

H. C. OF A. profits " is not identical with the phrase " profits standard." 1928. In the result, the Commissioner's view is in my opinion the right one.

JONES &
STEAINS

v.

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COMMIS-
SIONER OF
TAXATION
[No. 2].

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. *Dentist—Application for registration—Definite and continuous course of training—*
1928. *Medical (Dentists) Act 1927 (Vict.) (No. 3569), sec. 14 (1).**

SYDNEY,

Aug. 20, 1928.

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

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."

Special leave to appeal from the decision of the Supreme Court of Victoria (Irvine C.J.): *Dental Board of Victoria v. Denison*, (1928) V.L.R. 371; 49 A.L.T. 222, rescinded.

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APPEAL from the Supreme Court of Victoria.

In 1905 the respondent, who had for two years been employed as an attendant by one Wills, who practised as a dentist in Melbourne, the respondent's age being then about 13 years, commenced a course of practical instruction under Wills in the various branches of a dentist's work, which continued until March 1910, when Wills left for England. From that time until March 1912 the respondent acted as assistant to one De Beer, performing the mechanical and surgical work in the practice of dentistry. Wills having returned to Victoria, the respondent became his assistant in 1912 and remained with him in that capacity until 1916. For a few months during 1916 the respondent was engaged on military service, and ever since the expiration of that period he acted as assistant to one Taylor, a recorded dentist practising at Fitzroy, Victoria, and participated in all the work of Taylor's practice.

In March 1928 the respondent applied to the Dental Board of Victoria pursuant to sec. 14 of the *Medical (Dentists) Act* 1927 (Vict.) to be registered as a dentist on the ground that prior to 15th November 1910 he had entered on a definite course of training in Victoria to acquire a knowledge of dental surgery and dentistry and since so entering on such course and up to the commencement of the above cited Act he had been continuously employed solely in the work of dental surgery and dentistry in Victoria. The Board refused the application, stating that in its opinion the requirements of the section had not been satisfied, as it was unable to see any definite course of training in the circumstances set out above. In the opinion of the Board there was no programme upon which the respondent had entered with a view to acquiring a knowledge of dentistry, and nothing in the way of a definite course had been contemplated or embarked on by him.

The respondent appealed to the Supreme Court. The appeal was heard by *Irvine* C.J., who, during the course of his judgment, said that he was unable to accept the view that the words " ' definite course of training ' must be taken to mean one or another of the

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defined or prescribed courses of study existing for the training of dentists prior to" 15th November 1910. "If such had been the intention of Parliament it would have expressed it in apt language. The words 'definite course of training' must, of course, be construed in connection with the words 'to acquire a knowledge of dental surgery and dentistry,' and the latter words must . . . be read as tending to define the former. . . . The language of sub-clause (c) of sec. 14 (1) . . . tends to confirm" this "view inasmuch as it prescribes that since his entering upon such a course the applicant must have been continuously employed solely in the work of dental surgery and dentistry. This indicates that the 'course of training' must consist solely of the work of dental surgery and dentistry in which he has been employed. . . . Taking, then, the words 'entered on a definite course of training' to mean no more than entering on a defined and continuous course of practical instruction in dental surgery and dentistry," his Honor held that the respondent had complied with the conditions and allowed the appeal: *Dental Board of Victoria v. Denison* (1).

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

Owen Dixon K.C. (with him *Burgess*), for the appellant. The words "definite course of training" in sec. 14 (1) (b) of the *Medical (Dentists) Act* 1927 should be given their natural meaning. They are intended to refer to persons who have taken a definite step of entering on a definite course, that is to say, a series of steps of training which has for its object the acquisition of a knowledge of dentistry, e.g., the course prescribed by the Melbourne University, by the Australian College of Dentistry, or by the regulations. There should be a plan or scheme of projected studies. The object of the section was to deal with persons who had entered on a course of training prior to 15th November 1910, but had drifted away from training to practical work. The respondent did not follow any programme of study and, therefore, he has not, in the least degree, complied with the requirements of the section that he should enter upon a definite course of training.

Hotchin, for the respondent. The courses referred to were in existence prior to the Act and, therefore, as the Legislature did not prescribe them it must be deemed that it directed its mind to practical instruction. The course of training intended by the Legislature is something different from the academic instruction prescribed by the regulations. The word "definite" is used in contradistinction to something of a desultory or haphazard nature, whilst "training" means practical instruction. In addition to the courses referred to on behalf of the appellant a definite programme or course can also consist of all the knowledge which is in the possession of the employing dentist, and the requirement of the Act is satisfied if the applicant can show that he commenced on a pathway for the purpose of learning the art, or, in other words, that he commenced to learn dentistry. The respondent commenced his course in 1905 and, as the facts show, has ever since that year been actively associated with dentistry.

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Owen Dixon K.C., in reply. Sec. 14 (1) (b) requires a course of training which is ascertained and ascertainable, looking at it at the moment of entry; and it must also have a character of definiteness.

Cur. adv. vult.

THE COURT delivered the following judgment:—In this case special leave to appeal was granted solely for the purpose of deciding whether the construction placed by *Irvine* C.J. upon the words of sec. 14 (1) (b) of the *Medical (Dentists) Act* 1927 was correct. The learned Chief Justice of Victoria held that the words "entered on a definite course of training," in that sub-section were satisfied by the applicant "entering on a defined and continuous course of practical instruction in dental surgery and dentistry." In the opinion of this Court this interpretation of the words is correct. In this view the Court thinks there is no occasion to inquire whether the provision so interpreted was properly applied in this case and that the proper course to take is to rescind the order granting special leave to appeal. The appellant is to pay the costs of the appeal pursuant to its undertaking.

Aug. 23.

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Higgins J.

HIGGINS J. There is nothing in the section to limit the words "definite course of training . . . to acquire a knowledge of dental surgery" to a course of training in the University or other scholastic or theoretical institution: a definite course of *practical* training would be sufficient for the section. But I desire to guard myself from being supposed to countenance any such idea as that a course of training as dentist's mechanic would be sufficient.

The proper order is, as stated by the Chief Justice, to rescind the order granting leave to appeal.

Order granting special leave to appeal rescinded.

Appellant to pay costs pursuant to its undertaking.

Solicitor for the appellant, *Joske & Burbridge*, Melbourne, by *H. Smith*.

Solicitors for the respondent, *R. W. Dickinson & Son*, Melbourne, by *Vindin & Littlejohn*.

J. B.