would be a fair market price for untied tenants. No reason has been suggested why he should be specially favoured with such a discount, or treated differently from all other tied tenants, and if the prices charged were not exorbitant, what prices other than these can these words have referred to? In *Grant* v. *Grant*, L.R. 5 C.P. 727, Lord Blackburn adopted and judicially approved of the rule stated by him in his work on Contract of Sale, 3rd ed., p. 51. It runs thus—"The general rule seems to be that all facts are admissible which tend to show the sense the words bear with reference to the surrounding circumstances concerning which the words were used, but that such facts as only tend to show that the writer intended to use the words bearing a particular sense are to be rejected."

In *Bank of New Zealand* v. *Simpson*, Lord Davey, delivering the judgment, approved of this statement of the law.

The fact that so many judges have formed different opinions as to the meaning of these words "fair current market price" and "fair market price" as used in this contract and contracts like it, should suffice in itself to show that they are susceptible of either of two meanings. If that be so, as I think it is, the relations of the parties and all the surrounding circumstances may be taken into consideration, not to add to or alter their contract, but to interpret it, to show the nature and qualities of the subject-matter, or, in other words, to show the meaning the parties themselves attached to the language they have used. Viewing the expression "market price" through the light of the surrounding circumstances proved in this case, it is to my mind clear that their meaning was the price at which the appellants sold their beers to the vast preponderance of their customers, the licensees of their tied houses. And that by the use of the word "fair" it was, I think, simply meant to protect the lessee from being required to pay some extortionate price kept up by combination amongst the brewers or by some such like device. I do not think that the use of the word "market" excludes this construction.

The jury have found that the defendant had only been charged a fair market price as applied to a tied house. In my view that was all he was entitled to. The evidence given sustains that conclusion abundantly. The facts are all before your Lordships, and Order XXXIX, r. 6, and Order XL, r. 10, of the Rules of the Supreme Court 1883 therefore apply. This House has full jurisdiction to finally determine the matter in dispute and make such order as justice requires. That order in the present case, in my opinion, is that the decision of the Court of Appeal should be reversed, with costs, and the order made by the Lord Chief-Justice at the trial restored.

Their Lordships sustained the appeal.

Counsel for Appellants—Sir R. Finlay, K.C.—Holman Gregory, K.C.—H. A. M'Cardie. Agents—Loxley, Elam, & Gardner, Solicitors.

Counsel for Respondent—Rawlinson, K.C. —Douglas Hogg. Agent—S. Tonkin, Solicitor.

HOUSE OF LORDS.

Friday, December 12, 1913.

(Before the Earl of Halsbury, Lords Kinnear, Dunedin, and Atkinson.)

METROPOLITAN WATER BOARD *v.* AVERY.

(On Appeal from the Court of Appeal in England.)

Local Government — Water — "Domestic Purposes" — "Trade Manufacture or Business"—Supply to an Eating-house—Metropolitan Water Board (Charges) Act 1907 (7 *Edw. VII, c. cxc*), *secs.* 8 *and* 25 *—Water-works Clauses Act* 1863 (26 *and* 27 *Vict. c.* 93), *sec.* 12.

The respondent occupied a licensed public-house in which besides the ordinary trade of a publican she carried on a subsidiary business in supplying lunches to the number of twenty or thirty a-day. The appellants claimed to impose an extra charge for water used for the purposes of such business, on the ground that it was used for a "trade, manufacture, or business." *Held* that the test of what constitutes "domestic purposes" is the character of the purpose for which the water is used, not the character of the premises on which it is used, and that therefore in this case the water was supplied "for domestic purposes," not for a "trade manufacture, or business."

The *facts* of the case so far as material are stated by Lord Atkinson.

The 25th section of the Metropolitan Water Board (Charges) Act 1907 (7 Edw. VII. cap. cxci), sec. 25, reads as follows:—"In and for the purposes of this Act the expression 'domestic purposes' shall be deemed to include water-closets and baths constructed or fitted so as not to be capable of containing when filled or filled up to the overflow or waste pipe (if any) more than eighty gallons, but shall not include a supply of water for any of the following purposes, namely—steam, gas, motor, and other like engines; railway purposes; ventilating purposes; working any machine or apparatus; consumption by or washing of horses and cattle; washing carriages or other vehicles; watering gardens by means of any outside tap or any hose, tube, pipe, sprinkler, or other like apparatus; fountains, or any ornamental purpose; cleansing sewers and drains; cleansing and watering streets or roads; fire extinction; flushing drains by means of any apparatus discharging automatically; public pumps, baths, or washhouses; any trade, manufacture, or business; any bath constructed or fitted so as to be capable of containing when filled or filled up to the overflow or waste pipe (if any) more than eighty gallons.

Their Lordships' considered judgment (in which Lord Kinnear concurred) was delivered by

Earl of Halsbury—This case turns upon the construction to be given to the

25th section of the Metropolitan Water Board (Charges) Act 1907.

By that section it is enacted that the expression "domestic purposes" shall be deemed to include water-closets and baths within certain capacities, and then proceeds to exclude from that expression a large number of categories, among which are to be found "any trade, manufacture, or business." If each of these words is to be taken as establishing a distinct category, that clause is unskilfully drawn, and indeed its main purpose is apparently not so much to define what are domestic purposes as to enact what shall not be deemed to be domestic purposes, and the result of giving the meaning to the phraseology of the defining section which is sought to be given to it in this case would be to enact what it is I think absolutely certain the Legislature never intended. I think the case of *Colley's Patents Limited* v. *Metropolitan Water Board* (1911, 2 K.B. 38, 1912 A.C. 24) is decisive of this if one looks at the meaning of Lord Loreburn's judgment; and the judgment of Channell, J., in *Pidgeon* v. *Great Yarmouth Water-works Company* (1902, 1 K.B. 310) very clearly points out the mode in which the increased consumption of the water is intended by the Legislature to be paid for when used for domestic purposes.

I cannot help adding that I think no ordinary person would have misunderstood the meaning of the enacting section but for the defining section, which as I have said is not a defining section at all.

LORD DUNEDIN—The question in this case is whether the water which is used by the occupier of a public-house in preparing luncheons for customers and in washing plates and dishes, is water used for domestic purposes. The two Judges of the Divisional Court and three Judges of the Court of Appeal have unanimously held that it was. With that judgment I agree. The point depends upon the construction to be put upon the words "domestic purposes" as used in the Metropolitan Water Board (Charges) Act 1907, and the argument has ranged round the expressions used in section 25 of that statute.

It is first of all to be noticed that section 25 is not in the true sense of the word a definition section. It is not only that (as the Lord Chancellor said in *Colley's Patents Limited* v. *Metropolitan Water Board*) it is couched in slovenly and inaccurate language, but it does not even profess exhaustively to define. It begins by taking "domestic purposes" as a known expression; it then goes on to say it shall be "deemed to include" two specific uses, and then it proceeds to give an enumeration of certain uses it is not to include—not an exhaustive definition, but a series of warning notes, so to speak, against an undue inflation of the term "domestic purposes." The particular warning note that is here appealed to by the appellant is the expression supply for "any trade, manufacture, or business."

What is the criterion which enables us to fix whether the water is supplied for a trade, manufacture, or business. It does not settle it to point out that a trade, &c., is carried on in the premises where the water is supplied. That is absolutely clear from the terms of section 9, which contemplates a supply of water for domestic purposes being furnished to a building where not only a trade is carried on but where the occupation is solely for the purposes of the trade, *i.e.*, not residential at all, and *Colley's Patents Limited* v. *Metropolitan Water Board* in this House is a direct authority. Nor will it do to say that the persons who use it on the premises only go there for the purposes of a trade being carried on. *Pidgeon* v. *Great Yarmouth Water-works Company* (the boarding-house case) is an authority against that. It seems to me that there are just two alternative views left. Either the criterion is to see whether the purpose in connection with the trade is domestic or non-domestic in itself, the criterion adopted by the Courts below, and very clearly expressed in the judgments of Bray, J., and Buckley, L.J., or to say, as the appellants contend, that every use of water, however domestic in its nature, that appears as a step however insignificant in a trade operation, is use of water for a trade and therefore non-domestic.

The great objection to this latter view is that it goes so far, and leads to such astounding results, as to make it flagrantly in conflict with what I venture to call the common-sense view of the Act. The appellants themselves seem to have felt this, inasmuch as they admit that they are not used to exact from public-houses anything more than a domestic rate. Yet unless all liquors are consumed neat, and the glasses and mugs never washed, it is clear that the water used in public-houses is according to their method of definition a trade use. Nor does the matter stop there. Not only does all water in hotels and boarding-houses for the cooking of provisions (a severe narrowing down of *Pidgeon* v. *Great Yarmouth Water-works Company*) follow the same fate, but no retail shopkeeper could use a damp sponge to clean dusty goods without becoming liable to a trade rate for the water so used.

On the other hand, the test of the quality of the use in itself—so tersely put by Buckley, L.J., "The test is not whether the water is consumed or used in the course of the trade, but whether the use of the water is in its nature domestic"—is not only easy of application but is automatic in checking abuse. For purposes truly domestic cannot be amplified, and when the consumption on such heads is large it is invariably attended by an increase in the rating value of the premises, which brings with it an increased water rate.

The only seeming puzzle is introduced by the illustrations to which Sir Robert Finlay clung hard in his interesting argument—an establishment of public baths or public water-closets carried on for a profit. The use of a bath or of a water-closet is, says he, in its nature a domestic purpose, and there-

fore the test of domestic purposes by nature breaks down.

I think such extreme cases—for such establishments, at least of the second class, are not common—may be left to be dealt with till they arise within the Metropolitan area. But when they do I think the solution may be suggested by a phrase in the judgment of Bray, J. He says—"If the water is used for a purpose which is common to all domestic establishments it is none the less used for domestic purposes because it is ancillary to a trade, manufacture, or business." In the case supposed the use of the water would not be ancillary to the business, it would be the business itself, and I should personally be prepared to hold—again, I venture to think, taking a commonsense view of the situation—that the trade use of the water was so pre-eminent that it could not be said that in those establishments there was truly a use for a domestic purpose at all.

I think the appeal should be dismissed. I concede that the case is not covered by the actual judgment in the case of *Colley's Patents Limited* v. *Metropolitan Water Board* in this House. But I believe the views I have expressed are in entire concordance with the spirit of that judgment.

LORD ATKINSON—The appeal in this case is brought from an order of the Court of Appeal, dated the 24th July 1913, affirming an order of a Divisional Court composed of Bray and Channell, JJ., dated the 17th March 1913, whereby a judgment and order of the Judge of the County Court of Middlesex, dated the 8th October 1912, was reversed. This last-mentioned order was made on a suit instituted on or about the 13th May 1912 by the Metropolitan Water Board against the respondent in the County Court to recover the sum of 5s. in respect of water supplied to the latter's premises for the purposes, as it was alleged, of a trade or business within the meaning of the 25th section of the Metropolitan Water Board (Charges) Act 1907.

The facts are not disputed. So far as material they are as follows:—The respondent is the occupier and licensee of premises known as the Crutched Friars Hotel, No. 1 John Street, Minories. In these premises she carries on in addition to the business of a publican what has been styled a catering business—that is, she serves luncheons for reward to the number of twenty or thirty per day to persons, members of the public, who come to her establishment to get their luncheon and are ready to pay for it. The premises are fitted in the same manner as ordinary public-houses, with supply pipes connected with the appellants' mains. The so-called catering business involves a use of water for cooking, washing dishes, plates, &c., and scrubbing floors, in excess of what would be used in an ordinary public-house certainly of the size and nature of the Crutched Friars Hotel, and the sum sued for was sued for under sections 18 and 24 of the before-mentioned Act in respect of this additional supply.

The County Court Judge came to the conclusion that this catering business involved the use of a considerable quantity of water in excess of what would be used if respondent had not carried on that business, that she could not carry it on without using this extra quantity of water, and held that the water was being used for the purposes of a trade or business, as distinguished from domestic purposes within the meaning of this section.

This was the substantial question raised. Subsidiary questions were also raised, but have not yet been discussed on this appeal. The substantial question is obviously of vast importance.

The matter for decision is the construction of this 25th section, and ultimately, I think, the meaning of the words "any trade, manufacture, or business" used in it.

The Master of the Rolls, in speaking of this section in *Metropolitan Water Board* v. *London, Brighton, and South Coast Railway Company* (1910, 2 K.B. 890) said that "a more confusing section could scarcely be imagined." And Lord Loreburn, in the case of *Colley's Patents, Limited* v. *Metropolitan Water Board*, described it as "couched in slovenly and inaccurate language."

Criticisms even more severe than these would, in my view, be well deserved. Your Lordships were referred to many authorities decided before 1907 on statutes dealing with water-works and water supply to houses, somewhat similar in their provision to those of this Act of 1907. It must, I suppose, be assumed that the draftsman who drafted this section had some intelligent appreciation of the points ruled and of the principles laid down in these cases, and one would not unnaturally expect that when this last Act came to be drafted its framer would have made their meaning plain and clear, instead of leaving it obscure, as he has done.

It has been many times pointed out that this 25th section does not contain any complete definition of "domestic purposes," and that several of the purposes excluded by it are not true exceptions at all—that is, are not purposes which but for the exclusion would be covered by the words "domestic purposes," used in a rational sense. For instance, cleansing and watering streets or roads, railway purposes, public pumps, &c. And it is impossible to discover what principle, if any, guided the framer of the Act in selecting the purposes excluded.

According to the ordinary meaning of language, I take it that water supplied for domestic purposes would mean water supplied to satisfy or help to satisfy the needs, or perform or help in performing the services, which, according to the ordinary habits of civilised life are commonly satisfied and performed in people's homes, as distinguished from those needs and services which are satisfied and performed outside those homes, and are not connected with nor incident to the occupation of them.

It is plain from the provisions of the seventh and eighth sections of this statute that it is the character of the purpose for which the water is supplied, and not the

character of the premises to which it is supplied, that is the crucial consideration in determining whether the water is supplied for domestic purposes or not.

Again, it is plain from these sections that it is not at all necessary that the persons for whose use the water is supplied should reside in the premises supplied. In each of the following cases, decided on this statute of 1907 as well as on other statutes whose provisions were somewhat similar, it was held that residence on the premises supplied was no test as to whether water was supplied for domestic purposes or not—*Smith* v. *Müller*, 1894, 1 Q.B. 192; *South-West Suburban Water Company* v. *St Marylebone Union*, 1904, 2 K.B. 174; and *South Suburban Gas Company* v. *Metropolitan Water Board*, 1909, 2 Ch. 666.

The case of *Colley's Patents, Limited* v. *Metropolitan Water Board* is to the same effect, as the staff who used the sanitary appliances for which the water was supplied did not reside on the premises. No person slept in them, and no portion of them was charged with the payment of inhabited house duty. Now, if this be the law, as I think it clearly is, I confess I am unable to discover any sound principle upon which the case of *Pidgeon* v. *Great Yarmouth Water-works Company* can be distinguished from the present. There the occupier of the premises supplied carried on therein the business of a lodging-house keeper. His guests were lodged as well as boarded. The water was used for the purposes of cleansing, cooking, drinking, and sanitary purposes. These are obviously domestic purposes. The preparation and supply of food, the cleansing of the appointments necessary to serve it, the cleansing of the rooms in which the food is served, the supply of water to be drunk with the food, the supply for flushing lavatories, are all domestic requirements. The guests paid for their board and lodging, and they resorted to the house solely for the purpose of being boarded and lodged. The water was supplied directly in and for that business, and was used in the conduct of it.

It was held that the water was supplied for domestic purposes, but if there be no virtue in residence as a test, it would appear to me that, on principle, precisely the same result should be arrived at if the guest had merely boarded on the premises and not lodged. And I think that the business of providing, for reward, food for the persons who resort to the occupier's premises is as much a business and no more than is the business of providing not only food for them but lodging them in addition. The fact that the occupier could probably feed more people on his premises than he could feed and in addition lodge, cannot in my view affect the question.

It may well be that Channell, J., was quite right in saying, as he did in that case, that the use of water for the domestic purposes of the inmates of the house is the thing which is covered by the water rate based on the annual value of the house—that "it is a rough way of measuring the amount of water likely to be used for domestic purposes by the number of the inmates which the house is capable of containing and accommodating." But the annual value of the house would as obviously be increased by its being turned from an unprofitable dwelling-house to a profitable eating-house, as by turning it from an unprofitable dwelling-house into a profitable board and lodging-house. And in a rough way the water board would be as surely remunerated in the one case as in the other. He also said—"I think that although the supply for domestic purposes is paid for on the annual value, it does not make any difference whether the inmates of the home are guests who are entertained by the owner at his own expense or whether they pay for their board and lodging, or whether they are pupils whose parents pay for their board and lodging, or whether they are paupers for whom the parish pay. All those cases have been dealt with and decided, and it seems to me that our decision is governed by authority."

In *South-West Suburban Water Company* v. *Guardians of Poor of St Marylebone* the defendants were the owners and occupiers of premises in which they had erected and maintained schools for the education of children from the workhouse of the parish. The defendants required the plaintiffs to supply (on the usual terms) water to this school for domestic purposes, which the latter declined to do. The main question for decision was the right of the defendants to have this supply. Buckley, J., as he then was, expressed himself thus—"But granting that the schools are a dwelling-house, the next contention of the plaintiffs is that these premises have not and cannot have domestic purposes because that which is carried on upon the premises is a business, and that all the supply is for the purposes of that business. . . . I agree that the premises are used to carry on a business. If I were to define the business carried on I should say that it is the business of providing for, maintaining, and training pauper children, and that this is none the less a business because it is carried on, not for profit, but, on the contrary, at a large expense. . . . But although that which is carried on upon the premises is a business, it is, in my opinion, perfectly consistent that in business premises water may be wanted for domestic purposes. The question is, what is the character of the purpose, not what is the character of the place of user."

I think that the decisions in this case and in the case of *Pidgeon* v. *Great Yarmouth Water-Works Company* were perfectly right; but if the business carried on in this school was in fact the providing for and maintenance of pauper children, it is, I think, clear that the water supplied was at the same moment supplied both for domestic purposes and business purposes. This indeed must be so, inasmuch as the very essence of the business carried on was to supply those needs and render those services. And when one has to construe this clumsily drawn and puzzling statute one may well ask oneself if the water supplied is at the same moment used and intended to

be used for both purposes—and it is impossible to separate the one purpose from the other—which consideration is to prevail? Is the domestic purpose to be treated as the real and dominant purpose and the business purpose to be ignored, or *vice versa?* I confess that the answer to this question which commends itself to my mind is this, that the business of maintaining these pauper children, or a business which consists in providing cooking and supplying food to persons who resort to the occupier's premises for the very purpose of having their food supplied, is not a "trade, manufacture, or business" within the meaning of the excluding clause of this 25th section.

Sir Robert Finlay admitted, on the principle laid down in *Colley's Patents Limited* v. *Metropolitan Water Board*, that water used to supply food to or provide some of the conveniences of civilised life for the staff engaged in a factory would rightly be held to have been supplied for domestic purposes. He further, as I understood, admitted that if food was supplied to persons who resorted to the occupier's premises for some lawful purpose of business or pleasure, the water used to cook that food would be properly held to have been supplied for domestic purposes. I think this contention is absolutely sound. He went on, however, to contend, as it was absolutely necessary for the appellants' case that he should contend, that the result would be different if the only business carried on in the occupier's premises was the supply of food, and if the only purposes for which the persons resorted to those premises was to be supplied with food. In the one case he said the water would be used in the business only incidentally as an ancillary for the convenience of customers or of the staff; in the other it would be used directly for the very purposes of the business itself. I cannot think that the framers of this statute ever intended to base the distinction between domestic purposes and trade purposes on such a narrow foundation as this.

Business in its widest sense means "a state or quality of being busy," "a state of being busily engaged in anything." "Industry, diligence, an occupation, profession, or trade, &c."—Murray's Dictionary, vol. i, p. 1205.

Section 9 of this Act provides for a rebate in certain cases where any house or building or any part thereof is occupied solely for "any trade or business, or of any profession or calling, by which the occupiers seek a livelihood or profit." It is obvious that a calling by which a person "seeks a livelihood or profit" may be a business in a very true sense, or a trade, and unless the word "calling" is used in this section to denote something akin to a profession it would in this instance denote a business. If its meaning be not so restricted, then unless there be a redundancy in this section this word "business" must itself be used in a restricted sense. In section 16 the purposes for which a supply of water may be demanded by meter are stated to be all purposes other than domestic. That is the broad distinction. Section 20 provides that the board shall not be bound to afford a supply otherwise than by measure for any house or building whereof any part is used for any trade or manufacturing purposes for which water is used, or for any common lodging-house, barracks, workhouse, or any public institution or building. The word "business" is not used in this section. The obligations and privileges of the board are therefore these—They are bound under section 7 to supply water for domestic purposes when required without meter; they are equally bound under section 16 to supply when required water by meter for all purposes other than domestic; and under section 20 they have the privilege of refusing to supply otherwise than by measure any house or building any part of which is used for any "trade or manufacturing purpose."

It would be but natural that a provision should be introduced into section 25 to guard the privilege thus conferred by section 20, and prevent the board under any pretence or by any device from being deprived of the benefit of it. As the board are bound to supply without meter water for domestic purposes, and are not bound to supply water otherwise than by meter for purposes of trade or manufacture, the two provisions would be brought into harmony by excluding the purposes of trade or manufacture from the meaning of domestic purposes, and would none the less be so if the word "business" was added in section 25 with the object of covering businesses of the nature of trade or manufacture.

In my view the principle of *noscitur a sociis* applies to this provision of section 25. I think the business indicated is a business of the nature and character of some manufacture, or trade in the nature of manufacture, in which, to use the words of Channell, J., the water is as it were the raw material of the trade, not like the business carried on in this eating-house. Sir Robert Finlay pressed in his argument the case of public laundries. He urged that they render services for their customers which are usually rendered in one's home. I do not think the cases are analogous, and it is unnecessary to decide the point.

I am clearly of opinion that the purposes for which the water was in this case supplied were in their nature and character domestic, and the business carried on by the respondent was not a business within the meaning of section 25. I therefore think that the judgment appealed from was right, and the appeal should be dismissed, with costs.

Their Lordships dismissed the appeal.

Counsel for the Appellants—Sir R. Finlay, K.C. — Clavell Salter, K.C. — Goodland. Agent—Walter Moon, Solicitor.

Counsel for the Respondent—Ryde, K.C. —Konstam. Agents—Maitlands, Peckham, & Company, Solicitors.