessary for efficiently conducting the business; and also subject to such approval, pay and allow to such officers, &c., such salaries as to the said trustees shall seem reasonable, and from time to time remove any officer, &c. I assume in favour of the respondent, that the power to remove is also subject to the like approval. Sec. 8 empowers the trustees to declare any officer to be on the fixed establishment so as to be entitled to a retiring allowance, and invalidates any assignment of the allowance. Sec. 10 empowers the trustees to grant leave of absence up to three weeks per annum; sec. 11 empowers them to grant leave of absence for a longer term to officers who have been for ten or twenty years on the fixed establishment; sec. 12 makes the decision of the trustees final as to retiring allowance or leave of absence. Sec. 13 empowers and requires the trustees to make general rules respecting the transactions and business of the trustees and officers, and for the government and management of the Bank, and for the guidance, control

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H. C. of A. and information of all agents, clerks or other officers, and of depositors, for carrying the Act into execution. Every such rule has to be signed by five trustees, certified by the Attorney-General to be not repugnant to law, approved by the Governor, and laid upon the table of each House of Parliament; and, if not disallowed by resolution of either House within one month, the rule is to have the same force as if inserted in the Act. Under sec. 48, "subject to the conditions hereinbefore contained, the said trustees are hereby authorized and empowered to pay and discharge the salary," &c., "of every officer." AUSTRALIA. &c., "employed by them, under the authority of, and in the discharge of the duties imposed by, this Act, and all other expenses, allowances, and incidental charges which shall necessarily attend the execution of this Act, out of the funds of the said Savings Bank." This is, of course, a mere empowering clause; but it will be noticed that it empowers the trustees to pay the salary of every officer employed by them under the Act, as well as all other incidental expenses. The power is "subject to the conditions" contained in the preceding sections; and, so long as the approval of the Governor has been obtained to the amount of the salary, the trustees have power to pay that salary.

> The Industrial Arbitration Act 1912 created a Court with jurisdiction to settle industrial matters as between employers and employees; but the Full Court of South Australia has held that the Act does not apply to the Savings Bank as an employer. It bases its decision on two principles of construction—(1) that the Crown is not to be treated as bound except by express words or by necessary implication; and (2) that an earlier particular Act ought not to be treated as repealed by a later general Act except as aforesaid: Generalia specialibus non derogant.

> As to the Crown, no notice seems to have been taken of another principle of construction—that "where an Act of Parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong, the King shall be bound by such Act, though not particularly named therein" (Bacon's Abridgment, 7th ed., vol. vi., p. 462); and that the objective of these industrial Acts fits this description. For the present purpose, opinions may differ

as to success or desirability of these Acts, but success or desirability H. C. of A. is not the test. Questions are continually arising between employers and employees as to wages and conditions of employment, questions which lead to the suspension of business; and the King is entitled ASSOCIATION to the benefit of such machinery, whether it be conciliation or arbitration or any other device, as Parliament provides for the purpose of doing justice and of securing continuity in the operations of undertakings.

Then, again, the distinction has to be borne in mind between the King exercising his "primary and inalienable functions of government," and the King carrying on a business or industry. In holding that the Government of New South Wales was bound by the provisions of the *Employers' Liability Act* as to Government employees, the late Griffith C.J. quoted with approval Craies, 2nd ed., p. 377: "Saying that the rights of the Crown are not barred by any statute which does not name them does not mean that the King, looked upon as a mere individual, may not be in certain cases deprived by statutes, which do not specially name him, 'of such inferior rights as belong indifferently to the King or to a subject . . . '; what it does mean is that the King cannot in any case whatever be stripped by a statute, which does not specially name him, 'of any part of his ancient prerogative, or of those rights which are incommunicable and are appropriated to him as essential to his regal capacity " (Sydney Harbour Trust Commissioners v. Ryan (1)). This carrying on of a bank cannot, in any sense, be put in the same category as "the administration of justice, the maintenance of order, and the repression of crime" (see per Lord Watson in Coomber v. Justices of Berks (2)). In Farnell v. Bowman (3) the Judicial Committee warned us of the care necessary in applying principles as to Crown exemption within the colonies, where the Governments embark so frequently in undertakings which in other countries are usually left to private enterprise. There is another consideration to which I called attention in the case of the Amalgamated Society of Engineers v. Adelaide Steamship Co. (4)—the consideration that from the very

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<sup>(1) (1911) 13</sup> C.L.R., 358, at p. 365. (2) (1883) 9 App. Cas., 61, at p. 74.

<sup>(3) (1887) 12</sup> App. Cas., 643, at p. 649. (4) (1920) 28 C.L.R., 129, at p. 163.

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H. C. of A. nature of the case industrial disputes and matters cannot be effectively handled if the greatest employer in Australia cannot, though actually a party to the dispute and interested in the matter, be subjected to the operations of the Courts.

But, even assuming that the Crown is not bound by the Industrial Act, I take a view which, to my mind, is one of the simplest and most obvious. The Industrial Code, even if it extends to these officials, does not bind the Crown or affect the Crown's powers in any way. These officials are not servants of the Crown: they are servants of the trustees. Under sec. 7 of the Savings Bank Act 1875 the trustees appoint officers subject to the approval of the Governor; and subject to that approval they pay the salaries. It is for the trustees to appoint and to propose the salary; the Governor can merely interpose his veto. That veto is not disturbed by the Industrial Code. The Industrial Court prescribes, e.g., the minimum wage at which certain employees may be hired or kept in employment. If the trustees want to have such employees, and the Governor does not want to have them at the award rates, they cannot be employed. The same deadlock would arise if the cost of living rose very high, or if, as during the late war, employees became very scarce; for, if the trustees proposed to pay wages sufficient to attract employees, the Governor would have power to withhold his approval from such wages. It is the trustees that the award would bind-not the Governor. The position is similar as to sec. 13. The trustees make general rules; and I assume that the rules may prescribe the hours of work and other conditions (sec. 5 does not, as alleged, relate to hours of employees). The Governor can refuse his approval to any such rule drawn up so as to conform with an award, or a House of Parliament may disallow the rule. The result is that the trustees cannot employ the officers required without breach of the award; but there is no interference of the Industrial Court with the veto of the Governor. The point to be borne in mind is that the Industrial Court merely prescribes that if any persons are employed or retained in employment they must be employed or retained under certain conditions; it does not order any employer to employ or retain any one. There would now be two bodies with power to

veto-the Governor and the Industrial Court; and if both bodies H. C. of A. cannot be obeyed the officers concerned cannot be employed. position is similar as to existing officers. If, for instance, an award be made fixing the minimum salary for bank tellers at £300 per ASSOCIATION annum, and the Governor has hitherto approved of £250 as the AUSTRALIAN salary of some existing teller, that teller cannot be paid more than £250 without breach of the Bank Act; and he cannot be paid less than £300 without breach of the award. Under sec. 47 (1) (d) of the Code, the award prevails over any contract of service in force at the coming into operation of the award, and the contract has to be construed as modified to conform to the award. So it would seem that the teller must leave the service if the Governor should refuse his approval to the payment of the minimum salary prescribed by the award. The position would, of course, be awkward if such a deadlock arose; but there is no ground for saying that the Code interferes with the Governor's right of veto. I cannot take the view put by the learned Chief Justice of South Australia that the Governor's approval of existing salaries is deprived of effect, or his power to disapprove of future salaries nullified, by the Code.

As for the maxim Generalia specialibus non derogant, there is, in my opinion, really no more ground for treating the Bank Act as special and the Industrial Act as general, than for treating the Bank Act as general and the Industrial Act as special—if we look at the very special object of the Industrial Act. The Bank Act deals with the business of banking, on the assumption that employees can be procured at such wages and on such conditions as the trustees (with the approval of the Governor) prescribe. The Industrial Act deals with the special case of differences or questions arising as to the terms of employment, and provides for the regulation of industrial matters with the obvious view of securing industry against stoppages and disturbances. The provision that the jurisdiction of the Court or of the President over an industrial matter shall not depend upon the existence of a dispute (sec. 5, "industrial matters" (3) does not involve a corollary that the prevention and settlement of disputes or differences is not one of the objects of the Court. The definition of "industrial matters" in sec. 5—e.g., "matters or VOL. XXXII.

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H. C. of A. things affecting or relating to work done or to be done "-must include such matters if in dispute; secs. 19 and 20 allow the President to "mediate"; secs. 99 and 100 forbid strikes and lock-outs; and sec. 104 forbids picketing. The Industrial Act deals, therefore, with a different subject matter from the Savings Bank Act, a special matter with which the Savings Bank Act is not concerned at all.

But even if we are to treat the Savings Bank Act as special and the Industrial Act as general, there is nothing in the former Act that is prohibited by the latter. No one has attempted to point out any particular in which if one Act be obeyed the other Act must be disobeved. Both Acts can be obeyed; there is no repugnancy or even inconsistency between them; there is nothing struck out of the earlier Act, expressly or by implication. Sec. 34 of the Code, providing that the Crown may intervene in the Court to make representations in the public interest, is quite consistent with the provisions in the Bank Act for the approval of the Governor in Council as to salaries, &c. The position is analogous to that of a special Act for the constitution of a particular gas company, and a general Act regulating the quality of gas supplied by all gas companies, and the charges that may be made for the gas; there is not in either case any "derogation" or repeal of the special by the general. The Courts, on the principle of Generalia specialibus non derogant, try, if possible, to treat the rule laid down by the special Act as an exception to the general rule contained in the general Act, where the provisions conflict. The principle as expressed by Lord Selborne in Seward v. Vera Cruz (1) is: "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 . . that earlier and special legislation" is not to be held "indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do But here the Bank Act has not dealt at all, either specially or generally, with disputes or differences or questions between the Bank and its employees.

If the language of Lord Selborne in the Vera Cruz Case (1) be (1) (1884) 10 App. Cas., at p. 68.

carefully examined, it will be seen that he applies his rule to cases where the same subject is dealt with in the earlier Act as in the later Act; and here the subject of the later Act is radically different from that of the earlier. The subject of the earlier Act was the ASSOCIATION institution of a Savings Bank for the people, with incidental provisions for State control of the expenditure; the subject of the later Act was a novel expedient for promoting industrial peace, continuity of business operations and the easing of the economic pressure on the workers. The language of Lord Hobhouse in Barker v. Edger (1), and of Viscount Haldane in Blackpool Corporation v. Starr Estate Co. (2), responds to the same test. These learned Judges would not, I feel sure, apply their rule to an earlier Act constituting a particular gas company, and a later Act regulating for all gas companies the quality of gas and the price to be charged.

But, after all, these maxims merely afford presumptions; and we must not let them obscure our sight of the goal, which is the meaning of the later Act in relation to the earlier. The primary rule as between successive Acts is that earlier legislation must give way to later-Leges posteriores priores contrarias abrogant; and the rule Generalia specialibus &c. is treated as a qualification of that primary rule (see Craies, 2nd ed., pp. 337 et seqq.). These maxims merely aid us in taking our bearings in the movement of our reason; and if we come to the conclusion after a thorough survey that this Industrial Code was meant to apply to all banking businesses as well as to the other industries, to subject them to the devices for conciliation and arbitration and restraint of strikes which the Code provides, we must give effect to that intention, whatever presumptions are afforded by the maxims. This was the reasoning applied in In re Williams; Jones v. Williams (3). In that case, the manager of a Savings Bank died insolvent, owing the bank moneys which he received in his capacity as manager. The Savings Banks Act 1863 gave the Bank priority as to such a debt. But the Bankruptcy Act 1883 provided that, in distribution of the property of a bankrupt, taxes, wages, &c., should be payable in priority, and subject thereto all debts

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<sup>54. (2) (1922) 1</sup> A.C., at p. 34. (3) (1887) 36 Ch. D., 573. (1) (1898) A.C., at p. 754.

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H. C. of A. proved in the bankruptcy should be paid pari passu. It was held that the Bankruptcy Act prevailed over the provision in the Savings Banks Act. As Craies points out (p. 340) the rule of Generalia specialibus &c. "must not be pressed too far"; and this view is supported by the numerous cases which follow this statement. See in particular the striking case of the Blenheim estates of the Duke of Marlborough (In re Duke of Marlborough's Parliamentary Estates (1)) -where it was held that, notwithstanding the stringent provisions against alienation in Act 5 Anne c. 3, the general Settled Land Act 1882 enables the estates to be alienated. The effect of the general Act must, of course, depend on its nature as shown by its language; but in this Code the note of universality of application is prominent throughout. By Division III. of Part II. the Court has jurisdiction to deal with all industrial matters pursuant to that Part, as well as all industrial matters submitted to it by certain parties, and jurisdiction over any industrial matter as to which a conference has been held (as here). By sec. 5 "industrial matters" means matters or things affecting or relating to work done or to be done, or the privileges, rights or duties of employers or employees, or of persons who intend or propose to be employers or employees in any industry, not involving questions which are or may be the subject of proceedings for an indictable offence. This express exception tends to negative an exception as to the Savings Bank officials. "Industry" means an occupation in which persons of either sex are employed for hire or reward in any business, or calling carried on by way of trade or for purposes of gain (except agriculture—again the express exception tends to negative other exceptions). "Employer" means any person or corporation employing one or more employees in any industry; and "employee" means any person employed in any industry. Why then, should we imply any exception as to employees of this Savings Bank? I should prefer to rest my conclusion on this broad ground; but I have sought to show that even on the narrower ground the conclusion is well justified.

But I pass on now to the new argument raised before us, and not before the Supreme Court, that the Industrial Code does

not, even if these principles of construction are ignored, empower H. C. of A. the Industrial Court to deal with industrial disputes or matters affecting such business as that of the Savings Bank at all. Bank in the Supreme Court did not dispute that the word "industry" in the Industrial Act is wide enough to include the business of this Bank; but the parties then assumed that the Industrial Arbitration Act 1912 applied to this case; and if the Industrial Code (of 1920) applies, the matter is certainly not so clear. I ought to say first that if under the previous Act the proceedings in conference and in Court as to this Bank were permissible, they would seem still to be permissible under the Code (sec. 3(1); sec. 3(2), II., III., v.; sec. 3(4)); and that there is no indication of any deliberate intention to narrow the jurisdiction of the Court. But now I shall examine the definitions in the Code. Under sec. 17 (1) the Court shall have jurisdiction over any "industrial matters" as to which (c) "a conference has been held under sec. 20, and which, not having been finally and completely dealt with or settled at such conference, the President has referred to the Court." Under sec. 5 "industrial matters" means matters or things affecting or relating to work done or to be done or the privileges, rights or duties of employers or employees or of persons who intend or propose to be employers or employees in any industry. Again, under sec. 5 "employer" (a) means any person, firm, company, or corporation employing one or more employees in any industry, whether on behalf of himself or any other person; and (b) includes several bodies—the Public Service Commissioner, the Railways Commissioner, the Metropolitan Abattoirs Board, any District Council, the Fire Brigades Board, the Council of any Municipality—and "any other person, firm, company, or corporation, in respect of whom both Houses of Parliament pass a resolution approving their inclusion in this definition." These words of "inclusion," being mere words of inclusion, do not narrow the "meaning" of the previous words; and the Savings Bank is an employer in an industry if the definition of industry fits it. Now, "industry" is defined in a subsequent part of sec. 5: "'Industry' (a) means craft, occupation, or calling in which persons of either sex are employed for hire or reward -(I.) in any business, trade, manufacture, or calling carried on by way

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H. C. of A. of trade or for purposes of gain (except agriculture); or (II.) by any employer referred to in paragraph (b) of the definition of 'employer'" (supra). What the Savings Bank carries on is clearly a business; it is spoken of as a business several times in the Savings Bank Act: for instance, sec. 7 speaks of "efficiently conducting the business of the said Bank.' Moreover, the business is carried on for purposes of gain. Under sec. 30, depositors are to be paid interest "out of the net profits of the said Bank.' The trustees of the Bank may lend the moneys deposited on mortgage (sec. 37), or on Government or municipal securities (sec. 38). They must prepare a balancesheet annually (sec 41), and annually set apart any necessary sum but not exceeding one-fifth part of the net profits towards a reserve fund, until the reserve fund amounts to 4 per cent. of the deposits; and thereafter the trustees must annually divide among the depositors at certain rates, "and the balance not so divided shall stand to the credit of profit account, and be carried forward to the profit of the following year" (sec. 42). It is true that there are no shareholders; but the Act does not say that the purpose must be gain to shareholders. The institution was formed for the gain of the depositors from the first, as appears from the original ordinances of 1847: "Whereas it is desirable, for the encouragement of frugality, that persons possessing small sums of money beyond what they require for the supply of their immediate wants, should be afforded an opportunity of depositing the same on good security, to accumulate at interest, and to form a provision for themselves and families."

In my opinion, therefore, the Code of 1920 as well as the Act of 1912 applies to this Savings Bank. I may add that even if the words of the definitions in sec. 5 of the Industrial Code were at all ambiguous, it would be our duty to presume, from the absence of any clear indication to the contrary in the Code, that the Legislature in codifying the law did not intend to exclude institutions which before the Code were subject to the powers of the Industrial Court.

In my opinion, the appeal should be allowed, and the order of the Supreme Court set aside.

STARKE J. The Bank Officials' Association (South Australian Branch), on 20th November 1920 delivered a claim to the Savings Bank of South Australia in respect of salaries and conditions of service of officers of the Bank. The claim was not granted, and a Association conference was called by the Deputy President of the Industrial Court pursuant to the Industrial Arbitration Acts of 1912-1916. The conference was held on 6th December and adjourned to 9th December, but nothing resulted, and the Deputy President referred the claim to the Industrial Court. On 9th December the Industrial Arbitration Acts of 1912-1916 had been repealed and their place taken by the Industrial Code of 1920; but the Code preserved proceedings under the Acts repealed, and provided that the same might be proceeded with, heard and determined, and the decision or any award, order or determination enforced under the Code (see sec. 3). On 3rd February 1921 the Savings Bank obtained from the Supreme Court of South Australia a rule nisi directed to the President and Deputy President of the Industrial Court to show cause why a writ of prohibition should not issue to restrain them and the Industrial Court from hearing and determining or otherwise proceeding with the claim of the Bank Officials' Association which had been referred to that Court. The rule was made absolute on 11th October 1921: and this Court has been moved by way of appeal, pursuant to special leave granted to the Bank Officials' Association, to reverse and set aside the rule absolute.

The case was argued in the Court below "on the assumption that the jurisdiction of the Industrial Court to deal with this particular matter, if it has any at all, is that conferred by the Industrial Arbitration Act 1912." But it is plain that the matter ought to be determined upon the provisions of the Industrial Code of 1920. point, however, is not, in my view, at all material, for the jurisdiction given to the Industrial Court has been extended rather than lessened by the Code of 1920. Under the 1912 Act the jurisdiction of the Court was over "all industrial matters and industrial disputes," whilst under the Code of 1920 the jurisdiction covers "all industrial matters," and, to remove any doubt as to the meaning of the phrase "industrial matters," it was declared that the jurisdiction

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H. C. OF A. of the Court over an industrial matter should not depend upon the existence of a dispute or upon the making of a prior claim or demand in relation to such industrial matter (Code, sec. 5, "Industrial matters," sub-sec. 3). No doubt the declaration was made because of a series of decisions given under the Commonwealth Conciliation and Arbitration Act, and based, in truth, upon the limitation of the constitutional power of the Commonwealth to make laws with respect to industrial disputes (cf. Tramways Case [No. 2] (1)). But the reason of the declaration is unimportant, for the jurisdiction of the Industrial Court over the Savings Bank of South Australia depends upon the true construction of the Code. I therefore turn to the provisions of the Code.

> "Industrial matters" means "matters or things affecting or relating to work done or to be done, or the privileges, rights or duties of employers or employees, or of persons who intend or propose to be employers or employees in any industry . . . ." Industrial disputes are, therefore, included in the phrase thus defined. "Industry" means "craft, occupation, or calling in which persons . . . are employed for hire or reward—(1.) in any business, trade, manufacture, or calling carried on by way of trade or for purposes of gain. . . ." "Employee" means "any person employed in any industry . . . "; and "employer" means "any person, firm, company, or corporation employing one or more employees in any industry . . . ", and includes the Public Service Commissioner and the Railways Commissioner, in relation to certain of their employees, district councils, &c., and "any other person, firm, company, or corporation, in respect of whom both Houses of Parliament pass a resolution approving their inclusion in " the definition. Now, the Savings Bank is a body politic and corporate constituted under the Savings Bank Act of 1875. The chief function of the Bank is the receipt of comparatively small deposits of money, representing savings, and the investment thereof for the benefit of the depositors. Its business is essentially that of a banker

(Commissioners of the State Savings Bank of Victoria v. Permewan, Wright & Co. (1)). The Act itself recognizes that the Bank conducts a business (secs. 5 and 7), and may make profits (sec. 42, and 3 Edw. VII. No. 824, sec. 22). The officers of the Bank are employed Association for reward in this business; consequently the Bank falls, apparently, Australian within the very words of the definition of "industry" in the Code. The question of their remuneration and conditions of employment is a matter affecting or relating to their privileges, rights and duties in the business, and is apparently an "industrial matter" within the definition of the Code. And as the Industrial Court has jurisdiction to deal with all industrial matters, pursuant to the Act, it is difficult to see why it cannot hear and determine the claim of the Bank Officials' Association which was referred to the Court on 9th December 1920.

One reason advanced in support of the view that the Court has no jurisdiction is that the Savings Bank was entitled to the privileges and immunities of the Crown, and was not, therefore, bound by the Industrial Code. But though State aid has been given to the Bank in some directions (see 3 Geo. V. No. 1083, sec. 19), still the authorities and powers of the Bank are quite independent of the Crown, and it is by no means a mere agent of the Government (Fox v. Government of Newfoundland (2)). This argument is, therefore, untenable. Another reason advanced, however, creates more difficulty. It is said that the special terms of the Savings Bank Act are wholly inconsistent with the application of the Industrial Code to the Savings Bank: "Generalia specialibus non derogant" (Barker v. Edger (3); Blackpool Corporation v. Starr Estate Co. (4)). But this maxim should not be pressed too far: it is but an aid to construction. The essential inquiry is what is the intention of the Legislature as gathered from the words of the Code. On the one hand, the Savings Bank Act authorizes the trustees of the Bank, subject to the approval of the Governor, to appoint and remove

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<sup>(1) (1914) 19</sup> C.L.R., 457.

<sup>(2) (1898)</sup> A.C., 667.

<sup>(3) (1898)</sup> A.C., 748. (4) (1922) 1 A.C., 27

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H. C. of A. officers of the Bank, and to pay them such salaries and emoluments as to the trustees shall seem reasonable. A few rights and privileges are given by the Act to officers placed on the fixed establishment (see sec. 8); but, in the main, the appointment, remuneration, control and removal of the officers of the Bank rest in the volition and discretion of the trustees. The approval of the Governor to the acts of the trustees, in cases in which it is required, is clearly for the protection and the benefit of the depositors. Nowhere in the Act can any provision be found whereby opportunities are afforded to the officers of the Bank for improving their conditions of employment or the remuneration for their services. So far as these officers are concerned, they must submit to such terms and conditions of employment as to the trustees shall seem reasonable, unless perchance the Governor disapproves of them. On the other hand, the Industrial Code approached the relation of employers and employees from a different point of view. It is notorious that the constant antagonisms between employers and employees in industries proved detrimental to the public interest, and also inflicted grave hardships upon the parties themselves. Consequently the Code set up a public tribunal, to stand between the parties, and this Code deprived or was intended to deprive both employer and employee of their uncontrolled power of fixing remuneration and the conditions of employment. An overriding power was given to the tribunal: its orders and awards were to prevail over contracts (sec. 47), and it was bound to secure a living wage (sec. 43). Looked at from the point of view of the employees, the Code at last secured them a method of presenting their claims and obtaining an independent consideration of the reasonableness and justice thereof.

How is the Savings Bank Act inconsistent with this Code? The objects and powers of the two Acts are wholly different. grants a power or capacity to employ and remunerate its officers, whilst the other gives jurisdiction to the Industrial Court to control and regulate that power and also the power and capacity of every employer and employee to dictate the conditions of employment

and remuneration in an industry. It would be impossible, I should think, to apply the maxim above mentioned to the Industrial Code if it had simply provided for the settlement of industrial disputes. If the limitation of the Code to disputes, to industrial war, repels Association the application of the maxim, then it is difficult, I think, to say that AUSTRALIAN the extension of the Code to industrial matters generally, to industrial war and to industrial peace alike, attracts the application of the maxim. If the subject matter of the Code would not in the one case be inconsistent with the Savings Bank Act as a fixation of wages and conditions, then it seems to me equally clear that it could not be so in the other case.

In my opinion the Savings Bank Act did not direct its attention to the subject matter dealt with by the Industrial Code, and made no provision for dealing with the mischief which it was the object of that Code to remedy. That mischief was, as I have indicated, the uncontrolled and arbitrary power of employer and employee in relation to employment in industries. The Code established a public tribunal to regulate and control that power, and to do justice between the parties. Some aid is given to this view in the provisions of Part II., Division VIII., of the Code—"Lock-outs and Strikes." It would be somewhat anomalous to prohibit employees in industry from using the only weapon they possess for improving their conditions, namely, a strike, and then fail to give them the benefit of the Code. But such, if the view I take of the case be wrong, would, I think, be the necessary result of Division VIII., coupled with the definitions in the interpretation clause, sec. 5.

Two further observations I desire to make: one, that the awards or orders of the Industrial Court would not be subject to the approval of the Governor. The provisions of the Code override, in my opinion, those of the Savings Bank and give of themselves efficacy and force to those awards and orders (see secs. 48 and 51). The other, that the officers of this Bank can be brought within the provisions of the Industrial Code if both Houses of Parliament pass a resolution approving of the inclusion of the Savings Bank in the definition of

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employer (see interpretation clause, sec. 5, "Employer," (b) (VII.)). This, I think, is another reason for concluding that the Code is not inconsistent with the Savings Bank Act. I do not wish to say that Association the Bank ought to be brought within the provisions of the Code. I merely point out the power that exists. Whether that power should or should not be exercised in the circumstances of this case. is a matter entirely for the Houses of Parliament.

The appeal ought to be allowed.

Appeal dismissed with costs.

Solicitor for the appellant, J. McGee, Adelaide.

Solicitors for the respondents, Baker, Glynn, McEwin & Napier, Adelaide, by Whiting & Aitken.

B. L.