be Yes as to the sum of £111; to question 4 no answer; to question 5 should be No.

Questions answered: (1) *Yes*; (2) 31*st July* 1914; (3) *Both*; (4) *Yes*; (5) *No.*

Solicitors for the appellants, *Dunlop & Dunstan.*

Solicitor for the respondent, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

JONES AND STEAINS . . . . . APPELLANTS;

AND

THE FEDERAL COMMISSIONER OF TAXATION . . . . . } RESPONDENT.

[No. 2.]

War-time Profits Tax—Assessment—Recent commencement of business—Profits—"Pre-war standard of profits"—"Profits standard"—Deductions—War-time Profits Tax Assessment Act 1917-1918 (*No.* 33 *of* 1917—*No.* 40 *of* 1918), *secs.* 7, 11, 12 (1) (*b*), 16.

On a case stated by *Isaacs* J. the High Court decided that the pre-war standard of profits of the business carried on by the appellants was £372, being an amount proportionate for the period of twelve months to the actual profits during the pre-war period during which the business was carried on as provided by sec. 16 (6) (*a*) of the *War-time Profits Tax Assessment Act* 1917-1918, and that a deduction should be made from the profits of that business earned in the relevant accounting period of the sum ascertained in accordance with the provisions of sec. 12 (1) (*b*) of the Act.

Held, by *Isaacs* J., that the phrase "pre-war standard of profits" was not identical with the phrase "profits standard" used in the Act, and that the provision in sec. 16 (3) that the profits standard "shall not in any case be less than the sum of five hundred pounds" was not applicable; and, consequently, that the sum of £372 was the profits standard to be applied when making the deduction from the said profits required by sec. 12 (1) (*b*) of the Act.

Order of High Court in *Jones & Steains* v. *Federal Commissioner of Taxation* [*No.* 1], (1928) 41 C.L.R. 83, explained.

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JONES & STEAINS v. FEDERAL COMMISSIONER OF TAXATION [No. 2].

REFERENCE.

In settling the final order in *Jones & Steains* v. *Federal Commissioner of Taxation* [*No.* 1] (1) a difficulty arose as to the profits standard to be applied when making the deduction from the profits of the accounting period required by sec. 12 (1) (*b*) of the *War-time Profits Tax Assessment Act* 1917-1918; and the matter was referred by the parties to *Isaacs* J. for determination.

Owen Dixon K.C. and *Russell Martin*, for the appellants.

C. Gavan Duffy, for the respondent.

Cur. adv. vult.

July 25.

ISAACS J. delivered the following written judgment:—

Since the Full Court decision in this case a further question of law has arisen, and, subject to that, the parties can agree upon the final order. The question is: In applying sub-sec. 1 of sec. 12 of the *War-time Profits Tax Assessment Act* to the circumstances of this case, which show the relevant "profits standard" to be £372 in fact, do the words "but shall not in any case be less than the sum of five hundred pounds," appearing in sub-sec. 3 of sec. 16, require the relevant profits standard to be taken as £500? The taxpayer contends for an affirmative answer, and the Commissioner opposes it.

The words actually used in sec. 12 (1) are: "*the profits standard* on the average capital and borrowed money (if any) used in the pre-war trade years by reference to which the profits standard has been arrived at." That is a clear reference to certain provisions of sub-sec. 3 of sec. 16, by which "the profits standard" is defined for one, two or three pre-war trade years, as the case may be. So far the actual profits are referred to.

The difficulty arises from the fact that the quoted words as to a minimum occur in the same sub-section. They refer, however, not to "the profits standard," but to "the pre-war standard of profits," which is a special phrase employed by the Legislature. It appears in sec. 7 (2). There it is provided that from the sum representing the profit ultimately found to be the profit of the financial year

(1) *Ante*, p. 83.

by uniting the results of the accounting period or periods, there is to be deducted "the pre-war standard of profits as defined for the purposes of this Act." The difference—subject to some special deductions—is the war-time profits. The process so far assumes practical identity of the business as the profit-making machine. Sec. 16 defines "the pre-war standard of profits," the function of which has been stated. And in that connection it enacts the words of minimum quoted. But incidentally it also, as shown, defines the other phrase "the profits standard." "The profits standard" performs two functions, one in sec. 16 and one in sec. 12: and they are distinct. In sec. 16 "the profits standard" mentioned may constitute also "the pre-war standard of profits"; but it may not. The "pre-war standard of profits" may be constituted under sec. 16 (6) (*b*) by another "profits standard" or under sub-sec. 8 by a percentage standard. But the normal "profits standard" applicable to sec. 12 (1) is not for the purpose of arriving directly at war-time profits, assuming identity of the profit-making machine. It assumes non-identity of profit-making capacity, and is introduced for the purpose of restoring equality in that respect. It is applied for the purpose of a deduction, not from the ultimate "sum," but from "the profits of the accounting period," and, in the absence of any language compelling the interpretation of the phrase "the profits standard" in sec. 12 (1) as being "the pre-war standard of profits" in sec. 16 (3), I am not prepared to depart from its natural meaning and actual practical effect. To give it the meaning contended for by the taxpayer would confuse its function and operation, and in some cases of decreased capital might result in great hardship to taxpayers. However that may be, I adhere to the actual words used by the Legislature, and as they are expressly defined, and I find no other context controlling that definition. On the contrary, the inclusion in sec. 12 (1) of the "statutory percentage" in par. (*a*) tells in the opposite direction. And if by "the profits standard" in par. (*b*) the Legislature meant "the pre-war standard of profits," it would have been easy to say so, particularly since the expression appears both in the immediately preceding section (11 (1) (*g*) (ii)) and later in sec. 12 itself, namely, in sub-sec. 5, in a passage recognizing that the phrase "pre-war standard of

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profits" is not identical with the phrase "profits standard." In the result, the Commissioner's view is in my opinion the right one.

Question answered accordingly.

Solicitors for the appellants, *Dunlop & Dunstan.*

Solicitor for the respondent, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

[HIGH COURT OF AUSTRALIA.]

THE DENTAL BOARD OF VICTORIA . . APPELLANT; RESPONDENT,

AND

DENISON . . . . . RESPONDENT. APPLICANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1928.

SYDNEY, *Aug.* 20, 23.

Knox C.J., Isaacs, Higgins and Gavan Duffy JJ.

Dentist—Application for registration—Definite and continuous course of training—Medical (Dentists) Act 1927 *(Vict.) (No.* 3569), *sec.* 14 (1).*

Sec. 14 (1) (*b*) of the *Medical (Dentists) Act* 1927 (Vict.) requires that an applicant shall have "entered on a definite course of training."

Held, that the words of sec. 14 (1) (*b*) were satisfied by the applicant entering upon a defined and continuous course of practical instruction in dental surgery and dentistry.

* Sec. 14 of the *Medical (Dentists) Act* 1927 (Vict.) provides that "(1) Notwithstanding anything in any Act any person who on application to the Dental Board of Victoria within six months after the commencement of this Act satisfies the said Board that he . . . (*b*) had prior to the fifteenth day of November one thousand nine hundred and ten entered on a definite course of training in Victoria to acquire a knowledge of dental surgery and dentistry, and (*c*) since so entering on such course and up to the commencement of this Act has been continuously employed solely in the work of dental surgery and dentistry in Victoria, shall on proof of the matters aforesaid and on payment of the prescribed fee be entitled to be registered as a dentist."