PRIVY COUNCIL. 1910.

WILLIAMS v. MACHARG.

(1). Having pointed out that licensed surveyors are not salaried officers, or even members of the Civil Service, the judgment concludes by saying that Simpson, the respondent in that case, was not, during the period when he was a licensed surveyor, an officer within the meaning of the Act. The language of the judgment seems to be perfectly accurate. Simpson was not excluded by reason of the exception in the definition; for the exception would have had no application in his case if he would have been an "officer" but for the exception. He was not an officer within the meaning assigned to the term "officer" in the interpretation section or within the meaning which the term "officer" must bear in other sections when the Act is describing persons as officers in respect of office held before the passing of the Act.

The result, therefore, is that the appeal fails, and their Lordships will humbly advise His Majesty that it must be dismissed.

The appellant, in accordance with his undertaking, will pay the costs of the respondent as between solicitor and client.

Appeal dismissed.

[HIGH COURT OF AUSTRALIA.]

ROBERT STEPHEN BLACKER

v.

THE KING.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1910.

SYDNEY, *May* 19.

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

Criminal law—Evidence—Identification by finger prints—Enlarged photographs.

Upon the trial of a prisoner photographs of a thumb print found on a box, alleged to be that of the prisoner, and a photograph of the prisoner's thumb print, were put in evidence. The Crown also tendered enlarged photographs

(1) (1903) A.C., 208.

of these prints, which however did not show the whole of the print found on the box, or the whole of the prisoner's thumb print, but did show the characteristics of the thumb print relied upon for purposes of identification. The Supreme Court held that the enlarged photographs were admissible in evidence.

Special leave to appeal from the decision of the Supreme Court, *Rex* v. *Blacker*, 10 S.R. (N.S.W.), 357 ; 27 W.N. (N.S.W.), 76 refused.

APPLICATION for special leave to appeal from the decision of the Supreme Court affirming a conviction.

The prisoner was convicted of wounding with intent to murder. At the trial evidence was tendered that the imprint of a thumb found on a box was similar to that of the prisoner. A photograph of the thumb print on the box and of the prisoner's thumb print were put in evidence. The Crown also tendered an enlarged photograph of the thumb mark on the box. This was objected to on the ground that it did not reproduce the whole of the mark on the box. An officer from the finger print department, by whom the photographs were taken, stated that the bulb of the thumb was the portion examined for purposes of identification, and that this was the portion of the thumb represented in the enlarged photograph. It was not a copy of the whole of the mark on the box. There were some blurred lines and marks not included in the photograph, but these were useless for purposes of comparison. The part represented contained sufficient characteristics to enable the witness to identify the print with that taken in gaol, and to say that the two marks were made by the same thumb. This photograph was admitted. The Crown also tendered an enlarged photograph of the prisoner's thumb print. In this photograph a few lines below the joint were not shown, but the witness stated they were no part of the print. He also stated that if within a small radius round the bulb certain characteristics were found to coincide, that would identify the print irrespective of the outlying portions. This photograph was also objected to and admitted. The Supreme Court held that the enlarged photographs were rightly admitted: *Rex* v. *Blacker* (1).

Betts, for the prisoner. The photographs objected to were not

(1) 10 S.R. (N.S.W.), 357 ; 27 W.N. (N.S.W.), 76.

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BLACKER v. THE KING.

admissible (1) because they were enlargements; (2) because they were not photographs of the whole of the prints, or enlargements of the whole of the smaller photographs.

[GRIFFITH C.J.—On your first point you might as well object to a witness using a microscope.]

No substantial part of the print should have been omitted from the photograph.

[GRIFFITH C.J.—The evidence is that all of the thumb print which is relevant for purposes of identification is shown on the photograph.

ISAACS J.—Your argument goes to the weight of the evidence, but not to its admissibility.]

The photographs if admissible at all would only be admissible as copies of the originals, and they were only copies of part of the originals. The portion omitted might have shown the prints were dissimilar.

Per Curiam.—The application is refused.

Application refused.

Solicitors, *Gale & Paine*, Moss Vale.

C. E. W.