

H. C. OF A.  
1916.

BARTON, J. I agree.

FLEMMICH  
v.

GAVAN DUFFY J. I agree.

FEDERAL  
COMMISSIONER OF  
LAND TAX.

RICH J. I agree.

*Question answered accordingly. Costs to be  
costs of appeal.*

Solicitors for the appellant, *Stephen, Jaques & Stephen.*

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor  
for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

JOSKE . . . . . APPELLANT;  
INFORMANT,

AND

THE DENTAL CASH ORDER COMPANY }  
PROPRIETARY LIMITED . . . . . } RESPONDENTS.  
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF  
VICTORIA.

H. C. OF A. *Dentist—Prohibition of use of words—"Dental company"—Combination with  
1916. other words—"Dental Cash Order Company"—Meaning of words added—  
Evidence—Medical Act 1915 (Vict.) (No. 2695), sec. 72.*

MELBOURNE,  
Feb. 23, 24,  
28.

Griffith C. J.,  
Barton, Isaacs,  
Gavan Duffy  
and Rich JJ.

Sec. 72 of the *Medical Act 1915* (Vict.) provides that "No person who is not registered as a dentist shall, nor shall any company (other than an association consisting wholly of registered dentists), . . . take or use or have attached to or exhibited at any place (either alone or in combination with any other word or words or letters) the words 'dental company' or 'dental institute' or 'dental hospital' or 'dental college' or 'college or school of



dentistry' or any name title word letters addition or description implying or tending to the belief that he or such company is registered under this Act or any corresponding enactment previously in force 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."

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*Held*, by Griffith C.J. and Barton, Gavan Duffy and Rich JJ., that as to the words "dental company" the prohibition applies to the use of those words, whether in immediate conjunction or not, in such a manner that the word "dental" is used to qualify by way of description the word "company" so as to indicate that the company is concerned in the practice of dentistry on human beings, but does not apply to the case where other words are interposed which show that the word "dental" is not so used.

By Isaacs J.—When the words the use of which is prohibited by the section are so combined with other words that the essential meaning conveyed by them when in immediate juxtaposition is not changed, their use is unlawful.

A company was convicted of exhibiting at their registered office the words "dental company" in combination with other words, contrary to the section. The words exhibited were "The Dental Cash Order Company Pty. Ltd.," which was the name of the company.

*Held*, by Isaacs, Gavan Duffy and Rich JJ. (Griffith C.J. and Barton J. dissenting), that, in the absence of any evidence as to the meaning of the expression "cash order," the company was properly convicted.

By Griffith C.J. and Barton J.—The conviction was bad because the Magistrate never applied his mind to the real question for decision.

Decision of the Supreme Court of Victoria: *Joske v. Dental Cash Order Company Proprietary Limited*, (1916) V.L.R., 2; 37 A.L.T., 134, reversed.

#### APPEAL from the Supreme Court of Victoria.

\* At the Court of Petty Sessions at Melbourne an information was heard whereby the Dental Cash Order Company Proprietary Limited, a company incorporated under the *Companies Act* 1910 was charged on information by Ernest Joske, the Registrar of the Dental Board of Victoria, for that they did on 7th October 1915 at Melbourne have exhibited at their registered office the words "dental company" in combination with other words contrary to the provisions of the *Medical Act* 1915, Part II. Evidence was given that neither the Company nor any of its members were registered dentists, and that on the door of the Company's registered office were exhibited the words "The Dental Cash Order Company Pty. Ltd."



H. C. OF A. By the memorandum of association of the Company one of its  
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objects was stated to be “to carry on in Victoria and in any other part of the Commonwealth of Australia the business of lending money to persons for the purpose of enabling such persons to obtain dental attendance.” It was also stated in evidence that the business carried on by the Company was as follows:—“A person who could not afford to pay cash for dental treatment would approach the said Company, a servant of which on being satisfied of the *bona fides* of such person would examine his mouth and make a rough estimate of the value of the dental work required. An order would then be given to the said person by the said Company on one of twenty-eight or thirty registered dentists whose names were on a list at the said registered office, and the said registered dentist on whom the order was drawn would give the necessary dental treatment and then apply to the said Company for his fee for doing same. The said Company would pay the said fee, and subsequently collect the amount of such fee with interest added, in weekly or other agreed instalments, from the said person.” The Police Magistrate convicted the Company, stating that he had some doubts as to what the words exhibited would convey to him or to the man in the street.

An order *nisi* to review the conviction was made absolute by the Full Court of the Supreme Court, and the conviction was set aside : *Joske v. Dental Cash Order Company Proprietary Limited* (1).

From the decision of the Supreme Court the informant now, by special leave, appealed to the High Court.

*Sir William Irvine* K.C. and *Starke*, for the appellant. By sec. 72 the Legislature has placed an absolute prohibition on the use of the words “dental company.” The only limitation that can be put upon that prohibition is where the words are used in such a collocation that the word “dental” ceases to be associated with or to qualify the word “company.” Here, though the words “cash order” are interposed, the whole expression would convey to a considerable section of the public that the Company was some kind of dental company.

(1) (1916) V.L.R., 2 ; 37 A.L.T., 134.



*Pigott*, for the respondents. The absolute prohibition is against the use of the words in immediate juxtaposition.

[GRIFFITH C.J. The word "words" may be used in the sense of "phrases." Then, if words were interposed between "dental" and "company" which did not destroy the meaning of the words "dental company" as a phrase, the prohibition would still apply.]

That would be a complete answer because the words "cash order" being interposed, the word "dental" no longer qualifies "company."

*Sir William Irvine* K.C., in reply.

*Cur. adv. vult.*

GRIFFITH C.J. read the following judgment :—The relevant words of sec. 72 of the *Medical Act* 1915 on which the charge was founded are "No person who is not registered as a dentist shall, nor shall any company, . . . use or have . . . exhibited at any place (either alone or in combination with any other word or words or letters) the words 'dental company' or 'dental institute' or 'dental hospital' or 'dental college' or 'college or school of dentistry' or any name title words letters addition or description implying or tending to the belief that he or such company is registered under this Act or any corresponding enactment previously in force 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."

It will be observed that as to the specified words the prohibition is absolute, as to other words it depends on their tendency.

The respondents were charged with exhibiting the words "dental company" in combination with other words. What they did was to exhibit at their registered office their name, which is "The Dental Cash Order Company Proprietary Limited."

The case was presented to the Magistrate on the basis that the use of the two words "dental" and "company" in the respondents' name constituted an offence, and the same contention was put forward before us, although afterwards abandoned. The learned Magistrate apparently accepted this view, and convicted the respondents. A majority of the Supreme Court were of a contrary opinion.

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Griffith C.J.

In my opinion, in the expression "the words dental company . . . college or school of dentistry" the term "words" is used to denote the enumerated compound phrases separated from each other by the word "or." The only difficulty in this construction is the use of one set only of inverted commas for the words "college or school of dentistry," but the grammatical construction is plain and cannot be controlled by what is an obvious printer's error.

The use of the term or phrase "dental company" is, therefore, absolutely prohibited. I construe the prohibition to mean the use of the words, whether in immediate conjunction or not, in such a manner that the word "dental" is used to qualify by way of description the word "company" so as to indicate that the company is concerned in the practice of dentistry on human beings, but does not include the case when other words are interposed which show that that word is not so used. For instance, the use of the words "dental and homœopathic company" or "dental anæsthetic company" would be a use of the prohibited phrase, but the use of the words "dental chair manufacturing company" would not. In the first case the phrase may properly be said to be used, in the second not. In the present case, therefore, it is necessary to ascertain as a matter of fact whether the use of the name of the company falls within the prohibition so interpreted. The respondents say that the term "cash order" is a substantive, the meaning of which is well known as meaning an order by which the holder is enabled to obtain goods or services on time payment, and that the word dental qualifies this substantive, and does not point to the character of the company. If this is so, the case is not within the prohibition. If, on the other hand, the words "cash order" are a mere parenthetical or adjectival phrase denoting a particular kind of dental company, it is within it. This is a question of fact, to which the Magistrate did not apply his mind. This Court cannot find the fact as a Court of first instance except by taking judicial notice of the meaning of the words as actually used, and saying that the words "cash order" must, as a matter of legal construction, be read as an adjectival phrase and not as a substantive—that is, that the name means "cash order dental company." I do not know whether that is the true meaning of the words or not. I am inclined



to think it is not, but I am not prepared to found a decision upon my own ignorance. In my opinion the respondents have not been legally convicted because the Magistrate never applied his mind to the real question for decision. The strictly appropriate order, if any is made, would be to remit the case to him for further consideration. Special leave to appeal would not, under the circumstances, have been given for any such purpose. I think, therefore, that either the leave to appeal should be rescinded, or the appeal dismissed.

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BARTON J. I am of the same opinion.

ISAACS J. read the following judgment :—The Legislature has in relation to human dentistry (see sec. 37 of the Act) prohibited entirely the use of certain words, including the words “dental company.” To prevent evasion by making some verbal addition to the specified words, the prohibition of their use is expressly stated to be “either alone or in combination with any other word or words or letters.”

The defendants have used those very words in combination with the words “Cash Order” interpolated between them. They have also added other words at the end, namely, “Proprietary Limited,” which the Court can see at once are immaterial. The Police Magistrate convicted the defendants, and the question is: Have the Company shown the conviction was wrong? The Supreme Court by a majority held they had. *Madden C.J.* thought they had not, and in my opinion the learned Chief Justice was right. The respondents’ argument before us adopted the view of *àBeckett J.*, who held that so far as the specific words prohibited by sec. 72 are concerned, any separation of them by another word destroys their identity, and with that the specific prohibition. For instance, according to that view a company, though forbidden to call itself “Dental Company” could, without violating the specific prohibition, call itself the “Dental and Medical Company.” His Honor considered that the prohibition extending to combination did not apply to combination by interpolation. In this view, it would be an offence to use “Surgical Dental Company” or



H. C. OF A. “Operative Dental Company” or “Dental Company Limited,” but  
 1916. not to use “Dental Surgical Company” or “Dental Operative  
 ~~~~~ Company” or “Dental Limited Company.”

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 Isaacs J.

One of the other specifically forbidden titles enclosed like all the others in quotation marks, is “college or school of dentistry.” We cannot assume an error, printer’s or otherwise, especially seeing the form appears both in the original Act of 1898 and the consolidated Act of 1915. The reasoning referred to would maintain that an offence is committed if the whole bunch of words is used—a thing practically impossible; but if a company merely called itself “College of Dentistry,” the identity being gone, there would be no offence, and I am not sure it could be brought under the later provisions. I am unable to think this was the construction intended by Parliament.

The Legislature expressed no restriction on the combination that left the use of the specified words prohibited. But the limitation is found in the identity of meaning to be attributed to those same words when found in the combination. When they are so combined with other words as to change the essential meaning conveyed by them in juxtaposition, their use ceases to be unlawful, because they cease to be the conjunctive expression indicated by the Legislature. The essential meaning of “dental company” is that the person or company using those words holds himself or itself out as a company carrying on business as a dentist.

Added words may in their ordinary natural significance destroy that signification. For instance, “Dentists’ Materials Manufacturing Company” would be clearly free from objection. And as the ordinary meaning of English words is notorious and of public knowledge, we must take judicial notice of it, refreshing our minds with dictionaries and generally accepted works, if necessary. Again, if the added words have a special meaning in a particular trade, that must be proved. A special meaning known to the public when the words are used in a particular collocation need not be proved, because what the public know the Judges are taken to know. In the present case no special trade meaning was proved to attach to the words “cash order.” It may be that if such a meaning had been established, public notoriety might still be necessary.



That need not be now discussed. Then as to the ordinary meaning of the added words, they do not in any way negative the primary meaning of the two words "dental company" in conjunction. The term "Dental Cash Order Company" I take to be a dental company having some special system as to what it calls "cash orders." What that system is, and how it distinguishes this company from other dental companies, is unexplained. Reading those words as a member of the public, I should be in doubt whether it meant that no orders for dental work were accepted except for cash payment, like cash grocers, or whether it meant that some document called a "cash order" passed between company and customer, either by the Company giving it or receiving it, in the latter case an order, for instance, by the patient on some other person. This doubt, I should feel, could only be resolved by asking the Company what it meant by "cash order." But I should have no doubt in my own mind that it was, at all events, a dental company, because I have no notion whatever as to what is meant by a "dental cash order," and no notion that such a thing exists, or is asserted to exist, and the expression is meaningless to me. This leaves the essential meaning of the two words "Dental Company" undisturbed notwithstanding the interpolation of the other words, and consequently the offence was committed. The conviction ought to have been confirmed, and this appeal should, in my opinion, be allowed.

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Isaacs J.

GAVAN DUFFY J. read the following judgment :—I agree with the conclusion arrived at by the Chief Justice as to the interpretation of sec. 72 of the *Medical Act* 1915, and I think that the question to be determined in this case is whether in the name of the defendant Company exhibited at its registered office, the word "Dental" qualifies the word "Company" or qualifies the expression "Cash Order" and not the word "Company." If it qualifies the word "Company," the conviction should stand, if not, it should be set aside. It is said that the parties did not raise this question before the Magistrate, and that he did not apply his mind to it, and that, accordingly, the case should be sent back to him for further consideration. I am disposed to think that he did incidentally determine this very question in the process of determining the somewhat



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Gavan Duffy J.

different issue submitted to him, but as the affidavits left me in doubt on the subject, I asked Mr. *Pigott* whether his client desired a rehearing on terms which I stated to him, and which I considered fair. He declined to accept a rehearing on the terms suggested, and he did not then, or at any time, ask for a rehearing on any terms. I must therefore decide the question at issue on the evidence as it stands. In my opinion the name of the Company was intended to convey and does convey to the public that it is a dental company of some kind; and the epithet "dental" is applicable to the word "Company" and not to the expression "Cash Order." I consider that on the evidence before him the Magistrate was at liberty to convict, and as I cannot assume that he was possessed of any special knowledge or information which would enable him to give a meaning to the words in question different from that which I have given to them, I think he was bound to do so.

RICH J. I have read the judgment of my brother *Gavan Duffy*, and I agree with it.

*Appeal allowed. Order appealed from discharged. Order nisi to review discharged with costs in the Supreme Court.*

Solicitor for the appellant, *Ernest Joske*.

Solicitor for the respondents, *Septimus A. Ralph*.

B. L.