

## [HIGH COURT OF AUSTRALIA.]

JOSKE . . . . . APPELLANT ;  
 INFORMANT,  
 AND  
 LUBRANO . . . . . RESPONDENT.  
 DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF  
VICTORIA.

*Dentists Act 1898 (Vict.) (No. 1595), sec. 7\*—Unregistered person using words implying that he is carrying on practice of dentistry.*

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MELBOURNE,  
Sept. 18, 19.

Griffith C.J.,  
Barton and  
O'Connor JJ.

L., who was neither a legally qualified medical practitioner nor a registered dentist, practised dentistry in a house outside of which were displayed various signs one of them being "D., Dentist," and another "Teeth extracted." D. was a registered dentist who was absent from Victoria. L.'s name did not appear on any of the signs, but he was the only person who practised dentistry at the house.

*Held*, that L. was properly convicted of the offence of using at his place of business words implying that he was carrying on the practice of dentistry, contrary to the provisions of sec. 7 of the *Dentists Act 1898*, notwithstanding

\*Sec. 7 of the *Dentists Act 1898* is as follows:—"(1) No person other than a legally qualified medical practitioner or other than a person registered under the *Dentists Act 1887* or under this or the Principal Act shall, nor shall any company (other than an association consisting wholly of registered dentists), take or use or by inference adopt the name title word letters addition or description, of 'dentist' or 'dental practitioner' or 'dental surgeon' or 'surgeon dentist,' or use or have attached to or exhibited at his or its place of business or residence (either alone or in combination with any other word or words or letters) the words 'dental company' or 'dental institute' or 'dental hos-

pital' or 'dental college' or 'college or school of dentistry' or 'mechanical dentist' or any name title word letters addition or description implying or tending to the belief that he or such company is registered under the *Dentists Act 1887* or under this or the Principal Act or that he or such company is qualified to practise dentistry or is carrying on the practice of dentistry or is entitled to or to use such name title word letters addition or description.

"(2.) Any person or company guilty of a contravention of this section shall on conviction be liable to a penalty not exceeding Twenty pounds for every such offence," &c.

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that, in reply to questions put to him by a witness who visited the house and asked for D., L. said that D. was absent, that his name was L., and that he acted for D. and was carrying on the business for him.

Decision of Supreme Court, (*Joske v. Lubrano* (1906) V.L.R., 407; 28 A.L.T., 40) reversed.

APPEAL from the Supreme Court of Victoria pursuant to special leave.

At the Court of Petty Sessions at Footscray on 12th April 1906, an information was heard whereby Ernest Joske, Registrar of the Dental Board of Victoria, charged that Ernest Vistrani Lubrano, not being a legally qualified medical practitioner, nor a person registered under the *Dentists Act* 1887, nor under the *Dentists Act* 1898, nor under the *Medical Act* 1890, Part II., did, on the 19th March 1906, at 92 Nicholson Street, Footscray, use at his place of business words implying that he was carrying on the practice of dentistry, contrary to the provisions of the *Dentists Act* 1898.

At the hearing evidence was given that one Edward Walter Dermer, of 92 Nicholson Street, Footscray, was, and that the defendant Lubrano was not, a registered dentist, and also that the defendant was not a legally qualified medical practitioner. Evidence to the following effect also was given:—Joseph Lane, a senior constable, said that he knew the defendant's place of business at 92 Nicholson Street, Footscray; that on October 26th 1905, he called on the defendant there and had a conversation with him; that he asked the defendant if he was a registered dentist, and that the defendant said "I am a registered dentist in New South Wales"; that he asked the defendant to produce his certificate of registration in New South Wales; that the defendant produced certain papers purporting to be an acknowledgment of an application for registration, but did not produce the certificate; that the defendant said "I am carrying on this business for my brother-in-law Mr. Dermer. He is residing in Western Australia at present and has been away for nearly eighteen months"; that the surgery contained appliances usually used in the practice of dentistry; and that the name of "E. W. Dermer, Dentist," appeared on the premises in three or four places and inscriptions such as "Teeth Extracted" in various places, implying that dentistry was carried on there. On cross-

examination Lane said that the defendant's name did not appear anywhere on the premises, nor did the defendant hold himself out to him (Lane) as a dentist, and that the defendant said he was Mr. Dermer's representative.

Thomas Hamilton said that he went to 92 Nicholson Street, Footscray, on 19th March, and saw the defendant, and had the following conversation with him:—Hamilton.—“Is Mr. Dermer in?” The defendant.—“Not at present, but I am acting for him.” Hamilton.—“Are you a dentist?” The defendant.—“Yes.” Hamilton.—“What is your name?” The defendant.—“Lubrano. I am acting for Mr. Dermer. I am his brother-in-law.” The defendant (after examining Hamilton's teeth).—“Who sent you to me?” Hamilton.—“Mrs. Wilson.” The defendant.—“I thought so, she is one of my best patients. She has sent a lot of people to me.” Hamilton also said that on the window of the room and on the side of the wall there were the words “E. W. Dermer, Dentist,” and that this or similar signs appeared in three or four places.

The defendant, having been convicted, obtained an order *nisi* to review the conviction on the ground (*inter alia*) that “there was no evidence to support the said conviction inasmuch as it did not disclose that the defendant used the said words at his place of business.”

The order *nisi* coming on for hearing before *à Beckett* A.C.J., was made absolute: *Joske v. Lubrano* (1).

The informant, having obtained special leave, now appealed to the High Court.

*Isaacs* A.G. and *Mackey*, for the appellant. There is ample evidence that the respondent used at his place of business words implying that he was carrying on the practice of dentistry, which is an offence under sec. 7 of the *Dentists Act* 1898. The facts that the words “E. W. Dermer, Dentist” were displayed outside the house, and that the respondent practised as a dentist inside and was the only person who practised as a dentist there, were evidence of that offence: See *Brown v. Whitlock* (2); *Panhaus v. Brown* (3); *Royal College of Veterinary Surgeons v.*

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(1) (1906) V.L.R., 407; 28 A.L.T.,  
40.

(2) 19 T.L.R., 524.

(3) 68 J.P., 435.

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*s. 3; Encyclopædia of the Laws of England*, vol. IV., p. 217;  
*Carpenter v. Hamilton* (2); *Pharmaceutical Society v. London  
 and Provincial Supply Association Ltd.* (3); *Pharmaceutical  
 Society v. Wheeldon* (4). The last case shows that an offence is  
 committed notwithstanding that the defendant is carrying on the  
 business for some one else who is a registered dentist. There  
 was evidence that the place in question was the defendant's place  
 of business. He was the only person carrying on dentistry there.  
 It is however immaterial whether it was the defendant's place of  
 business, for the offence of using words implying that the person  
 using them is a dentist is independent of any place of business.

*Arthur*, for the respondent. There is only one offence  
 disclosed by the evidence, and that is taking the title of dentist,  
 which is made a specific offence by the Act. What happened  
 inside the house between the defendant and the witnesses is  
 relevant to the question whether the defendant did use the word  
 "dentist." If the sign outside had nothing to do with the  
 representation which is made inside, the offence is not complete.  
 The implication to be drawn from the sign is rebutted by the  
 defendant telling the patients that he is not the person referred  
 to in the signs. The case of *Panhaus v. Brown* (5) came directly  
 within the words of the Statute (41 & 42 Vict. c. 33.) It is con-  
 sistent with the evidence that the signs were not put up by the  
 defendant at all but were left up by Dr. Dermer. All the cases  
 referred to in the *Encyclopædia of the Laws of England* are cases  
 where the defendant himself had put up the sign. There is no  
 evidence that the defendant carried on this business. It is  
 necessary to show that he carried it on for his own profit:  
*Pedgrift v. Chevallier* (6).

*Isaacs* A.G. in reply.

GRIFFITH C.J. Sec. 7 of the *Dentists Act* 1898 provides that no  
 person not being duly qualified shall "take or use or by inference

(1) (1892) 1 Q.B., 557.

(2) 37 L.T., 157.

(3) 5 App. Cas., 857.

(4) 24 Q.B.D., 683.

(5) 68 J.P., 435.

(6) 8 C.B.N.S., 240.

adopt the name title word letters addition or description, of 'dentist' or 'dental practitioner' or 'dental surgeon' or 'surgeon dentist,'—that is one prohibition; then follows another—"or use or have attached to or exhibited at his . . . place of business or residence (either alone or in combination with any other word or words or letters) . . . any name title word letters addition or description implying or tending to the belief that he . . . is qualified to practise dentistry or is carrying on the practice of dentistry," &c. The respondent was charged that he, not being a legally qualified medical practitioner, nor a person registered under the *Dentists Act* 1887, nor under the *Dentists Act* 1898, nor under Part II. of the *Medical Act* 1890, did at Footscray, on 19th March 1906, use, at his place of business, words implying that he was carrying on the practice of dentistry. The facts were that the respondent was the occupier of a house outside of which were placards with the words "E. W. Dermer, Dentist" on them, and two or three other signs, "Teeth Extracted," &c. As a matter of fact he did carry on the practice of dentistry at that house, and was the only person who did so. The justices were of opinion that he had used, at his place of business, words implying that he was carrying on the practice of dentistry, and they convicted him. It is to be observed that the offence is "using" the words, which must mean having written or printed words affixed to some place so as to be seen. *à Beckett J.*, in the course of his judgment, said: (1)—"I do not at all mean to say, supposing the evidence were of a man carrying on business in a place, and the plate and placards, whatever they might be, outside indicating that the business of a qualified dentist was carried on there by a qualified dentist—that might not be enough. In the absence of evidence negating the inference which would be drawn from these facts, an unqualified person might rightly be charged with using at the place at which he carried on his business words within the section inducing the belief that he was a qualified person." That opinion of the learned Judge is exactly in accord with that of the King's Bench Division in the case of *Panhaur v. Brown* (2), decided in 1904. In that case the charge was slightly different, but the finding of fact was that the defendant carried

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(1) (1906) V.L.R., 407, at p. 413.

(2) 68 J.P., 435.

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on the practice of dentistry in the house, that outside he had on the door-plate the words, "West Central Dental Institute, Limited," and "Dental Institute, Limited, West Central Registered Zahnärztliches Institut." The magistrate came to the conclusion that the description on the door-plate and in an advertisement implied that the person who in fact practised dentistry at the house was a person specially qualified under the *Dentists Act* 1878, or other Acts, and that such was the impression which would be left on the mind of any ordinary person reading the advertisement or the words on the door-plate. He was of opinion that the appellant, being the only person who actually practised dentistry on these premises, did avail himself of and use the description on the door-plate and the description in the advertisement implying that he was a person specially qualified under the *Dentists Act* 1878, and so on. On appeal to the King's Bench Division, Lord Alverstone C.J. said (1):—"I am clearly of opinion that the magistrate has come to the only conclusion that he could come to, and that there is abundant description to infringe the *Dentists Act* 1878." *à Beckett* J. intimated that that was the only conclusion the magistrates could have come to in this case—and I quite agree with him in that—but for the point upon which he allowed the appeal. He thought that the offence, which is completed by using the words outside the house so as to be seen by the public and so induce the belief, could be qualified by something said by the respondent inside the building. The learned Judge calls that "administering the antidote." It appears that the respondent, on being asked by a witness "Are you Mr. Dermer?" said, "No, I am not." But the question is, not whether the respondent induced the belief in the mind of that witness that he was a qualified dentist, but whether he used words in public implying that he was practising dentistry at that place. I think there can be no doubt that he did, and that what he did afterwards is irrelevant, and could not qualify the use of the words outside the house. That is where, in my opinion, the learned Judge made a mistake. I think that the appeal should be allowed.

BARTON J. I am of the same opinion. The Act in question

(1) 68 J.P., 435.

shows that its scope is not the protection of registered practitioners but the protection of the public. Now, the thing which tended to injure the public was the representation by the respondent, who was not registered as a dentist, that he was the person carrying on business at the place outside which the name of "E. W. Dermer, Dentist," was displayed. To use the analogy of *à Beckett J.*, the poison laid for the public was the notice outside the door, and it does not excuse the laying of it, that the antidote was administered to one person who happens to have taken the poison. The evidence is perfectly clear that the respondent was carrying on the business referred to in the notice outside, and that he was getting the benefit of that notice for the purpose of carrying on that business in a manner contrary to the Act. Under the circumstances I think that the magistrates could have come to no other conclusion than they did, and that the appeal should be allowed.

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O'CONNOR J. I am of the same opinion, and have nothing to add.

*Appeal allowed. Order nisi discharged  
with costs. Respondent to pay the  
costs of the appeal.*

Solicitor, for appellant, *E. Joske*, Melbourne.

Solicitor, for respondent, *A. E. Secomb*, Melbourne.

B. L.