[HIGH COURT OF AUSTRALIA.]

JOSKE . . . . . APPELLANT;
INFORMANT,

AND

WHAMOND . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1931.

MELBOURNE, *Oct.* 29.

SYDNEY, *Nov.* 30.

Gavan Duffy C.J., Rich, Starke, Evatt and McTiernan JJ.

Dentist—Unregistered person practising dentistry—Person holding permit—Permit limited to employment under personal supervision of dentist—Dental operations performed by permittee not under personal supervision of employer—Offence—Medical Act 1928 (*Vict.*) (*No.* 3730), *secs.* 68, 71, 72.*

The respondent was the holder of a permit under a provision now contained in sec. 68 (3) (*a*) of the *Medical Act* 1928 (Vict.). The permit purported to authorize any dentist to employ the respondent "under his personal supervision." The respondent was employed by a dentist and performed certain dental operations in the course of such employment, but not under the personal supervision of his employer.

Held, by the whole Court, that the respondent, not being a registered dentist, had practised dentistry for reward contrary to the provisions of sec. 72 of the *Medical Act* 1928.

* The *Medical Act* 1928 provides (*inter alia*):—"68. (1) No dentist shall authorize or permit any person who is not registered as a dentist to practise dental surgery or dentistry for such dentist. . . . (3) (*a*) Notwithstanding anything in sub-section 1 of this section a dentist may in his practice of dental surgery or dentistry employ any person who holds a permit issued by the Board stating that for at least two weeks during the period of three months immediately preceding the thirtieth day of December One thousand nine hundred and twenty-seven such person was practising dental surgery or dentistry under the personal supervision of a dentist." "71. No person shall practise dental surgery or dentistry except in his own name." "72. No person who is not registered as a dentist shall except as in this Division provided practise dental surgery or dentistry for fee or reward."

Held, also, by *Rich*, *Evatt* and *McTiernan* JJ. (*Gavan Duffy* C.J. and *Starke* J. dissenting), that a permit issued pursuant to sec. 68 of the Act only authorizes employment under the personal supervision of the employer.

Decision of the Supreme Court of Victoria (*Macfarlan* J.): *Joske* v. *Whamond*, (1931) V.L.R. 376, reversed.

APPEAL from the Supreme Court of Victoria.

An information was laid by Ernest Joske against F. C. Whamond alleging that the defendant, not being a registered dentist in the State of Victoria, did between 12th and 28th May 1931 at Koo-wee-rup practise dentistry for reward contrary to the provisions of the *Medical Act* 1928 (Vict.). The information was heard before the Court of Petty Sessions at Lang Lang on 22nd July 1931.

From the evidence it appeared that the defendant was the holder of a permit from the Dental Board of Victoria in the following terms:— "Permit to an Employee of a Dentist under the provisions of the *Medical Act* 1915 Part II. and of the *Medical* (*Dentists*) *Act* 1927.— A dentist may under his personal supervision employ Frederick Charles Whamond in his practice of dental surgery or dentistry, he having for at least two weeks during the period of three months immediately preceding the passing of the *Medical* (*Dentists*) *Act* 1927, practised dental surgery or dentistry under the personal supervision of a dentist.—Dated at Melbourne the seventh day of May 1929.—Registrar of the Dental Board of Victoria. The holder of this permit is not entitled to practise dentistry either in his own name or under the name of a registered dentist or otherwise and if he does so practise whether under cover of his employer or in any other way he is liable to prosecution for an offence." It also appeared that the defendant was in the employment of H. H. Wainwright, a registered dentist practising at Windsor and Koo-wee-rup; that Wainwright rented a room in a café at Koo-wee-rup, and that a movable board bearing the words "H. H. Wainwright, Surgeon Dentist," was placed inside the window of the café, in the front of the premises abutting on the street. The defendant, it appeared, had visited Koo-wee-rup on about twenty-five occasions during the preceding twelve months. He was usually accompanied by Wainwright, but on several occasions Wainwright, owing to the illness of his wife, did not accompany the defendant. On the

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occasions on which Wainwright was absent the defendant performed dental work, but if on these occasions he got any work about which he considered it necessary to consult Wainwright, he did so when he returned to Windsor. On 13th May 1931, an occasion on which Wainwright had not accompanied the defendant, a constable of police called at the café at Koo-wee-rup and asked the defendant to make him a set of teeth for his lower jaw. The defendant told him it would cost him two guineas. He took an impression of the constable's lower jaw and asked him to call back in a fortnight. On 27th May 1931 a policewoman attended the defendant at the café and asked him to adjust a filling in her tooth. He took out the filling, cleaned it and cemented it in. Being asked how much the charge was, the defendant replied "five shillings," and the policewoman paid him that amount, which he put in his pocket. When this work was being done Wainwright was not in the room, but he was seated at a fire in another part of the café. These were the only specific instances given in evidence of work done by the defendant. The defendant accounted to Wainwright for all moneys received by him for dental services which he performed, and all the work done by the defendant was done by him as Wainwright's employee, and as such he was paid a salary, but did not receive any bonus or commission.

The information was dismissed on the ground that "Sec. 72 of the *Medical Act* 1928 is to be read subject to sec. 68 of the Act. The defendant was the holder of a permit within sec. 68 and was entitled to do what he did": *Joske* v. *Whamond* (1).

The informant obtained an order nisi to review the decision of the justices which was heard by *Macfarlan* J., who discharged it.

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

Appellant in person. An unregistered person is not permitted to practise dental surgery or dentistry. Sec. 71 (1) of the *Medical Act* 1928 requires a person to practise dental surgery in his own name; a permit holder is not permitted to practise dentistry. Sec. 73, sub-secs. 1 and 2, were infringed. The permittee must be

(1) (1931) V.L.R. 376.

employed under the personal supervision of the registered dentist. Under the 1915 Act a dentist might employ a person under his personal supervision. That was repealed in 1927.

[STARKE J. The only permission the respondent had was to work under the personal supervision of the registered dentist. If he did not work under the personal supervision, had he any permit at all ?]

I would adopt that suggestion and say that he had none. [The appellant also referred to the *Medical Act* 1928, secs. 68, 72; *Medical Act* 1915, secs. 66, 68, 71; *Dentists Act* 1910, secs. 4, 13; *Joske* v. *Lubrano* (1); *Howarth* v. *Brearley* (2).]

Robert Menzies K.C. (with him *Hudson*), for the respondent. Sec. 68 (3), clauses (*a*) and (*b*), of the *Medical Act* 1928 show the effect of issuing a permit. The permit does not itself show its own effect. The Dental Board has no discretion to refuse a permit except on the grounds set out in the Act. [Counsel referred to sec. 72 of the *Medical Act* 1928.]

The appellant, in reply.

Cur. adv. vult.

Nov. 30.

The following written judgments were delivered :—

GAVAN DUFFY C.J. AND STARKE J. The respondent was charged under sec. 72 of the *Medical Act* of 1928, for that he, not being registered as a dentist in the State of Victoria, did practise dentistry for reward. The respondent relied upon the provisions of sec. 68 of the Act in exculpation of the charge :—" 68. (1) No dentist shall authorize or permit any person who is not registered as a dentist to practise dental surgery or dentistry for such dentist. . . . (3) (*a*) Notwithstanding anything in sub-section 1 of this section a dentist may in his practice of dental surgery or dentistry employ any person who holds a permit issued by the Board stating that for at least two weeks during the period of three months immediately preceding the thirtieth day of December one thousand nine hundred and twenty-seven such person was practising dental surgery or

(1) (1906) 4 C.L.R. 71, at p. 76. (2) (1887) 19 Q.B.D. 303.

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Gavan Duffy C.J. Starke J.

dentistry under the personal supervision of a dentist." The respondent held a " permit " from the Dental Board in the following form: " Permit to an Employee of a Dentist under the provisions of the *Medical Act* 1915 Part II. and of the *Medical (Dentists) Act* 1927. A dentist may under his personal supervision employ Frederick Charles Whamond in his practice of dental surgery or dentistry, he having for at least two weeks during the period of three months immediately preceding the passing of the *Medical (Dentists) Act* 1927, practised dental surgery or dentistry under the personal supervision of a dentist.—Dated at Melbourne the seventh day of May 1929.—Registrar of the Dental Board of Victoria. The holder of this permit is not entitled to practise dentistry either in his own name or under the name of a registered dentist or otherwise and if he does so practise whether under cover of his employer or in any other way he is liabile to prosecution for an offence." This document only permits a dentist to employ the respondent under his personal supervision in his practice of dentistry. And it is clear on the evidence that the dental operations the subject of the charge against the respondent were not performed under the personal supervision of any dentist. In requiring the personal supervision of a dentist, the permit may be unwarranted by the terms of the section, as we think it was; but the respondent had no other authority or permission than here granted to practise dentistry or perform dental operations. Consequently, the Magistrates should have convicted the respondent, and the Supreme Court on appeal should have set aside the order dismissing the information. This aspect of the case was not presented to the Courts below, because the Dental Board insisted that no person unregistered as a dentist (other than the persons mentioned in sec. 72 (*a*)) could practise, or perform dental operations, unless under the personal supervision of a dentist. We are unable to agree with this view, for sec. 68 (3) allows a dentist to employ in his practice or business any person who holds the permit prescribed by that section. But the employment must be really and truly in the employer's business: no device or pretence whereby others are allowed to practise under the name of a dentist and ostensibly on his behalf, but in truth for themselves, will suffice. And legal tribunals will not, as a rule, find it difficult

to discriminate between legitimate and illegitimate practices. The decision must depend in all cases upon the precise circumstances proved, and is essentially one of fact. Further, as the matter has been fully argued, we think it right to add that, as already indicated, the " permit " issued by the Dental Board to the respondent is not warranted by the *Medical Act*. That Act does not authorize the Board to limit the employment of a person who complies with sec. 68 (3) to employment under the personal supervision of a dentist. Its functions are to inquire into the matters specified in sec. 68 (3) (*a*) and (*b*), and, according as those matters are determined by it, to issue or refuse to issue a general permit for employment, stating the facts mentioned in sec. 68 (3) (*a*).

RICH J. The respondent was informed against under sec. 72 of the *Medical Act* 1928 for that he not being registered as a dentist did at Koo-wee-rup practise dentistry for reward. Sec. 72 enacts that " no person who is not registered as a dentist shall except as in this Division provided practise dental surgery or dentistry for fee or reward, or for expectation of fee or reward." The expression " practise dental surgery or dentistry " is given a very wide meaning by sec. 37 of the Act, and a proviso to sec. 72 makes it immaterial that the fee or reward was not received or receivable by the defendant for his personal benefit. Upon the facts proved in evidence there could be no doubt, that the defendant, who was not registered as a dentist, did practise dentistry for fee or reward within the meaning of these provisions. He set up, however, by way of exculpation or excuse the defence that he held a permit issued by the Dental Board of Victoria stating that for at least two weeks during a period of three months immediately preceding the passing of the *Medical (Dentists) Act* 1927 he practised dental surgery or dentistry under the personal supervision of a dentist. He did, in fact, hold a permit stating these facts which was expressed to authorize a dentist to employ the defendant under his personal supervision. The question for decision upon this appeal is whether the possession of this permit affords the defendant an excuse for what would otherwise be an offence under sec. 72. This depends in part upon the meaning of the legislation under which the permit was issued, and in part upon

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Rich J.

its application to what the defendant in fact did. What he did was this. He was employed by a registered dentist who held himself out as practising in the suburb of Windsor and in the country town of Koo-wee-rup. At Koo-wee-rup the dentistry was practised in a room in a café. During the twelve months preceding the charge the defendant visited Koo-wee-rup twenty-five times. According to the defendant's evidence the only occasions upon which the registered dentist did not accompany him "were several times when his wife happened to be ill." When a policewoman visited the café surgery and secured evidence at the price of a filling, the registered dentist was seated at a fire in the front part of the café while his employee performed the work of dental surgery in an inner room. The defendant and the registered dentist, however, swore that the former was employed at a wage of £2 10s. per week and expenses with house-rent free, and that the defendant accounted in full to his employer for all fees he received. The justices considered upon the construction of the statute that the defendant as holder of a permit "was entitled to do what he did." They do not state precisely what they think he did, and from the evidence much might have been inferred. It seems clear that neither the justices nor *Macfarlan* J., who heard the order to review in the Supreme Court, considered that he acted under the personal supervision of a registered dentist. On the other hand both Courts appear to have accepted the employment as a reality and treated the activities of the defendant as an exercise of his authority as an employee. Whatever may be the effect of the permit, and upon that question the case turns, it cannot be denied that the defendant did much more than the permit purported to authorize, for in terms it warranted no more than employment by the registered dentist under his personal supervision in his practice. Unfortunately the language of the permit is founded on no more than an interpretation placed by the Dental Board of Victoria upon the provision in the statute which enables or requires the issue of permits. *Macfarlan* J. did not accept their interpretation. The provision now stands as sec. 68 (3) of the *Medical Act* 1928. It was introduced into the law by the *Medical* (*Dentists*) *Act* 1927, sec. 12. Before that enactment what is now sec. 68 (1) prohibited any registered dentist from

authorizing or permitting any unregistered person "to practise dental surgery or dentistry for such dentist unless under the personal supervision of such dentist." The Act of 1927 struck out the words "unless under the personal supervision of such dentist," and thus made the prohibition absolute. At the same time it provided that notwithstanding anything in the provision containing the prohibition a dentist may, in his practice of dental surgery or dentistry, employ any person who holds a permit stating that for at least two weeks during the period of three months immediately preceding the passing of the *Medical (Dentists) Act* 1927 such person was practising dental surgery or dentistry under the personal supervision of a dentist. Although this does no more expressly than authorize the registered dentist to employ the holder of a permit, it no doubt does operate as a provision allowing the holder of the permit so to be employed. Sec. 72 contains an express exception in the words "except as in this Division provided." Whatever the statute allows the holder of the permit to do cannot, therefore, be an offence under sec. 72. *Macfarlan* J. held that so long as the employment is bona fide the holder of the permit may practise to the fullest extent his employer may allow. At first sight it might be thought that employment by a dentist in his practice did not necessarily involve a practising by the employee. But while this is so in the ordinary meaning of the word "practise," such a large meaning is given to the word by sec. 37 that it would be difficult for an employee to avoid coming within its terms. But does it follow that the holder of a permit is under no restriction in the matter of his practising except that he must act in the course of his employment? The difficulty is that sec. 68 nowhere describes what it is the permit is to authorize. The provision is obviously one directed at the preservation of existing rights. Further existing rights are not preserved by general description, but there is a carefully qualified provision enabling those who did practise dental surgery or dentistry under the personal supervision of a dentist before the *Medical (Dentists) Act* 1927 to satisfy the Board of that fact, or on appeal a Judge, and thus to obtain a permit if, and only if, they have since the Act been continuously employed by a dentist in his practice of dental surgery or dentistry. The view that because the holder of a permit

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may be employed by a dentist in his practice he may himself practise unhampered in the course of his employment cannot be right unless an employee who is not the holder of a permit may do the same. For sec. 68 (3) (*b*) expressly provides that the Board may refuse an application for a permit if satisfied that the applicant has not been, since the passing of the *Medical* (*Dentists*) *Act* 1927 continuously employed by a dentist in his practice of dental surgery or dentistry. It thus appears that without a permit he may be employed as well as with a permit, and the terms in which the employment is described are identical. The truth seems to be that the permit was intended to authorize more than employment, but that owing to the defective drafting of the legislation no express statement of what it authorized was made. Considering what the permit is required to state, that its purpose was to preserve existing rights, but that the existing right was to practice under the personal supervision of a dentist and that the time when the definition of practise was enlarged practising under personal supervision was also drawn within the prohibition, the fair interpretation of the provision seems to be that the permit was intended to allow the continuance of that which it is required to state that the holder of the permit had done, namely, had practised under the personal supervision of a dentist. It is true that this involves interpretation by means of implication, but so does any construction of the provision. It is a more violent implication to treat the permit as authorizing not merely employment in the practice of a dentist but employment to practise without restriction in the employment. Without implication the words "employ in his practice" could not justify permission to practise in the course of the employment, yet, as I have already pointed out, employment without a permit since the Act is a qualification for obtaining a permit. It can scarcely be supposed that, in spite of the prohibition of practising under personal supervision, a person who did not hold a permit might be employed to practise with or without supervision. Possibly the expression "in his practice" was intended to have a very strict meaning and, if so, this may afford the explanation. It may refer to the doing by the dentist himself of the things set out in the statutory definition of "practice of dental surgery or dentistry." So that the employment must be

confined to assisting the dentist in doing them. But it seems reasonably clear that the permit was intended to authorize something not described by the words " employed in his practice." Everything points to the conclusion that it can have been directed only at the continuance of practice under personal supervision. This appears to be the better interpretation of the provision, and, besides giving a sensible construction to the ill-drawn sub-sec. 3, it makes the legislation consistent and harmonious. It is clear that the defendant's practice was not always under personal supervision. The permit, therefore, did not afford an excuse or justification.

The appeal should be allowed with costs.

EVATT J. On May 13th and 27th, 1931, the respondent, who was not registered as a dentist, practised dentistry for fee or reward at a town in Victoria called Koo-wee-rup. He was therefore guilty of an offence under sec. 72 of the *Medical Act* 1928 unless he came within the stated exception and his actions were authorized by some other provision contained in Division 4 of Part II. of the Act.

The authority he points to is sec. 68. He held a permit issued by the Dental Board under sec. 68 (3) (*a*), and he has proved that the dental operations he performed at Koo-wee-rup were on behalf of a registered dentist named Wainwright, who also had a practice at Windsor near Melbourne. On May 13th Wainwright did not attend at Koo-wee-rup at all, and, although he did so on May 27th, he did not attend the patient Lily Smith or supervise the operation upon her. In short, the respondent was employed by Wainwright in the latter's business, and it is said that sec. 68 allows this to be done.

The Act of 1928 is a consolidation statute. Sec. 66 (1) of the *Medical Act* 1915 prohibited a dentist from authorizing or permitting any person, not registered as a dentist, to practise dentistry for such dentist " unless under the personal supervision of such dentist." Even if his employee practised for him and under his personal supervision, the dentist employer was under the duty of preventing the public from believing that the employee was authorized to practise dentistry " on behalf of " the employer (sec. 66 (2)).

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The amending Act of 1927 (sec. 12), passed on December 30th, 1927, omitted from sec. 66 (1) the words " unless under the personal supervision of such dentist," and extended the definition of practising dentistry so as to include the giving of any dental treatment, attendance or advice.

Unless the qualification to sec. 66 (now contained in sec. 68 (3) (*a*) of the *Medical Act* 1928) had been introduced in the 1927 Act, the position would have been that employees of dentists who theretofore had, without the requirement of personal supervision by their employer, been allowed by law to give certain minor dental treatment, could no longer give such treatment even under the personal supervision of the dentist. This would probably have resulted in many dental assistants losing their employment altogether. The result was mitigated, and a dentist was allowed by sec. 12 (2) of the 1927 Act to employ permit holders " in his practice of dental surgery or dentistry." Permit holders were limited to those employed, prior to the passing of the Act, in practising dental surgery or dentistry under the personal supervision of a dentist. The length of such employment was not considered very material, a period of two weeks during the three months ending December 30th, 1927, being treated as sufficient.

The question of the nature of the employment of permit holders sanctioned by the 1927 Act now arises. There are three possible interpretations of the language used :—

(1) The first is that the permit holder is entirely prohibited from practising dentistry, and that the registered dentist is only authorized " to employ " such permittee. But this view gives no significance to the fact that sub-sec. 3 (*a*), added to sec. 66 in 1927, was inserted " notwithstanding " the terms of sec. 66 (1), and as a qualification upon the absolute injunction against a dentist's authorizing an unregistered person to practise dental surgery or dentistry. The very purpose of the mitigating provision was to allow the permittee to practise dental surgery or dentistry to some extent.

(2) The second interpretation is that the permit holder is enabled to practise dentistry " under the personal supervision " of his employer and not otherwise. This is the view expressed in the

Dental Board's official permit. The difficulty I feel about this arises from the words used in the statute. The natural way of imposing such a condition, *eo nomine*, would have been to affirm the requirement of personal supervision in the same words as had previously been used in sec. 66 (1), by declaring that, notwithstanding the terms of sec. 66 (1), a dentist may authorize permitted persons (describing them) to practise dentistry " under his personal supervision."

(3) There is, however, a third view of the statutory phrasing, which I think should be adopted. This is that the permittee is to be allowed to practise dentistry for a registered dentist so long as everything he does in the course of such practice is done " in his " (i.e., the employer's) " practice of dental surgery or dentistry." These are the words used in sub-sec. 3 (*a*). They are also stated in the conditions which must be satisfied by permittees after the passing of the 1927 Act at the risk of the Dental Board's cancelling the permit. (See sub-sec. 3 (*b*) (ii.).)

The question then turns upon the meaning of the words " in his practice " in sec. 68 (3) (*a*). I do not agree with the suggestion that " practice " means business. That would enable a registered dentist to absent himself for an indefinite time from his professional duties, and to engage a permittee to carry on his profession for him.

In my opinion there is no reason why the interpretation section (sec. 37) should not be applied to the word " practice." If so, the permittee is enabled to perform acts and give advice " for " the registered dentist so long as it can be predicated of every act of practice by the permittee that, although it is performed by him, it is also being performed in *his* (i.e., the employer's) practice. The " practice " of dentistry includes all operations and all attendances. If a permittee operates upon or attends a patient he is engaged in " the practice " of dentistry, and he is liable to be convicted under sec. 72 unless it can be said of each operation and attendance that it is done in the employer's own practice.

In the result, the opinion I have expressed involves that the registered dentist must supervise and control all the actions of his employee in attending, treating or operating upon patients. The

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undisputed facts of the present case show that the respondent's employer did not direct or even concern himself with the treatment given by the respondent on the occasions described. The consequence is that the defence based on sec. 68 (3) failed.

The appeal should be allowed.

McTIERNAN J. The defendant was not registered as a dentist according to law. There can be no doubt upon the evidence that he performed operations which fell within the statutory definition of "dental surgery" or "dentistry," or the "practice of dental surgery or dentistry." But the defendant was the holder of a permit which the Dental Board issued to him "as an employee of a dentist" under the provisions of the *Medical Act* 1915, Part II., and of the *Medical* (*Dentists*) *Act* 1927. These provisions are now contained in sec. 68 (3) of the *Medical Act* 1928. The "permit" stated, *inter alia*, that "A dentist may under his personal supervision employ Frederick Charles Whamond in his practice of dental surgery or dentistry, he having for at least two weeks during the period of three months immediately preceding the passing of the *Medical* (*Dentists*) *Act* 1927, practised dental surgery or dentistry under the personal supervision of a dentist." If the permit does correctly define the scope of the exception which sub-sec. 3 of sec. 68 allows to the prohibition contained in sub-sec. 1 of that section, neither sub-sec. 3 nor the permit is a defence to the information, in view of what the defendant did on the relevant occasions. I agree with my brother *Rich* that upon the true construction of sec. 68 (3) the holder of a permit is not employed by a dentist "in his practice of dental surgery or dentistry" unless such a person is employed under the personal supervision of the dentist.

The practice of the dentist mentioned in sec. 68 (3) consists, in my opinion, of his attendances upon persons who come to him for treatment. If a dentist, instead of attending to some of the people who wished to consult him, were to turn them off to another practitioner, whom he authorized to attend to them on his behalf, without any personal supervision on his part whilst attendances were being made upon them, it could not be said that such attendances would be made in the practice of the dentist. The persons

so treated would not in fact be his patients. Thus it appears to me that the personal supervision of the dentist who employs the permit holder is necessary to make him an employee in his practice. In this view sec. 68 (3) is consistent with the principle and objects of Part II. of the Act, which aims at confining the practice of dental surgery or dentistry to persons who are registered under the Act and obviously for the benefit of the public, at enforcing standards of knowledge and training which must be attained by persons engaging in the practice of dentistry. It would, indeed, be anomalous if personal supervision by a registered dentist was not necessary when persons were under treatment by the holder of a permit whose employment was lawful only because he held a permit, upon the face of which sec. 68 (3) requires that the following words should be recorded: "for at least two weeks during the period of three months immediately preceding the thirtieth day of December one thousand nine hundred and twenty-seven such person was practising dental surgery or dentistry under the personal supervision of a dentist." The view of sec. 68 (3) expressed in the judgment of my brother *Rich* avoids this anomaly. In this view the principle of the Act is maintained unimpaired, the registered dentist is saved from the obligation of doing by his own hands every act within the category of dental surgery or dentistry, and the position of the employee is determined in a manner suitable to the qualification, which is laid down for a person to be the holder of a permit to be employed, and finally the rights of those employed under the personal supervision of a dentist prior to the passing of sec. 12 of the *Medical* (*Dentists*) *Act* 1927, are maintained. Whether anything within the meaning of dental surgery or dentistry was done under personal supervision must depend upon the facts in each case. It will be noticed that the date mentioned in sec. 68 (3) is that upon which the *Medical* (*Dentists*) *Act* 1927 came into force. Sec. 12 of that Act removed from sec. 66 of the *Medical Act* 1915 the following words: "unless under the personal supervision of such dentist." This supports the view that sec. 68 (3) was inserted to save the rights of persons who were employed under the personal supervision of a dentist in accordance with sec. 66 (1) of the *Medical*

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Act 1915 from being deprived of their employment by the prohibition, which is now sec. 68 (1).

I am of opinion that the appeal should be allowed with costs.

Appeal allowed with costs. Order of Macfarlan J. set aside and in lieu thereof order made absolute with costs. Order of Court of Petty Sessions set aside and defendant convicted and fined five pounds with five guineas costs.

Solicitor for the appellant, *Ernest Joske.*

Solicitors for the respondent, *W. E. Pearcey & Ivey.*

H. D. W.

[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXATION APPELLANT; PLAINTIFF,

AND

THE VICTORIAN HARDWARE CLUB . . RESPONDENT. DEFENDANT,

H. C. OF A. 1931.

MELBOURNE, *May* 6.

Rich, Starke, Dixon, Evatt and McTiernan JJ.

Entertainments Tax (Cth.)—Entertainment—Club's annual picnic—Boat ticket—Incidental attractions—Whether an entertainment—Entertainments Tax Assessment Act 1916-1924 (*No.* 36 *of* 1916—*No.* 52 *of* 1924), *secs.* 2, 11.

A club held its annual picnic for which it made a charge to cover the cost of a boat ticket and also provided music and incidental attractions in a public park engaged for the occasion for admission to which no further charge was made.

Held, that the function was not an entertainment within the meaning of the Federal *Entertainments Tax Assessment Act* 1916-1924.