H. C. OF A. 1931. DIMOND v. MOORE.

Order that the plaintiff do pay to the defendant Dimond his costs of action and of this appeal—such costs to be taxed.

Solicitors for the appellant, *Edmunds, Jessop & Ward.*

Solicitors for the respondent, *Baker, McEwin, Ligertwood & Millhouse.*

H. D. W.

FOLL 46 C.L.R. 73
C. at pp. 207/8. 54 A.L.J.R. 5.
C. 144. C.L.R. 377.

[HIGH COURT OF AUSTRALIA.]

DIGNAN . . . . . APPLICANT;
INFORMANT,

51 (N.S.W.) S.R. 307

AND

AUSTRALIAN STEAMSHIPS PROPRIETARY LIMITED . . . . . RESPONDENT.
DEFENDANT,

H. C. OF A. 1931.

SYDNEY, *April* 22, 23.

MELBOURNE, *May* 12.

Gavan Duffy C.J., Rich, Starke, Dixon and Evatt JJ.

Parliament (Cth.)—Senate—Regulations—Disallowance—"Laid before" Senate—By whom to be so laid—"Within fifteen sitting days after"—Notice of motion to disallow—What constitutes notice—Directory or imperative—Procedure in Senate—Standing Orders—The Constitution (63 & 64 *Vict. c.* 12), *secs.* 49, 51 (I.)—*Acts Interpretation Act* 1904-1930 (*No.* 1 *of* 1904—*No.* 23 *of* 1930), *sec.* 10—*Transport Workers Act* 1928-1929 (*No.* 37 *of* 1928—*No.* 3 *of* 1929)—*Transport Workers* (*Waterside Workers*) *Regulations* (*S.R.* 1931, *No.* 34).

Sec. 10 of the *Acts Interpretation Act* 1904-1930 provides that "Where an Act confers power to make Regulations, all Regulations made accordingly shall, unless the contrary intention appears—(*a*) be notified in the *Gazette*; (*b*) take effect from the date of notification, or from a later date specified in the Regulations; (*c*) be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations. But if either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation such regulation shall thereupon cease to have effect."

Held, by *Rich*, *Starke* and *Dixon* JJ. (*Gavan Duffy* C.J. and *Evatt* J. dissenting), that it was not a condition essential to the validity or operation of a resolution of disallowance that the regulations should first be laid before the House and notice of such resolution given.

On 26th March 1931 the Senate, by an absolute majority, agreed to the suspension of its Standing Orders "in order to discuss a matter of urgent public importance," namely, "the action of the Government in gazetting" on 20th March 1931 "new regulations under the *Transport Workers Act* 1928-1929." It then resolved that the statutory rule referred to by the Senator who moved the motion for the suspension of Standing Orders should be laid upon the table of the Senate, which was accordingly done by a Senator who was not a member of the Executive Council. A motion that the statutory rule in question be disallowed was then affirmed by a majority of the Senators.

Held, by *Rich*, *Starke* and *Dixon* JJ. (*Gavan Duffy* C.J. and *Evatt* J. dissenting), that the regulations were lawfully disallowed.

ORDER NISI to review.

The Australian Steamships Pty. Ltd. was charged at the Court of Petty Sessions at Melbourne, on the information of Cecil Joseph Dignan, an inspector of the Navigation Department, Melbourne, for that it was, on 7th April 1931, at Melbourne, in the State of Victoria, guilty of an offence against the *Transport Workers* (*Waterside Workers*) *Regulations*, in that it did at Melbourne, a port in the Commonwealth to which Part III. of the *Transport Workers Act* 1928-1929 applies, employ George Templar, a transport worker (being a waterside worker) in contravention of sub-reg. 1 of reg. 2 of the said Regulations, the said George Templar not being either a member of the Waterside Workers' Federation of Australia or a returned soldier or sailor within the meaning of the proviso to sub-reg. 1 of reg. 2 of the said Regulations, and members of the said Federation being at the time of the said employment available for employment at the said port.

At the hearing before a Police Magistrate evidence was given by Templar, a licensed waterside worker, who stated that he was neither a returned soldier or sailor, nor a member of the Waterside Workers Federation of Australia, that on 7th April 1931 he was engaged by a representative of the Australian Steamships Pty. Ltd. at a recognized "picking-up" place, known as "the Compound," Victoria Dock, Melbourne, to load and unload cargo on the s.s. *Mundalla*, a vessel then engaged in inter-State trade. Other evidence showed

H. C. OF A. 1931. DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

that at the time of the engagement the defendant Company knew that Templar was neither a returned soldier or sailor, nor a member of the Waterside Workers' Federation of Australia, and that members of such organization were then available for engagement but were not engaged. The following documents (*inter alia*) were admitted in evidence on behalf of either the informant or the defendant: *Statutory Rules* 1931, No. 34; *Commonwealth of Australia Gazette* 1931, No. 11, dated 18th February 1931; *Statutory Rules* 1931, No. 10; *Journal of the Senate* for 26th March 1931, and the *Standing Orders of the Senate*.

By a notice appearing in the *Gazette* of 18th February 1931 and purporting to be given by the Minister of State for Transport, Part III. of the *Transport Workers Act* 1928-1929 was made applicable (*inter alia*) to the Port of Melbourne. The *Statutory Rules* 1931, No. 34, consisted of regulations, referred to therein as the *Transport Workers* (*Waterside Workers*) *Regulations*, made on 20th March 1931 by the Governor-General in Council under the *Transport Workers Act* 1928-1929, to come into operation forthwith and, so far as material, were as follows:—"2. (1) In the employment, engagement or picking up of transport workers (being waterside workers) for work in or in connection with the provisions of services in the transport of goods the subject of trade or commerce by sea with other countries or among the States, at ports in the Commonwealth to which Part III. of the *Transport Workers Act* 1928-1929 applies, priority shall be given to those of such workers available for employment, engagement or picking-up at those ports, who are members of the Waterside Workers' Federation of Australia, an organization which is bound by an existing award of the Commonwealth Court of Conciliation and Arbitration applicable to such employment: Provided that nothing in this regulation shall operate to prevent the employment, engagement or picking-up of returned soldiers or returned sailors, as defined in section eighty-one A of the *Commonwealth Conciliation and Arbitration Act* 1904-1930, who were, at any time during the first six months of the year 1930, the holders of licences under Part III. of the *Transport Workers Act* 1928-1929, in respect of any ports to which that Act applied at any time during that year. (2) Any person who

employs, engages or picks up a transport worker (being a waterside worker) in contravention of the last preceding sub-regulation shall be guilty of an offence." The official record of the proceedings that took place in the Senate on 26th March 1931, namely, the *Journal of the Senate*, showed that Senator Sir George Pearce moved a motion for the adjournment of the Senate "in order to discuss a matter of urgent public importance," namely, "the action of the Government in gazetting new Regulations under the *Transport Workers Act*." A motion was thereupon moved by a senator "That the document quoted by Senator Sir George Pearce during his speech be laid upon the Table." This motion was resolved in the affirmative, and a copy of *Statutory Rules* 1931, No. 34 (*Transport Workers* (*Waterside Workers*) *Regulations*) was laid upon the table of the Senate by Senator Sir George Pearce. The motion for the adjournment of the Senate was put and negatived. Senator Sir George Pearce then moved "that the Standing Orders be suspended to enable the moving of a motion for the disallowance of the Statutory Rule laid upon the table with respect to the Transport Workers Regulations." On a point of order taken by a senator that in view of the provisions of sec. 10 of the *Acts Interpretation Act* 1904-1930 such motion could not be moved without notice, the President of the Senate ruled that so far as the Standing Orders related to the case the proceedings were entirely in order, and that the legal aspect of the matter was not one to be adjudicated upon by him. The motion for the suspension of the Standing Orders was resolved in the affirmative by an absolute majority of the senators, and a subsequent motion that the Statutory Rule in question be disallowed was also carried. Later, on the same day, a notice of motion appearing on the Senate's Notice Paper for that day in the name of Senator Sir George Pearce, and referred to below, was withdrawn. The relevant Standing Orders of the Senate are as follows:—"104. Notice of motion shall be given by the senator stating its terms to the Senate and delivering at the table a copy of such notice, fairly written, printed or typed, signed by himself and showing the day proposed for bringing on such motion." "114. No notice or contingent notice shall have effect for the day on which it is given." "115. No senator shall, unless by leave of

H. C. OF A. 1931. DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

the Senate, unless it be otherwise specially provided by the Standing Orders, make any motion, except in pursuance of notice openly given at a previous sitting of the Senate, and duly entered on the Notice Paper." "364. A document quoted from by a senator not a Minister of the Crown may be ordered by the Senate to be laid upon the table; and such order may be made without notice immediately upon the conclusion of the speech of the senator who has quoted therefrom." "448. In cases of urgent necessity, any Standing or Sessional Order or Orders of the Senate may be suspended on motion, duly made and seconded, without notice: Provided that such motion is carried by an absolute majority of the whole number of senators."

The Magistrate dismissed the information, stating that in doing so he followed the established practice of Courts of Petty Sessions, and proceeded that although in ordinary circumstances he would have held the regulation to be regular, in these cases the regulations were allowed by Parliament to be disallowed under certain circumstances, and he thought that he was justified in assuming that the Senate, a branch of the Legislature, was within its powers in disallowing them, and he left to a higher Court to decide whether the Senate acted reasonably or otherwise.

From this decision the informant now, by way of an order nisi to review, appealed to the High Court.

An affidavit by the Clerk of the Senate was admitted in evidence by virtue of sec. 155 of the *Justices Act* 1928 (Vict.). The affidavit showed that on 25th March 1931 the Clerk, as part of his official duties, received a notice of motion signed by a senator on behalf of Senator Sir George Pearce, which duly appeared on the Senate's Notice Paper for 26th March 1931, annexed to the affidavit, under the sub-headings "Business of the Senate—Notice of Motion," as follows:—"1. Senator Sir George Pearce: To move—That Statutory Rules 1931, No. 34, Transport Workers (Waterside) Regulations, be disallowed."

C. Gavan Duffy, for the applicant. The Regulations were not laid before the Senate in accordance with the requirements of sec. 10 of the *Acts Interpretation Act* 1904-1930. Sec. 10 (*c*) makes it a

condition precedent that regulations must be laid before the House prior to any motion for disallowance thereof being considered.

[EVATT J. referred to *Institute of Patent Agents* v. *Lockwood* (1).]

The laying of the regulations before Parliament constitutes part of the publication, and is essential to give them permanent validity: the condition of laying them before Parliament is a matter of substance and therefore mandatory (*Bain* v. *Thorne* (2)). It is not competent for any person other than a member of the Executive Council to lay regulations on the table of the Senate. Even if such regulations were laid before the Senate no notice of the motion for their disallowance was given within fifteen sitting days after they were laid upon the table. The words "fifteen sitting days" appearing in sec. 10 apply to the notice, that is, notice must be given within fifteen sitting days calculated from the day on which the regulations are brought before the House. That procedure was not followed here. A notice of motion to disallow given before the regulations were laid upon the table of the House is ineffective and cannot be relied upon. It is a proper and reasonable provision: the requirement that the papers should be before the House before a notice to disallow is given is so that members might have an opportunity of becoming acquainted with the nature and effect of the matter sought to be disallowed. The notice required by sec. 10 is such a notice as the Senate itself prescribes. As to this, see orders 104 and 115 of the Standing Orders of the Senate. The actions taken on 25th and 26th March do not constitute notice within the meaning of the Standing Orders. As the Standing Orders were suspended it would seem that the matter was actually dealt with without notice. Sec. 10 is a grant of a power subject to conditions, which conditions must be complied with irrespective of whether they are important or otherwise. To ascertain whether a provision is directory or mandatory regard must be had to the form of the provision. It is in the proper sequence of things that a notice of motion to disallow should be given after the matters proposed to be disallowed have been laid upon the table of the House.

Ham K.C. (with him *Robert Menzies* K.C. and *Stanley Lewis*), for the respondent. Sec. 10 of the *Acts Interpretation Act* 1904-1930 provides

(1) (1894) A.C. 347.

(2) (1916) 12 Tas.L.R. 57.

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

the means by which delegated legislation may be more prompt in operation by coming into force immediately upon being gazetted, and reserving to each House of Parliament the right to disallow. There are no words in the Act limiting to a Minister, or any particular Minister or person, the laying of the papers on the table. The whole purpose of sec. 10 is to bring to the notice of Parliament that it has a legislative function permitted to it of disallowing something which has the force of law. The gazettal of the regulation is not only the moment when it has the force of law but such gazettal acts as notice also. There is nothing in the Act, either express or implicit, which states that a disallowance cannot be made unless and until the regulations are laid on the table of the House. The laying of the regulations on the table is only part of the publication thereof (see *Allen* on *Law in the Making*, 2nd ed., p. 324, sec. 3, par. 3). The powers and privileges of the Senate are the same as those which obtain in the House of Commons (The Constitution, sec. 49). As to the procedure followed in the House of Commons in regard to matters required to be laid, and laid, before that House, see *Campion's Introduction to the Procedure of the House of Commons*, pp. 66, 141. The Act is not concerned with how the person who lays the papers on the table gets such papers into the House. Here there is a direction by the House that the papers should be laid upon the table of the House. In the absence of express language the Court will not go behind the resolution of the Senate for the purpose of ascertaining whether or not, in a matter of this nature, the correct procedure has been followed. Having got a formal disallowance, the same rule should be applied as if the Senate had passed an Act repealing another Act. The Court will not be concerned with whether there has been any irregularity as regards the Senate's Standing Orders (*May's Parliamentary Practice*, 13th ed., p. 441; *Craies* on *Statute Law*, 3rd ed., p. 34).

[EVATT J. referred to *Bradlaugh* v. *Gossett* (1).]

When a regulation becomes the law of the land upon gazettal the parliamentary function of disallowing it then arises, and such function should not be restricted to the discretion of the law-making body. There is nothing in the wording of the Act to deny that,

(1) (1884) 12 Q.B.D. 271, at pp. 278, 279.

once a regulation has the force of law, Parliament may by resolution require the relevant document to be placed upon the table, and may disallow it. If it be a direction in sec. 10 that the Executive or the Governor-General shall lay the regulations before Parliament, the mere fact that it was not done does not invalidate the disallowance of the regulation (*Middlesex Justices* v. *The Queen* (1)). Such a provision is merely directory (*Jones* v. *Robson* (2)). In considering whether a neglect to properly exercise the duties imposed is one which nullifies the disallowance, the Court must consider the main object of the legislation (*Montreal Street Railway Co.* v. *Normandin* (3)).

[DIXON J. referred to *Howard* v. *Bodington* (4).]

The suggested irregularities as to defects in the notice, and that an unauthorized person laid, or initiated the laying of, the Regulations before Parliament, are matters of slight importance ; and non-observance was not intended to make the proceedings invalid (*Maxwell* on the *Interpretation of Statutes*, 7th ed., p. 316). The principles which should be applied are as stated in *Le Feuvre* v. *Miller* (5). Analogous provisions to sec. 10 of the *Acts Interpretation Act* 1904-1930 are to be found in sec. 271 of the *Customs Act* 1901, except for the words " of which notice has been given." " Laying before " Parliament is not necessarily the same as " placing on the table of the House." If a matter is brought before the House in any manner which brings it under the cognizance of the House, that is sufficient to satisfy the requirement of sec. 10. " Within fifteen sitting days " means not later than fifteen days after the resolution, so that if notice was given before the resolution it would be a notice not later than fifteen days after the resolution. If such a construction is not given to these words it would be possible to disallow matters at any time, months or years afterwards. A construction should be given which tends to preserve the object of the Act. The order in which the various conditions are observed is immaterial. Although it is possible that the notice was in writing, the Act does not expressly require that a notice must be in writing. The statement by

(1) (1884) 9 App. Cas. 757, at pp. 769, 778.
(2) (1901) 1 K.B. 673, at pp. 679, 680.
(3) (1917) A.C. 170, at pp. 174, 175.
(4) (1877) 2 P.D. 203.
(5) (1857) 8 El. & Bl. 321, at pp. 331, 333 ; 120 E.R. 120, at pp. 123, 124.

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

the senator who moved the motion that he intended to move such motion is a sufficient notice under the Standing Orders of the Senate. The regulation is *ultra vires* as not being within the commerce power. The very words which a majority of this Court said in *Huddart Parker Ltd.* v. *The Commonwealth* (1) would lead to invalidity were included in the regulations now under review. The language of the regulation is too wide and leads to absurdities. The words "in connection with" are wide enough to include persons who at any stage are interested in goods which eventually are transported overseas or to other States by sea. On the question of severability under sec. 15A of the *Acts Interpretation Act* 1901-1930, the operation of sec. 10 of the Act of 1904-1930 can be severed, but the construction of the section cannot be severed. The invalidity or validity of the phrase used must be treated as a whole. Sec. 15A does not alter the construction of the language used but alters the effect. In so far as the regulation prohibits the employment of persons other than those specified, "in or in connection with" transport services, it goes outside the commerce power. Sec. 32 of the *Acts Interpretation Act* 1901-1930 does not have the effect of giving the same operation to regulations as Acts would have, because it relates to the meaning only and not to the operation.

C. Gavan Duffy, in reply. The words of sec. 10 should be given their ordinary meaning. A notice of motion is a notice that a resolution will be moved on some future date, and before such resolution can be moved its subject matter must have been before the House. A definite period of time must elapse between the notice and the moving. As to whether the Court can go behind a resolution of the Senate, see *Bradlaugh* v. *Gossett* (2). The case of *Howard* v. *Bodington* (3) lays down that such a rule exists, but not that such rule must be universally applied (*Craies* on *Statute Law*, 3rd ed., p. 228, par. (c)). A contravention of the enactment renders the matter void. As to the application of rules with regard to mandatory or directory provisions of enactments, see *Craies*, pp. 128, 230, 234 (*f*). Whether the provisions of the Regulations are constitutionally supportable is not decided one way or the other

(1) (1931) 44 C.L.R. 492.
(2) (1884) 12 Q.B.D., at p. 274.
(3) (1877) 2 P.D. 203.

in *Huddart Parker Ltd.* v. *The Commonwealth* (1). The words "in or in connection with" appearing in the regulation should be read as relating to work so far as such work is work which is part of the actual carrying out of commerce. Alternatively, the words must be construed with due regard to the words "waterside workers." Those words limit the operation of the regulation so as to bring it within the commerce power. Sec. 15A of the *Acts Interpretation Act* 1901-1930 directs the Court to construe Acts in such a way as to make them effective and "within the Constitution." The operation of the section should be extended to include regulations.

Cur. adv. vult.

May 12.

The following written judgments were delivered :—

RICH J. In the first place I have no doubt that the regulation was effectually laid before the Senate within the meaning of sec. 10 (*c*) of the *Acts Interpretation Act* 1904-1930. The construction of the proviso, however, is attended with some grammatical difficulty. English being a positional language, it is sometimes impossible to be certain how adjectival and adverbial phrases should be attached. Perhaps the provision with which we have to deal should be read as if the words "of which notice has been given" were in parenthesis, and the words "at any time within fifteen sitting days" modify the word "passes." If so, the provision was exactly complied with. If, however, the words "at any time within fifteen days" modify the word "given" so that the notice is to be given within fifteen days compliance was not precise because the notice was given before the fifteen days commenced. But the question is whether the purpose of the section was to require a notice at all or whether its purpose was to require that steps to disallow a regulation should be commenced within fifteen days. I think the latter was its true purpose, and that the draftsman not unnaturally assumed that a notice would be given, and expressed his limitation of time upon that hypothesis. I do not deny that in so expressing himself he has described the resolution by his relative clause, but it does not follow that he meant every part of his description to be a condition upon

(1) (1931) 44 C.L.R. 492.

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Rich J.

which its validity depended. The section is dealing with a power of a member of the Sovereign Legislature the procedure of which is not generally canvassed in Courts of law. The disallowance is really the expression of dissent by way of condition subsequent to a law for which the assent of both Houses would have been necessary in the absence of a rule-making power. The continued existence of a public law depends upon the expression of that dissent, and it seems to be very unlikely that those called upon to obey or to ascertain or to enforce the law were meant to undertake the investigation of all the conditions under which the dissent was expressed. The nature of the power and the character of the body that exercises it all appear to me to point strongly towards an interpretation of the provision as to notice as directory and not imperative. The cases on the subject will be found collected in *Maxwell* on the *Interpretation of Statutes*, 7th ed., p. 315 and following pages. For these reasons if the regulation was in force it ceased to be in force on 26th March 1931 prior to the date of the alleged offence.

The appeal should be dismissed and the order nisi discharged with costs.

STARKE J. Two questions were argued in this case: one, whether the *Transport Workers (Waterside Workers) Regulations* 1931, No. 34, were within the constitutional power of the Commonwealth; the other, whether the Regulations had been lawfully disallowed by the Senate.

In *Huddart Parker Ltd.* v. *The Commonwealth* (1) this Court supported the *Transport Workers (Waterside) Regulations* 1930, No. 158 and No. 159. As I understand that decision, the power to make laws with respect to trade and commerce with other countries and among the States authorizes a law empowering the Governor-General to make regulations with respect to the employment of transport workers in inter-State or foreign trade, and this power extends to the determination of the persons who should or might be directly employed or concerned in such trade. But some doubt was expressed whether the power authorizes a law or regulation

(1) (1931) 44 C.L.R. 492.

controlling the selection of agents doing work only incidental to inter-State or foreign trade, or regulating the relationship of employer and employee. The Regulations of 1930, Nos. 158 and 159, provide that in the employment, &c., of transport workers (being waterside workers) for oversea or inter-State vessels priority shall be given to members of the Waterside Workers' Federation; whilst the regulations here in contest provide that in the employment, &c., of transport workers (being waterside workers) for work in or in connection with the provisions of services in the transport of goods the subject of trade or commerce by sea with other countries and among the States priority shall be given to members of the Waterside Workers' Federation. The description of persons for whose benefit the regulation is designed is the same, namely waterside workers. Looking at the definition given in the *Transport Workers Act* 1929 (No. 3 of 1929), I take waterside workers to mean (subject to certain exceptions which are immaterial for present purposes) persons engaging in the loading or unloading of ships as to cargo, coal or oil fuel, and persons engaging in work in or alongside the ships in connection with the direction or checking of the work of other waterside workers. It is this class or description of workers who are given priority. But the work as to which they are given priority is not loading or unloading of ships as to cargo, coal or oil fuel, but work in or in connection with the provisions of services in the transport of goods the subject of trade or commerce by sea with other countries or among the States. So far as the regulation gives priority to waterside workers engaged in the transport of goods in inter-State or foreign trade, the *Huddart Parker* decision (1), in my opinion, supports its validity. But it is by no means clear, on the wording of the regulation, whether the transport of goods is confined to loading or unloading of ships within the description of such work mentioned in the definition of waterside worker contained in the *Transport Workers Act* 1929 (No. 3 of 1929), sec. 2, or whether it extends generally to the transport of goods and gives waterside workers priority of engagement and employment of all work of transport. When, however, a privilege is given to one description or class of workmen over all other subjects except

(1) (1931) 44 C.L.R. 492.

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Starke J.

returned sailors and soldiers, then that privilege must be given, and its extent defined, in the clearest and most unmistakable terms. And, in case of ambiguity, that construction is to be preferred which lessens the area of preference rather than that which extends it. Consequently, in my opinion, the priority given by the regulation does not extend beyond those engaged in the transport work included within the description already mentioned. The regulation, however, also gives priority to members of the Waterside Workers' Federation in employment or engagement for work in connection with the provisions of services in the transport of goods the subject of trade and commerce by sea with other countries and among the States. But if the priority given by the regulation be limited to those engaged in transport work included within the aforesaid description, then the words "in connection with" apply to work related or ancillary to the loading or unloading of ships in inter-State or foreign commerce. The decision in the *Huddart Parker Case* (1) appears to me, then, to govern the matter, and supports the validity of the regulation. But for the decision, I should have thought that the *Transport Workers Act* 1928-1929, and the regulation, invalid, and for the reasons which I gave in that case.

The other question is whether the regulation has been lawfully disallowed by the Senate. This depends upon the construction of the *Acts Interpretation Act* 1904-1930 (1904, No. 1, sec. 10, and 1930, No. 23, sec. 2):—"Where an Act confers power to make Regulations, all Regulations made accordingly shall, unless the contrary intention appears—(*a*) be notified in the *Gazette*; (*b*) take effect from the date of notification, or from a later date specified in the Regulations; (*c*) be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations. But if either House . . . passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation such regulation shall thereupon cease to have effect."

The *Transport Workers (Waterside Workers) Regulations* 1931, No. 34, were made pursuant to sec. 3 of the *Transport Workers Act* 1928-1929, and would in any case be subject to the provisions of

(1) (1931) 44 C.L.R. 492.

the *Acts Interpretation Act*, but they are expressly so made by the *Transport Workers Act* itself. The object of sec. 10 of the *Acts Interpretation Act* is twofold : one, to fix the date of commencement of regulations, the other to retain the power of disallowance in Parliament. The power to make regulations is construed, unless a contrary intention appears, as including a power to rescind, revoke, amend, or vary such regulations (*Acts Interpretation Act* 1901-1930, sec. 33 (3)). Therefore the power of disallowance is to ensure the control and supervision of Parliament over regulations. But it is argued that this control is subject to two conditions precedent : that the regulations be laid before each House of Parliament, and, before either House can disallow them, it must pass a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before such House. Is this right ? Acts passed for the purpose of enabling something to be done, and prescribing the way in which it is to be done, may, in the language of the cases, be absolute, or imperative, or directory only. An absolute or imperative enactment must be obeyed or fulfilled exactly, and, if it be neglected or contravened, the Courts of law will treat the thing done as altogether invalid and void (*Woodward* v. *Sarsons* (1)). On the other hand, if the enactment be directory only, its non-observance will not render the thing done invalid or void. " The question," says the Judicial Committee in *Montreal Street Railway Co.* v. *Normandin* (2), " whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. . . . When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done." (See also *Howard* v. *Bodington* (3).) In the present case, the object of the

(1) (1875) L.R. 10 C.P. 733. (2) (1917) A.C., at pp. 174-175.
(3) (1877) 2 P.D. 203.

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Starke J.

Legislature is to preserve the legislative power of the Houses of Parliament over regulations made by the Executive or other statutory authorities: not to give a new legislative power, but to maintain the Houses of Parliament as the dominant authority in legislative matters. It is therefore desirable that some procedure should be prescribed which will bring regulations to the notice of the Houses. Hence the direction that the regulation be laid before each House within fifteen sitting days after the making thereof. The implication of this provision, we have been told, is that the regulation-making authority must lay a regulation before each House of Parliament within fifteen sitting days of that House, or else the regulation is void. But no such sanction is to be found in the Act itself, and the suggested implication is quite unnecessary if the purpose of the provision be to apprise the Houses of regulations, and not to prescribe a condition of their power to disallow them. But then it is said that a regulation can only be disallowed if a resolution be passed to that effect after notice of it has been given at any time within fifteen sitting days after the regulation has been laid before the Houses. The purpose of the provision, however, is to fix a period of time beyond which disallowance should not take place, not to impose it as a condition on the power of disallowance. The opposite view would enable the regulation-making authority to delay the presentation of any regulation to Parliament, and thus keep it in force for fifteen days at least, and if disallowed, then re-enact it and delay presenting it to Parliament for another fifteen days. By this method a regulation might be kept in perpetual operation, and in fact it seems to have been adopted in the present case. On 20th March 1931 the Senate disallowed the Regulations 1930, Nos. 158 and 159, and on the same date the present Regulation 1931, No. 34, was made, having, as I think, substantially the same effect. This procedure was entirely subversive of the control of Parliament over regulations, which it is the main object of sec. 10 of the *Acts Interpretation Act* 1904-1930 to preserve. And when a member of the Senate referred to the new regulation and the House resolved that it be laid on the table, there was nothing in sec. 10 which imposed any condition or limitation upon its power to disallow the regulation. The Senate

suspended its Standing Orders, and thereupon resolved to disallow the regulation, and, in my opinion, lawfully disallowed it.

The order to review should therefore be discharged.

DIXON J. The question for decision upon this appeal is whether the *Transport Workers (Waterside Workers) Regulations* (S.R. 1931, No. 34) had any operation after 26th March 1931. The Regulations were made on 20th March 1931 by the Governor-General in Council as under the *Transport Workers Act* 1928-1929. On 26th March 1931 the Senate passed a resolution in these terms, "That Statutory Rules 1931, No. 34, *Transport Workers (Waterside Workers) Regulations*, laid on the table of the Senate this day, be disallowed." I am of opinion that upon the passing of this resolution the Regulations, supposing them to be valid, ceased to have any effect.

The provisions of sec. 10 of the *Acts Interpretation Act* 1904-1930 govern the power in the intended exercise of which the Regulations were made. They are as follows:—"Where an Act confers power to make Regulations, all Regulations made accordingly shall, unless the contrary intention appears—(*a*) be notified in the *Gazette*; (*b*) take effect from the date of notification, or from a later date specified in the Regulations; (*c*) be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations. But if either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation such regulation shall thereupon cease to have effect."

The contention that notwithstanding the resolution disallowing the Regulations they remained in force rests upon two grounds, namely, (i.) that the resolution was not passed pursuant to the prescribed or any notice and (ii.) that the Regulations were not "laid before" the Senate in the manner required by sec. 10. The facts which give rise to the contention are these:—(1) Before the adoption of the resolution the Regulations had not been laid before the Senate on behalf of the Governor-General in Council. (2) In accordance with a Standing Order of the Senate (No. 115) at a previous sitting of the Senate held on 25th March 1931 notice was

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Dixon J.

openly given, and duly entered on the Notice Paper, of a motion that Statutory Rules 1931, No. 34, Transport Workers (Waterside) (*sic*) Regulations be disallowed. (3) At the sitting of the Senate on 26th March 1931 before the motion so notified was called on, (i.) the Senate resolved that the Regulations which had been quoted by a Senator in a speech before the House should be laid on the table, and the Regulations were laid on the table of the Senate accordingly; (ii.) the Senate resolved that the Standing Orders be suspended to enable the moving of a motion for the disallowance of the Statutory Rule laid upon the table with respect to the Transport Workers. (iii.) the resolution was then passed disallowing the Regulations. (4) Afterwards upon the same day the motion entered on the notice paper was called on and the notice was withdrawn.

Upon this state of facts it appears that although formal notice was given of a resolution to the effect of that adopted, yet as the Regulations had not then been laid before the Senate, the notice was not given at a "time within," i.e., at a time during, a period beginning when the Regulations were laid before the House and ending after fifteen sitting days, and further, the notice was disregarded when the resolution was passed. Accordingly the informant maintains that even if on 26th March 1931 the Regulations were "laid before" the Senate within the true meaning of the requirement prescribed by sec. 10, nevertheless the resolution did not correspond with the description contained in the section, namely, "a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House." He gives to the word "within" its precise meaning, and denies to it an interpretation by which it would limit a time after, but not also a time before, which notice might be given; and he reads the provision as requiring not merely that the resolution shall be preceded by a notice, but also that the resolution shall be passed in reliance upon the notice which precedes it. But in any case a further contention is made on behalf of the informant, namely, that on 26th March 1931 the Regulations were not "laid before" the Senate within the meaning of that expression in sec. 10 because they were brought before the House by its own act and

not at the instance of the Governor-General in Council who is the authority empowered to make the Regulations. The provision does not itself specify the person or body whose duty it shall be to cause the Regulations to be laid before the Houses of Parliament, and an examination of the manner in which documents are dealt with by the House of Commons, whose powers, privileges and immunities belong by virtue of sec. 49 of the Constitution to the Houses of the Commonwealth Parliament, and upon whose procedure the Standing Orders of the Senate relating to "accounts and papers" are founded, supplies no reason for the conclusion that the requirement is not satisfied when the regulation is laid before the Senate by its own order. (See *May, Parliamentary Practice*, 10th ed., ch. XXI., p. 507, and particularly pp. 511-512.)

In my view, however, the solution of all these various difficulties is found in a more fundamental consideration. I think it an error to treat the requirement that the regulation shall be laid before each House of the Parliament as a condition precedent to the power of the respective Houses to disallow the regulation. It seems undeniable that the sole purpose of the requirement is to apprise each House of the existence and nature of the regulations, so that the question whether a resolution should be proposed for their disallowance may be considered by its members. I can find no justification for the view that if the regulations are not laid before both Houses within the time provided by the statute they cease to operate. The section does not say so, and it would be strange if such an omission of which there could often be no public knowledge operated to annul an existing law. In *Darrach* v. *Thomas* (1) *Cullen* C.J., *Pring* and *Sly* JJ. expressed the opinion that it would not so operate. But if the regulations remain in force although they are not laid before each House within fifteen sitting days, as I think must be the case, it seems unreasonable to suppose that the power of disallowance fails because of the omission. The limitation of fifteen days for laying the regulation before the Houses is contained in the direction to lay them before each House, and not in the provision authorizing disallowance, and, I think, it follows

(1) (1914) 31 N.S.W.W.N. 22.

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

DIXON J.

that in no view could the expiration of fifteen days without the regulations coming before each House be fatal to the power.

Two interpretations then remain open: one by which the power to disallow continues in abeyance and does not arise until the regulations are laid before the House, if and whenever that may happen; the other, by which the power is exercisable at any time unless the regulations have been laid before the House and fifteen sitting days have elapsed without notice being given of a resolution of disallowance. The reasons for adopting the first of these two interpretations are confined to the form in which the relative clause is expressed in the provision conferring power to disallow. Every consideration of substance appears to be against it. It converts into a condition essential to the validity of the disallowance a mere procedural requirement prescribed for no other purpose than to acquaint the Houses that regulations have come into existence, the annulment of which they might wish to consider. It treats the relative clause as not only specifying a time after which the power to disallow should cease, but as intending to require that some notice of motion should be given and that it should be given after the regulations had been laid before the House. Yet the nature of the notice and the manner and time of giving it are not defined by the section. The supposed requirement would be satisfied if the proposer stated to the House his intention to move the resolution at any appreciable interval of time before he actually did so. Indeed, it was suggested that in this case the motion to suspend the Standing Orders to enable the moving of the resolution of disallowance amounted to notice of that resolution within the meaning of the section. A consideration of the matter leaves no doubt that the sole purpose of the relative clause was to place a limit of time after which regulations should not be liable to annulment by resolution. If a time were prescribed within which the resolution must actually be passed, as was done in the *Customs Act* 1901, sec. 271, the state of parliamentary business might make it easier to defeat a proposal for disallowance by delay than to obtain its consideration. To avoid this difficulty it was natural to fix a time within which the proposal must be made and, in doing so, to refer to the familiar parliamentary procedure by which motions are

made upon notice unless by leave of the House, or unless it be otherwise specially provided by the Standing Orders (e.g., see Senate S.O., No. 115). It may be conceded that as a result the relative clause describes a course which has not been exactly pursued. But the question is not simply whether the course has been exactly pursued, but whether an intention is expressed or otherwise sufficiently appears that exact compliance with its language shall be essential to the power. Again it may be conceded that upon this question weight should be given to the circumstance that the power of disallowance is expressed in the form of a condition, the occurrence of which defeats the regulations. The law supplies, however, other considerations which must also be attended to. "It is a rule of construction that matters shall not be deemed to be conditions precedent unless they are declared to be so. That is a sound rule to apply to statutes, and unless the legislature has in plain words said that a certain thing shall be a condition precedent, we must not so construe it" (per *Martin* B. in *Thompson* v. *Harvey* (1)). Unless obliged to do so by the terms of the enactment, Courts should not hold validity to be conditional upon an exact compliance with statutory provisions which describe the mode of exercising a public authority over large and indefinite bodies of persons where to do so would not achieve the main purpose of the enactment and would produce serious inconvenience and cause confusion and doubt in the ascertainment of the law. In the language of Lord *Penzance*: "There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings" (*Howard* v. *Bodington* (2); see too *Montreal Street Railway Co.* v. *Normandin* (3)). "The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially" (per Lord *Coleridge* C.J., who read the judgment of the Court (*Brett, Archibald and Denman* JJ.) in

(1) (1859) 4 H. & N. 254, at p. 262; 157 E.R. 836, at p. 839.

(2) (1877) 2 P.D., at pp. 210-211.

(3) (1917) A.C., at pp. 174-175.

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Dixon J.

Woodward v. *Sarsons* (1)). "No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed" (per Lord *Campbell* L.C., *Liverpool Borough Bank* v. *Turner* (2)).

The statute in this case deals with powers of the Houses of the Legislature. It contemplates the enactment of statutes delegating what is equivalent to a legislative power, and makes a general provision by which each House may dissent from a law made pursuant to the delegation and thus end its operation. The power of subsequent dissent may be considered as a substitute in the case of delegated legislation for the requisite of a prior assent in the case of direct legislation. The power relates to regulations having the force of law which may bind the public at large. The course of procedure and the mode in which the authority and privileges of the Houses of Parliament are exercised are not commonly regarded as proper for judicial consideration. The requirement that regulations shall be laid before each House is manifestly for the benefit of the House, to apprise it of the regulations. It is equally clear that the reference to the notice of motion is for the purpose of limiting a time within which proceedings towards disallowance must be begun. This being the scope of the statute, the real intention of the Legislature appears to me to have been to empower each House to disallow the statute by resolution, to require the regulations to be brought to its notice, but not to condition its power of disallowance upon this being done, and to require it to begin to act in the exercise of the power before the expiration of a time set running by laying the regulations before it.

In my judgment it was open to the Senate to proceed to disallow the Regulations before they were laid before the House. But in any event the resolution of disallowance having been passed before the expiration of fifteen sitting days from the time when the Regulations were in fact laid before the Senate the requirements

(1) (1875) L.R. 10 C.P., at p. 746.
(2) (1860) 2 DeG. F. & J. 502, at p. 507; 45 E.R. 715, at p. 718.

of sec. 10 were observed in substance and the resolution was therefore valid and effectual.

For these reasons I think the appeal should be dismissed.

EVATT J. The issue raised between the parties to this appeal is whether the *Transport Workers (Waterside Workers) Regulations*, No. 34 of 1931, made in pursuance of the *Transport Workers' Act* 1928-1929 had any legal force or effect on the date in respect of which the appellant prosecuted the respondent for a breach of the Regulations.

It is said on behalf of the respondent: (1) That when made by the Governor-General the Regulations were not within the competence of that authority or of the Commonwealth Parliament itself; (2) that they are no longer operative because the Senate of the Commonwealth has disallowed them in pursuance of the Commonwealth Act of Parliament—the *Acts Interpretation Act* 1904-1930.

The first question depends upon the true interpretation of the Regulations in relation to the trade and commerce power of the Commonwealth Parliament under the Constitution. I shall deal at once, however, with the second contention. The answer to the question it raises will determine the binding force of the matters and things prescribed by the Commonwealth statute for the disallowance of Executive regulations by a single House of the Parliament. Regulations made under most Commonwealth Acts may be affected therefore by the decision of the Court upon this part of the case. Inasmuch as, under our constitutional system, statutory rules and regulations proceed upon the advice and responsibility of the Executive Government, and are not directly enacted upon the advice or with the consent of either House of the Parliament, they may not carry out the wishes of one or other of the two Houses. It was thought necessary therefore by both Houses acting conjointly that a scheme should be provided by a law of the Commonwealth which would control the legal situation if, when regulations had been made under the authority of the Executive Government, it was proposed in either the Senate or the House of Representatives to disapprove of them or disallow them.

The written embodiment of the scheme is sec. 10 of the *Acts Interpretation Act* 1904-1930. That section binds not only the Executive

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Evatt J.

itself but each House of the Parliament also. Until amended or repealed by another Act full effect must be given to the commands contained in it. The terms of the section must settle the main controversy between the parties.

I think it is best to set down at once all the provisions of sec. 10:—

> "10. Where an Act confers power to make Regulations, all Regulations made accordingly shall, unless the contrary intention appears—(*a*) be notified in the *Gazette*; (*b*) take effect from the date of notification, or from a later date specified in the Regulations; (*c*) be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations. But if either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation such regulation shall thereupon cease to have effect."

The question may be stated as follows: Let it be assumed that the regulation-making authority has caused the Regulations to be notified in the *Gazette* and that they have come into operation by virtue of sec. 10 (*b*); let it be assumed also that the time within which such Regulations are to be laid before the Senate has not elapsed and that the Executive has not yet caused the Regulations to be laid before the Senate; may the latter House effectively disallow the Regulations without obedience to the provisions contained in the last paragraph of sec. 10 itself?

It will be observed that the section provides a method of regulation making as well as a method of regulation ending. The first matter of importance is that notification in the *Gazette* is essential to the Regulations taking effect at all. For sub-sec. (*b*) provides that the regulations are to operate from the date of notification or from a later date specified in the regulations themselves. There can be no "later date" unless the date of notification is first ascertained. No date of notification is ascertainable unless notification takes place. And yet there is no *express* statement in the section that *unless and until* notification of the regulations takes place they shall not take effect at all. Analysis of the sub-section shows that the negative statement is unnecessary. Indeed the negative proposition is inherent and implicit in, because it is a necessary correlative of, the positive enactment in the sub-section.

Sub-sec. (*c*) next commands that the regulations shall be laid before each House of the Parliament within a certain stated period. It is said that this provision is purely "directory." I must confess that I do not think much assistance is forthcoming from the use of that phrase in such connection. The regulations have either to be laid before each House or they have not. But (it is urged) they are operative without being so laid, and if they are not so laid they do not by reason thereof cease to be in force because the time specified has passed.

Such question does not, of course, arise for actual decision and the matter seems to be untouched by authority. But Lord *Herschell* L.C. in *Institute of Patent Agents* v. *Lockwood* (1), speaking of a similar provision, said "any of the rules made by the Board of Trade may be annulled by either House of Parliament within forty days after they are laid on the table, and the laying of them on the table is made compulsory." (Cf. *R.* v. *Minister of Health*; *Ex parte Yaffe* (2).) The use of the passive voice—"all Regulations . . . shall . . . be laid before each House of the Parliament . . . "—should not be allowed to obscure the real position. In *Lockwood's Case* the relevant provision was "any rules made in pursuance of this section shall be laid before both Houses of Parliament." It is customary in such matters to impose a duty upon the Executive Government without actually naming the individuals who are to perform it. Providing the duty is carried out it matters not what particular Executive member or agent does it.

In the present case can there be any doubt but that within the time prescribed the Executive Government would have recognized the duty cast upon it of laying the Regulations before the Senate by simply carrying out such duty? If by any extraordinary chance on any particular occasion the duty were ignored the form of "compulsion" available might have to be considered and decided. If the remedy of mandamus against the responsible Minister were inappropriate it might still be possible for either House to take cognizance of the Regulations for the purposes of disallowance, seizing the opportunity of which it had been denied by breach of duty. That situation has not arisen here.

(1) (1894) A.C., at p. 357. (2) (1930) 2 K.B. 98, at p. 158, per *Greer* L.J.

H. C. OF A. 1931. DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD. Evatt J.

I now turn to the last paragraph of sec. 10. The language of this section is simple and direct. It may be paraphrased as follows:—"*But if* either House of the Parliament passes a resolution of a certain character within a certain period of time the regulation shall *thereupon* cease to have effect." The paragraph assumes that all necessary steps have been taken and that there is in actual force and effect one or more statutory regulations. A sequence of events may then occur. If the sequence is of the described character one or more of the regulations is to operate no longer. The passing of the necessary resolution by the House is the last event in the series and until that event takes place the regulation continues in force.

It is not satisfactory to speak of any one of the events postulated in the paragraph as being "conditional" or "non-conditional," "mandatory" or "directory." The statutory command is clear, "but if event A happens within a period of time B, the consequence is C." This sentence regarded as a logical judgment is hypothetical in form and substance. The required conclusion C necessarily involves the happening of A within B. It is not a matter of any difficulty to make an alteration in the hypothesis or any part of it. And if parts of the prescribed sequence including prior notice of the necessary resolution and the giving of such notice *after* the regulations have been laid before the House are of no legal effect, it would be better to expunge the surplus words from the Statute Book. Their continuance would be quite futile and even misleading.

But there is not the slightest ground for supposing that any amendment of the section is desired or intended. It is, therefore, far better and far safer in the long run to assume that the Legislature did not intend to lay down an order of procedure which could be followed or not at the will of either House. The probability is that Parliament intended to ordain that the end—disallowance—was to be reached by way of the means and in the order prescribed, and not otherwise; and that none of the words used are surplusage.

It is broadly contended that the last paragraph of sec. 10 confers the important power of disallowance upon each House. That statement is true. It is then added that the method of exercising the

granted power is but a matter of form, and quite subordinate in importance to the power itself. But this is not a full or adequate description of the section. For it requires the Executive to notify the regulations in the *Gazette*. It prevents the regulations from taking effect at all until notification has been duly made. It commands the Executive to lay the regulations before each House. It gives the Executive a certain period of time in which to carry out that duty. It enables a member of either House to commence the proceedings of disallowance. It compels a member to give notice of motion for disallowance in whole or part of the regulation. It limits the time within which that notice may be given so as to lead to an effective disallowance.

The section therefore includes not only a power of disallowance in each House of the Parliament but other closely related powers, rights and duties. In the aggregate there is established a series of checks and balances designed to reconcile and adjust conflicting and competing interests. Together there is made up an interwoven code in which it is possible but not very profitable to classify the prescriptions of Parliament in their order of importance.

Why should it be said, for instance, as it is, that notice of the proposed resolution of disallowance is quite unimportant? In the present case where the Senate passed a resolution disallowing Regulation No. 34 on 26th March 1931 one can readily come to the conclusion that the same result—disallowance—would also have been reached if the ordinary procedure had been adopted. But the section must be regarded from a more general point of view. It might well happen that from time to time there is a fairly even division of opinion in either House on the question of disallowance, and the Standing Orders in force may not always require an absolute majority for their suspension. In such a case, if notice may be dispensed with, a minority of the total membership might by suspension of Standing Orders pass a resolution of disallowance against the considered opinion of the majority of its members. The House would then be powerless to rescind the resolution of disallowance. The requirement of notice serves the purpose of protecting the House against such a contingency. If so, the inclusion of notice as a component part of the statutory scheme is explained and justified. It

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Evatt J.

is a safeguard. Some opportunity for discussion is ensured. Not only is the House itself protected but the Executive is enabled to prepare its case for the retention of the regulations.

It was suggested that as sec. 10 does not state precisely what notice is to be given, the proposal of the motion of disallowance itself involves and includes the giving of notice of the resolution. In my opinion this view is quite untenable. The Standing Orders of the Houses of the Parliament and, indeed, all British parliamentary usage clearly distinguish between a resolution carried after and one carried without prior notice. Identification of a resolution made in pursuance of prior notice is easily made. "No Senator shall, unless by leave of the Senate, unless it be otherwise specially provided by the Standing Orders make any motion, except in pursuance of notice openly given at the previous sitting of the Senate and duly entered on the Notice Paper" (Senate S.O., No. 115)—*May, Parliamentary Practice*, 13th ed., pp. 230, 234. What is contemplated by the section is that the resolution of disallowance should proceed upon and be made in pursuance of a motion on notice given in accordance with the Standing Orders of either House for the time being.

Once it is admitted that notice *may* on occasion perform a useful and important function in the scheme of sec. 10, it would seem to follow at once that one need not endeavour to measure its importance relatively to the other commands of the section. But certain cases must first be noted.

The statute under consideration in *Justices of Middlesex* v. *The Queen* (1) gave the Commissioners of the Treasury full power to grant to public servants on retirement a reasonable and just compensation for loss of office. If the compensation decided to be paid exceeded a certain sum it was provided that the allowance was to be granted by special minute to be laid before Parliament. It was held by the House of Lords that the failure of the Treasury to observe the statutory requirements by embodying their decision in a minute and then laying such minute before Parliament did not invalidate the grant of a pension to a member of the service. "I do not shrink," said the Earl of *Selborne* L.C. (2), "from going further than

(1) (1884) 9 App. Cas. 757.

(2) (1884) 9 App. Cas., at p. 769.

that, and saying that if that which is granted might properly be granted, and if the grant or the award is made, as far as the officer is concerned, in the usual manner, and communicated to him in the usual manner, I do not think that the neglect of the Treasury or of their proper officer to record in their proper books a special minute, or their neglect to lay that special minute before Parliament, need be construed as nullifying what otherwise would be a valid grant and award of a pension made and announced to the pensioner in a form which is sufficient in all other cases."

But that decision does not assist the respondent in the present case. The superannuation enactment was mainly concerned with the relationship between the Treasury and the public servant. A record of the Treasury decision should have been kept in proper form and the minute then placed before Parliament. But the rights of the individual officer could hardly be adversely affected by the neglect of the Treasury to perform its duty to Parliament. Parliament had no power to approve or disapprove of the grant, and the two matters directed to be done were not to be done until after the vital decision had been made by the Treasury.

In *Jones* v. *Robson* (1) the statute under review gave power to a Secretary of State, on being satisfied that any explosive was or was likely to become dangerous, to prohibit the use of such explosive in mines. The method of prohibition was " by order, of which notice shall be given in such manner as he may direct." The substantive power was to prohibit. The prohibition was to be embodied in an order. But the extent of the notification of the order was left to the discretion of the Secretary of State himself. He did not direct in what manner the notice should be published nor did he publish any notice of the order.

It will be seen that this case was also of a rather special character. The order of time in which the events were to occur under the statute was a very important element in the decision. For the statute did not contemplate any notification foreshadowing or proposing the order of prohibition so as (say) to give persons interested an opportunity of making suitable representations to the Secretary of State. The Act of Parliament merely required that

(1) (1901) 1 K.B. 673.

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Evatt J.

after the decision to prohibit and the making of the order on the entire and sole responsibility of the Secretary of State, the latter was to notify and publish his decision. The conclusion was easily reached that his failure to do so in the particular case did not make the prior order itself null and void.

The present case is quite distinct. Under the *Acts Interpretation Act* 1904-1930 the resolution of disallowance has to be preceded by notice, and we have seen that the requisite notice may have a considerable bearing upon whether a resolution ever comes to be passed at all. There might be some resemblance to *Jones* v. *Robson* (1) if sec. 10 had provided that after disallowance by the Senate notice of such disallowance should be published in the *Gazette* or elsewhere. In such a case (there being no other relevant provisions to consider) mere failure to notify the disallowance could hardly be held to invalidate it.

Montreal Street Railway Co. v. *Normandin* (2) was also referred to. The decision itself is in no way analogous to this case, but there is a discussion in that case at pp. 174-176 on the principles to be adopted in construing statutes containing directions to be observed. "The question whether provisions in a statute are directory or imperative has very frequently arisen in this country," said Sir *Arthur Channell* at p. 174, "but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at." Lord *Penzance* in *Howard* v. *Bodington* (3) stated the matter thus: "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

Lord *Penzance's* statement might usefully, I think, be accompanied by a warning. It is not to be taken for granted either that the enactment under consideration has one "general object" or that it is possible to disregard a statutory direction simply because its importance does not appear to be so clear as that of other provisions. Once it

(1) (1901) 1 K.B. 673. (2) (1917) A.C. 170.
(3) (1877) 2 P.D., at p. 211.

is agreed that a prior command or prescription bears such a relation to a legislative scheme that its observance or non-observance *may* affect the existence of the final act, matter or thing on which the statute operates—it is almost impossible to treat disobedience of the prior provisions as of no effect. The object of the Legislature may be and often is to set down a series of interdependent commands some of greater, some of lesser importance but all going to the making up of one comprehensive whole. Such an object is, in my opinion, expressed in sec. 10 of the *Acts Interpretation Act*. There can be no valid disallowance of regulations by either House of Parliament unless the resolution passed is of the stated description, because notice might prevent the resolution from being adopted at all.

The precise question in dispute between the parties is whether the *Transport Workers* (*Waterside Workers*) *Regulations*, No. 34 of 1931, for a breach of which the respondent was prosecuted, ceased to have effect on 26th March 1931 when a resolution disallowing the regulations was carried by the Senate. By sec. 3 of the *Transport Workers Act* 1928-1929 these Regulations had the force of law "subject to" the two Commonwealth *Acts Interpretation Acts*. For the reasons I have given above the resolution of disallowance is ineffective unless the provisions of sec. 10 of the 1904-1930 Act have been complied with.

It was suggested that the maxim *Omnia præsumuntur rite esse acta* applies, and the fact that the proceedings under review took place "within the walls" of the Senate (*see Bradlaugh* v. *Gossett* (1)) prevents us from looking further than at the resolution of disallowance itself. This, however, is not an action for the purpose of declaring the resolution of the Senate invalid or of questioning in any way the power of the Senate to act as it did in accordance with its own rules and standing orders. "There can be no doubt," said Lord *Coleridge* C.J., "that, in an action between party and party brought in a Court of law, if the legality of a resolution of the House of Commons arises incidentally, and it becomes necessary to determine whether it be legal or no for the purpose of doing justice between the parties to the action; in such a case the Courts

(1) (1884) 12 Q.B.D., at p. 279.

H. C. OF A. 1931

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Evatt J.

must entertain and must determine that question" (*Bradlaugh* v. *Gossett* (1)).

Here the defendant in the Court below put in evidence the proceedings of the Senate for the purpose of establishing a defence, and he was permitted to add a fresh document for our consideration during the course of the appeal (*Justices Act* (Vict.), sec. 155). The acts and proceedings of the Senate being before us, there is no occasion or scope for the application of any legal presumption that everything has been carried out in accordance with the statute. We must simply apply the section and see whether it has been observed.

It is quite clear that the provisions contained in sec. 10 have not been observed. The resolution carried on 26th March was not in pursuance of the notice given on 25th March. The latter notice was withdrawn after the resolution of disallowance had been carried on 26th March. The resolution was carried despite the absence of notice and after standing orders had been suspended so as to do away with the necessity of notice. The notice of motion of 25th March did not follow upon the laying of the Regulations before the Senate. The Executive Government at no time caused the Regulation to be laid before the Senate.

It comes to this—that the resolution of disallowance was not of the character described in the section nor was it given within the period required by the section. The event whereby the Regulations would have ceased to operate did not occur, and they therefore continued to operate notwithstanding the purported disallowance.

It is therefore necessary to consider the second answer to the case made by the appellant. It is said that the Regulations are void because they are not authorized by the Constitution and, therefore, sec. 3 of the Transport Workers Act cannot protect them.

The power of the Commonwealth Parliament to pass regulations with respect to trade and commerce with other countries and among the States has been considered very recently by this Court in the case of *Huddart Parker Ltd.* v. *The Commonwealth* (2). It must, I think, be taken as established that sec. 3 of the *Transport Workers Act* and the Commonwealth Constitution do authorize the making of the present Regulations if their true intendment is to secure preference

(1) (1884) 12 Q.B.D., at p. 274.

(2) (1931) 44 C.L.R. 492.

of employment to members of the Waterside Workers' Federation in respect of the performance at various ports of the Commonwealth of the service of handling goods in the course of inter-State trade or foreign trade and commerce by sea. It becomes necessary, therefore, to see what is the meaning and scope of the Regulations.

They apply only to the "transport of goods the subject of trade or commerce by sea with other countries or among the States." These words of description are necessarily words of limitation. Sea-going inter-State and foreign commerce is largely made up of the movement of goods from State to State and between Australia and foreign countries. The words quoted from the Regulations are a sufficiently accurate transcription of the words of the Constitution defining the area of the Commonwealth legislative power. Consequently if the transport of any specified goods was not in the course of inter-State or foreign commerce the Regulations do not apply to such transport; and if the transport is in course of inter-State or foreign commerce it may be validly regulated by Commonwealth authority.

The Regulations next proceed to make a further delimitation of their scope and application. The subject matter dealt with is "work in . . . the provision of services in" the inter-State and foreign transport of goods. I do not think that the composite phrase quoted refers to more than the actual work or service of transporting goods. From the point of view of the individual employee it is "work"; from the larger point of view of the concept of commerce itself, the same thing may be fairly described as the "provision of a service." We are still clearly within the ambit of power.

Do, then, the words "in connection with" extend the application of the Regulations beyond the constitutional power? The service of inter-State transportation of goods is comprised within the power. But the inter-State journey of goods may be broken and their transport temporarily interrupted. The legislative power of the Commonwealth does not disappear during such periods of interruption provided the goods are still in course of inter-State trade. The goods themselves may be at rest but necessarily destined to continue their inter-State motion. The work of loading and unloading goods

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Evatt J.

in vessels voyaging from State to State is a component part of inter-State trade. The operations of loading and unloading involve the handling, re-handling and guarding of the merchandise and the supervision of these services. Some of this work may not be comprised in the inter-State transport as such. But they may be accurately described as work "in connection with" that transport.

The argument that Regulation No. 34 of 1931 goes beyond the constitutional power necessarily depends upon its express and intended scope. Illustration is very helpful. This Regulation might apply (it is said) to the work performed by a lift-attendant in the warehouse from which the goods are emerging on their inter-State journey for the work of such attendant is "connected with" the transport of the goods. Similarly (it is said) banking and insurance arrangements in respect of a contract embodied in a bill of lading may also involve work "in connection with" the transportation of goods inter-State.

Let us see what there is in this suggestion. The heading of the Regulations, *Transport Workers* (*Waterside Workers*) *Regulations*, shows beyond any doubt that in application they are to be limited to that class of labour. The term "waterside worker" is defined in the *Transport Workers Act* itself, and it has the same meaning in the Regulations. (*Acts Interpretation Act* 1901-1918, sec. 32 (1)). If so, it means "a transport worker who offers or is engaged for work in the loading or unloading of ships" and certain other operations of an incidental character. The argument for the respondent necessarily involves the bold assertion that with respect to the work of warehouse lift-attendant and of providing banking and insurance services, preference of employment is intended to be secured to wharf labourers.

In my opinion the Regulation intends nothing of the kind. The Federation to whose members preference is given is identified by reference to an award of the Commonwealth Court of Conciliation and Arbitration. This award may be presumed to have been made in settlement of an industrial dispute extending beyond the limits of one State. Can there be any doubt but that the industry in which the dispute occurred and to which the award relates was the industry of wharf-labouring and not any other industry? The

Regulations apply only at *ports* of the Commonwealth specified from time to time, not at warehouses, banks, or insurance offices. They are intended to cover the occupation and industry of waterside work and nothing else.

The truth is that sec. 2 of the *Transport Workers Act* in defining " waterside worker " identifies not only the individual worker but also the industrial zone to which he belongs. It is by actual or attempted entry into that zone that a person becomes a " waterside worker." When the individual worker gives up waterside work he ceases to be a " waterside worker " for the purposes of the Act and Regulations. If he seeks a job as lift-attendant it is not as a waterside worker that he does so. So regarded, the definition of " waterside worker " describes the work to be done as well as the person who is to do it.

I have already pointed out that the loading and unloading of ships in the course of inter-State transit of goods involves incidental operations. It is these operations—ancillary to the actual inter-State movement—that are brought within the scope of the Regulations by the use of the phrase " in connection with." It was not intended to give preference to waterside workers in respect of work other than wharf-labouring work and its defined incidents. If so, the Regulations do no more than the previous Regulations held to be within the Commonwealth constitutional power in *Huddart Parker Ltd.* v. *The Commonwealth* (1).

The Magistrate's decision dismissing the prosecution was, in my opinion, erroneous in point of law. The resolution of disallowance relied on by the respondent and proved to have taken place was not in accordance with the Commonwealth statute, and had no effect whatever in terminating the operation of the Regulations. Moreover, the Regulations themselves when originally made were authorized both by the *Transport Workers Act* and the Constitution. On the true interpretation of the Regulations, the recent decision of this Court in *Huddart Parker Ltd.* v. *The Commonwealth* (1) decides that they are within the trade and commerce power conferred upon the Commonwealth by sec. 51 of the Constitution. No other defence

(1) (1931) 44 C.L.R. 492.

H. C. OF A. 1931.

DIGNAN v. AUSTRALIAN STEAMSHIPS PTY. LTD.

Evatt J.

to the charge made and proved against the respondent can be supported by the facts proved in evidence.

In my opinion the following propositions have been established:—

(1) Sec. 10 of the *Acts Interpretation Act* 1904-1930 (by virtue of which the Senate purported to disallow the *Transport Workers (Waterside Workers) Regulations* is binding on each House of the Parliament as well as on the Executive Government of the Commonwealth.

(2) The section is to be regarded as the statutory code or scheme for reconciling and adjusting Executive responsibility for the making of Statutory Rules and Regulations with limited control of the Executive power by either House of Parliament.

(3) The section (*a*) commands the Executive to lay its regulations before each House but allows a specified period of time in which to perform that duty; (*b*) enables a member of either House to commence proceedings for disallowance within a further specified period of time after the regulations are duly laid before the House, and (*c*) compels the member to give prior notice of his resolution of disallowance in order to safeguard both the House and the Executive Government against a decision given without full opportunity for attendance and debate.

(4) The plain words of sec. 10 require those who assert that regulations have been duly terminated to prove the existence of a "resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before" the House. The proceedings in the present case show that the resolution carried was not of the described character, and it did not therefore operate so as to end the operation of the Regulations.

(5) The Regulations (as their heading indicates) are on their true interpretation limited in scope and operation to giving preference of employment in or in connection with the work or service of loading or unloading merchandise which is being carried by sea from State to State or between Australia and other countries.

(6) The recent decision of this Court in *Huddart Parker's Case* (1), therefore, applies and the Regulations, so interpreted, are authorized by the *Transport Workers Act* and by the legislative authority of

(1) (1931) 44 C.L.R. 492.

the Commonwealth over trade and commerce with other countries and among the States.

(7) The only two defences raised to the prosecution of the respondent for breach of the Regulations, namely, (a) valid disallowance by the Senate on 26th March 1931 and (b) legal incapacity of the Commonwealth Legislative and/or Executive authority to make them have, therefore, both failed.

The appeal should be allowed.

The Chief Justice wishes me to say that he agrees with me in thinking that the appeal should be allowed.

Appeal dismissed. Order nisi to review discharged with costs.

Solicitor for the applicant, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

Solicitors for the respondent, *Blake & Riggall.*

J. B.