[HIGH COURT OF AUSTRALIA.]

THE ARCHITECTS REGISTRATION BOARD OF VICTORIA . . . . . } APPELLANT;
RESPONDENT,

AND

HUTCHISON . . . . . RESPONDENT.
APPLICANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *March* 2, 31.

Knox C.J., Isaacs, Rich and Starke JJ.

Architect—Registration—Powers of Board of Registration—Conclusiveness of finding of fact—Mandamus—Architects Registration Act 1922 (*Vict.*) (*No.* 3207), *secs.* 4, 6, 7, 10, 13.

By sec. 7 (1) of the *Architects Registration Act* 1922 (Vict.) it is provided that "Any of the following persons who applies in the prescribed form to be registered under this Act may on payment of the prescribed fee be so registered if the" Architects Registration Board constituted by the Act "is satisfied that such person has attained the age of twenty-one years and is of good character, namely: Any person who . . . (*c*) has for a period of at least one year before the first day of January one thousand nine hundred and twenty-three been bona fide engaged in Victoria in the practice of the profession of an architect and has made application for registration within six months after that date."

An application by the respondent for registration had been refused by the Board on the ground only that he had not for a period of at least one year before 1st January 1923 been bona fide engaged in Victoria in the practice of the profession of an architect.

Held, that mandamus would not lie directing the Board to register the respondent:

By *Knox* C.J. and *Starke* J., on the ground that the Board was entrusted with authority and jurisdiction to investigate and determine whether the

appellant was within sec. 7 (1) (*c*) of the Act and, as no appeal was given by the Act, the Board's determination given honestly and without reference to extraneous circumstances which the Board was not entitled to consider was final;

By *Isaacs* and *Rich* JJ., on the ground that, although the determination by the Board of that question of fact was open to review, on the evidence the respondent was not within sec. 7 (1) (*c*).

Held, also, by *Isaacs*, *Rich* and *Starke* JJ., that the period mentioned in sec. 7 (1) (*c*) is a continuous period of one year.

Decision of the Supreme Court of Victoria (*Schutt* J.): *Ex parte Hutchison*, (1924) V.L.R. 463; 46 A.L.T. 80, reversed.

APPEAL from the Supreme Court of Victoria.

Henry Robert Hutchison applied to the Architects Registration Board of Victoria to be registered pursuant to sec. 7 (1) (*c*) of the *Architects Registration Act* 1922 (Vict.), and he submitted evidence in support of his allegation that for a period of at least one year before 1st January 1923 he had been engaged in Victoria in the practice of the profession of an architect. The Board refused the application, and stated that its decision was based on the requirements of sec. 7 (1) (*c*) of the Act. Hutchison thereupon obtained from the Supreme Court an order nisi calling upon the Board to show cause why a writ of mandamus should not issue directing the Board to issue a certificate of registration to Hutchison as an architect under the Act. The order nisi came on for hearing before *Schutt* J., who made it absolute with costs against the Board: *Ex parte Hutchison* (1).

From that decision the Board now, by special leave, appealed to the High Court.

Pigott, for the appellant. The ultimate determination of whether an applicant is a person within sec. 7 (1) (*c*) rests with the Board, for no right of appeal from the determination is given by the Act although an appeal is given by sec. 10 (4) in respect of cancellation or suspension of registration. On the evidence the respondent did not bring himself within sec. 7 (1) (*c*). [Counsel referred to *Leaper* v. *New Zealand Institute of Architects* (2).] The period of one year mentioned there is a continuous period. [Counsel was stopped.]

(1) (1924) V.L.R. 463; 46 A.L.T. 80.

(2) (1915) 34 N.Z.L.R. 643.

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Robert Menzies, for the respondent. An applicant is entitled to registration if, in addition to satisfying the Board on the points of age and character, he brings himself in fact within one of the descriptions of persons in sec. 7 (1). The Act draws a marked distinction between cases where satisfaction of the Board is required and those where proof of a certain fact is sufficient. The mere fact that an appeal is given in some cases but not in respect of a refusal to register does not conclude the matter. The respondent has proved that he is within sec. 7 (1) (*c*). The period there mentioned is not limited to the year immediately preceding 1st January 1923, nor is it necessarily continuous, but it is a total period of one year however made up.

Cur. adv. vult.

Mar. 31.

The following written judgments were delivered :—

KNOX C.J. In June 1923 the respondent applied to the appellant to be registered as an architect under sec. 7 (1) (*c*) of the *Architects Registration Act* 1922. That section, so far as relevant, is in the words following, :—" Any of the following persons who applies in the prescribed form to be registered under this Act may on payment of the prescribed fee be so registered if the Board is satisfied that such person has attained the age of twenty-one years and is of good character, namely : any person who . . . (*c*) has for a period of at least one year before the first day of January one thousand nine hundred and twenty-three been bona fide engaged in Victoria in the practice of the profession of an architect and has made application for registration within six months after that date." It was not disputed that the respondent had attained the age of twenty-one years and was of good character, but on the evidence adduced by the respondent the Board came to the conclusion that it was not established that he had for a period of at least one year before 1st January 1923 been bona fide engaged in Victoria in the practice of the profession of an architect, and accordingly refused to register him. The respondent then applied to the Supreme Court for a writ of mandamus directing the appellant to register him. On this application *Schutt* J. granted a writ of mandamus, and this is an appeal by special leave from that order.

By sec. 6 of the Act the Board is required to compile a register containing the names, &c., of persons admitted to the register pursuant to the Act and is empowered to issue or cancel certificates of registration. The Act contains no provision giving a right of appeal from a decision of the Board refusing registration, but a right of appeal to the Supreme Court is given to any person aggrieved by any order of the Board cancelling or suspending his registration. It is obvious that before issuing a certificate of registration it is the duty of the Board to satisfy itself that the applicant possesses the qualification necessary to entitle him to be registered, and, as I have already pointed out, no right of appeal is given from a decision of the Board refusing to register. But *Schutt* J. expressed the opinion that an applicant for registration is entitled to go to the Supreme Court to have it declared that notwithstanding the contrary view adopted by the Board he is, upon the evidence submitted, a member of the class of persons entitled to be registered. I read this as meaning that in every case in which the Board refuses registration an applicant is entitled to challenge by an application to the Supreme Court the Board's decision on the evidence submitted to it. If this be the view taken by the learned Judge I am unable to agree. It may be that, if the Board took into consideration irrelevant matters or refused to consider relevant evidence submitted to it or came to such a conclusion on the facts as no reasonable man could entertain or declined to consider an application, the applicant might invoke the assistance of the Supreme Court to compel the performance by the Board of its statutory duty. But in this case nothing of that kind is suggested. It is not suggested that the Board refused to apply its mind to the evidence submitted or that it refused to perform any duty imposed on it by the statute. All that is said is that the Board came to a wrong conclusion on the evidence submitted to it in respect of a matter which it was the duty of the Board to determine. It is not suggested that on the evidence submitted to the Board no reasonable man could have come to the conclusion at which the Board arrived; and in these circumstances I can see no ground on which the respondent was entitled to obtain the assistance of the Supreme Court in compelling the Board to accede to his application.

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For these reasons I am of opinion that the appeal should be allowed, but the appellant will, pursuant to its undertaking, pay the costs of the appeal.

ISAACS J. The principles involved in the method of approaching this case are of even more general importance than the actual result.

The respondent applied to the Architects Registration Board of Victoria for registration under sec. 7 (1) (*c*) of the Act No. 3207. Sec. 7 (1) says :—" Any of the following persons who applies in the prescribed form to be registered under this Act may on payment of the prescribed fee be so registered if the Board is satisfied that such person has attained the age of twenty-one years and is of good character, namely :— " Then follows a series of seven descriptions of which the first is : " (*a*) holds any degree or diploma of architecture of the University of Melbourne." Among these descriptions is the one applicable here, namely : " (*c*) has for a period of at least one year before the first day of January one thousand nine hundred and twenty-three been bona fide engaged in Victoria in the practice of the profession of an architect and has made application for registration within six months after that date." The Board refused the application and, as stated in its Registrar's letter, the " Board's decision was based on the requirements of clause 7 (1) (*c*) of the Act." In other words, the Board came to the conclusion on the materials before it that the applicant did not answer the description. A writ of mandamus was applied for to *Schutt* J., who came to the conclusion on the materials before him, which were placed before him as original materials, that the applicant did answer that description and, that being the only question in contest, directed the writ to issue.

The Board appeals to this Court from that decision. Its contention is twofold :—First, it is said, *Schutt* J. was wrong in considering for himself the qualification of the applicant, because, the law having entrusted the determination of that matter to the Board in the first instance and not having provided any appeal to the Court, no appeal was permissible. The other branch is that on the facts the applicant fails to sustain his position as coming within the necessary description.

It is the first contention that is so generally important. Its inherent fallacy is in assuming that the law has entrusted the Board with determining whether an applicant answers the description. Where matters are entrusted to the Board, as, for instance, age and character, or elsewhere where so stated, the opinion of the Board is one of the constitutive or conditional facts on which the Legislature rests its directions. But when stating a description free from such a stipulated opinion of the Board, then it is the actual fact that is important and not the Board's opinion whether it exists or not. The contention put forward for the Board to the contrary is not novel. It has been frequently raised, but very definitely denied. It is quite true that when such a case comes before the Board it is its duty to satisfy itself that the applicant does answer the description; so as to see so far as it can that it is acting within the jurisdiction given to it by law. But, unless Parliament has said that the decision of that question is to rest with the Board, its opinion as to that is collateral only, and the real decision, if necessary, rests with a Court entrusted with it. The case of *R.* v. *General Council of Medical Education* (1) illustrates both branches. I have in *Amalgamated Society of Carpenters and Joiners* v. *Haberfield Pty. Ltd.* (2) stated my view; and so do no more than say that the decision of the Judicial Committee in *Colonial Bank of Australasia* v. *Willan* (3) is decisive against the first contention of the Board. *Schutt* J. was right in examining the matter for himself on materials prepared for that application, and, if his own view of the facts and law be correct, his decision should stand.

When, however, the facts come to be examined, the applicant in my opinion fails. He must show that (1) "for a period of at least one year before the first day of January one thousand nine hundred and twenty-three" (2) he had been "bona fide engaged in Victoria in the practice of the profession of an architect." As to the first ingredient, namely, the period of one year, I agree that it does not mean a period limited to the specific year ending 31st December 1922. But the words "a period" primarily denote a continuous duration of time, and not a combination of separate intervals strung

(1) (1861) 3 E. & E. 525. (2) (1907) 5 C.L.R. 33, at pp. 52-54.
(3) (1874) L.R. 5 P.C. 417, at p. 444.

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together. It is here that in my opinion the applicant fails. I am not prepared to say that he did not bona fide act on several occasions as architect in preparing plans for other persons; but I cannot see any reasonable evidence to satisfy my mind that for a connected period of one year prior to 1st January 1923 he so held himself out to the public and conducted his affairs as a means of livelihood that, in the ordinary acceptation of the words, he was "bona fide engaged in the practice of the profession of an architect." His experiences as architect over any given period of a year were rather occasional than as his real means of livelihood for that period.

For these reasons I agree that the appeal should be allowed.

RICH J. On this appeal it was contended by Mr. *Pigott* on behalf of the Board (1) that the Board's decision on the sufficiency of the applicant's qualification was conclusive, and (2) that the applicant had not in fact "for a period of at least one year before the first day of January one thousand nine hundred and twenty-three been bona fide engaged in Victoria in the practice of the profession of an architect."

With regard to the first contention I am of opinion that the Board are not constituted the sole and final arbiters of the sufficiency of the evidence of the qualification under the Act. The present case falls, I think, within the first class of cases referred to by Lord *Esher* M.R. in *R.* v. *Commissioners for Special Purposes of the Income Tax* (1):— "When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine

(1) (1888) 21 Q.B.D. 313, at pp. 319-320.

whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

Turning now to the second contention, the evidence produced by the applicant does not in my opinion fulfil the requirements of sec. 7 (1) (*c*) of the Act. An accumulation of broken portions of time does not satisfy the conditions of the sub-section. The period must be continuous.

I agree that the appeal should be allowed. In accordance with the order granting special leave to appeal the Board must pay the respondent's costs of this appeal.

STARKE J. This appeal ought, in my opinion, to be allowed.

An Architects Registration Board has been constituted in Victoria, and its duties and powers include the compilation of a register containing the names and addresses, qualifications and other prescribed particulars of persons who are admitted to the register pursuant to the Act (see Act No. 3207, secs. 4 and 6).

Any person who has for a period of at least one year before the first day of January 1923 been bona fide engaged in Victoria in the practice of the profession of an architect, and has made application for registration within six months after that date, may be registered, if the Board is satisfied that such person has attained the age of twenty-one years and is of good character (see sec. 7).

Hutchison applied for registration pursuant to these provisions. The Board was satisfied that he had attained the age of twenty-one

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years and was of good character, but held that he had not, for a period of at least one year before 1st January 1923, been bona fide engaged in Victoria in the practice of the profession of an architect. But the Supreme Court of Victoria (*Schutt* J.) directed the Board to issue a certificate of registration to Hutchinson. No appeal is given from the Board to the Supreme Court. It is said, however, that the Board in rejecting Hutchison's application refused to perform its duty under the Act, because the facts submitted to it established Hutchison's qualification under sec. 7, sub-sec. 1 (*c*), of the Act. That contention directly raises the ambit of the Board's jurisdiction or authority under the Act.

The law is clear enough. If the true construction of the statute be that the applicant is entitled to registration if a certain state of facts exist, then it is not for the Board conclusively to decide whether that state of facts exists, and it is competent to the Courts of law, in appropriate proceedings, to inquire into and determine whether those facts do exist. But if the true construction of the statute be that the Board is entrusted with authority and jurisdiction to investigate and determine whether those facts exist, then, if no appeal be given, its determination, honestly given and without reference to extraneous circumstances which it is not entitled to consider, is final and cannot be reviewed in the Courts of law (*R.* v. *Nat Bell Liquors Ltd.* (1); *R.* v. *Commissioners for Special Purposes of the Income Tax* (2)). If the Board acts within its authority, then "it does not matter how erroneously it determined, for its decision in such a case cannot be reviewed by mandamus" (*R.* v. *Cotham* (3); *R.* v. *Bowman* (4); *R.* v. *Woodhouse* (5)). In the present case it was the duty of the Board to compile a register containing the names and addresses, qualifications and other prescribed particulars of persons who are admitted to the register pursuant to the Act (sec. 6 (*d*)). The Act does not say that the decision of the Board is to be final. It constitutes, however, a tribunal of experts to compile a register containing the names, addresses, qualifications and other prescribed particulars. And it undoubtedly places the final determination of some qualifications

(1) (1922) 2 A.C. 128.
(2) (1888) 21 Q.B.D. 313.
(3) (1898) 1 Q.B. 802.
(4) (1898) 1 Q.B. 663.
(5) (1906) 2 K.B. 501, at p. 520.

in the hands of that tribunal (see sec. 7, sub-secs. 1 (*d*) and (*g*)). Also the statute gives it extensive powers of summoning persons before it, and of compelling them to produce documents, and of examining them upon oath (see sec. 13). All this, in my opinion, makes it difficult to resist the conclusion that authority is given to the tribunal to investigate the qualifications of persons applying for registration, and that a decision upon those qualifications is on a matter arising within its authority and jurisdiction (cf. *London County Council* v. *Galsworthy* (1)).

No suggestion was or could be made in the present case that the Board acted dishonestly or with reference to circumstances that it ought not to have considered. All that could be said was that it came to an erroneous conclusion upon the facts proved before it. But, in my opinion, that conclusion was a matter within the jurisdiction of the Board and not open to review by the Supreme Court upon proceedings for mandamus. There is no ground, in my opinion, for saying that the Board refused or omitted to do its duty according to law. If I had to consider the facts, I should say that the Board had reached a right conclusion. The applicant's training and equipment as an architect is of the most meagre description. And his practical experience is limited to the assistance which he gave for some years to his father in the business of a builder and contractor, and to drawing between the years 1912 and 1918 a few plans and specifications of buildings for private individuals. These facts do not satisfy me that the applicant, for any continuous period of one year before 1st January 1923, practised the profession of an architect in Victoria, or indeed that he practised it at all.

Appeal allowed. Order appealed from set aside. Order nisi discharged. Appellant to pay costs of appeal in accordance with its undertaking.

Solicitors for the appellant, *J. M. Smith & Emmerton.*
Solicitor for the respondent, *Vincent Nolan.*

B. L.

(1) (1917) 1 K.B. 902.