[HIGH COURT OF AUSTRALIA.]

THE COMMISSIONER FOR RAILWAYS (NEW SOUTH WALES) . . . . . } APPELLANT;
DEFENDANT,

AND

HAILEY . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *April* 22, 26; *May* 5.

Latham C.J., Rich and Dixon JJ.

Criminal Law—Felony—Simple larceny—Summary conviction—Railways—Officer—Vacation of office—Government Railways Act 1912-1931 (*N.S.W.*) (*No.* 30 *of* 1912—*No.* 61 *of* 1931), *secs.* 3*, 80—*Crimes Act* 1900-1929 (*N.S.W.*) (*No.* 40 *of* 1900—*No.* 2 *of* 1929), *secs.* 9*, 117*, 476-478*, 481, 501—*Interpretation Act* 1897 (*N.S.W.*) (*No.* 4 *of* 1897), *sec.* 29*—*Ministry of Transport Act* 1932 (*N.S.W.*) (*No.* 3 *of* 1932), *secs.* 5 (3), 6 (1) (*a*), 9 (1), 12 (2)—*Transport* (*Division of Functions*) *Act* 1932 (*N.S.W.*) (*No.* 31 *of* 1932), *secs.* 3 (1) (*a*), 4 (3) (*a*), 14 (1), 20, 21 (1).

Sec. 80 of the *Government Railways Act* 1912-1931 (N.S.W.) provides that if an officer of the Department of Railways "is convicted of any felony" he shall be deemed to have vacated his office. Sec. 481 of the *Crimes Act* 1900-1929 (N.S.W.) provides that every conviction after summary trial for an indictable offence triable summarily by the consent of the accused under sec. 476 of

*Sec. 3 of the *Government Railways Act* 1912-1931 (N.S.W.) provides: "In this Act, unless the context or subject matter otherwise indicates or requires . . . . (*g*) 'Officer' means any officer, clerk, servant, or other person employed by the commissioners to assist in the execution of this Act."

The *Crimes Act* 1900-1929 (N.S.W.) provides:—Sec. 9: "Whenever by this Act a person is made liable to the punishment of death, or of penal servitude, the offence for which such punishment may be awarded is hereby declared to be and shall be dealt with as a felony, and wherever in this Act the term 'felony' is used, the same shall be taken to mean an offence punishable as aforesaid." Sec. 117: "Whosoever commits simple larceny, or any felony by this Act made punishable like simple larceny, shall, except in the cases hereinafter otherwise provided for, be liable to penal servitude for five years." Sec. 476: "Where a person is charged before one, or more than one, justice with an offence mentioned in the next following section, and the evidence for

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that Act "shall have the same effect as a conviction upon an indictment for the offence would have had."

Held that an officer of the Department of Railways who is tried under sec. 476 of the *Crimes Act* 1900-1929 (N.S.W.) for the offence of simple larceny and convicted vacates his office.

Commissioner for Railways (N.S.W.) v. *Cavanough*, (1935) 53 C.L.R. 220, and *Commissioner for Railways (N.S.W.)* v. *Pitman*, (1936) 56 C.L.R. 144, distinguished.

Held, further, that notwithstanding the *Transport (Division of Functions) Act* 1932 (N.S.W.) a railway employee is an "officer" within the meaning of that word as used in the *Government Railways Act* 1912-1931 (N.S.W.).

Decision of the Supreme Court of New South Wales (Full Court): *Hailey* v. *Commissioner for Railways*, (1937) 37 S.R. (N.S.W.) 482; 54 W.N. (N.S.W.) 182, reversed.

APPEAL from the Supreme Court of New South Wales.

In an action brought in a District Court of New South Wales Leslie William Alfred Hailey claimed from the Commissioner for Railways of New South Wales the sum of £76 17s. 2d., as salary due to him by the defendant.

Judge *Thomson* found a verdict for the defendant, and judgment was entered accordingly.

An appeal to the Supreme Court was made under sec. 143 of the *District Courts Act* 1912 (N.S.W.) by way of a special case settled by the trial judge substantially as follows:—

This is an action by the plaintiff to recover from the defendant the sum of £76 17s. 2d. alleged to be salary due to the plaintiff between 7th December 1936 and 16th April 1937.

the prosecution is in the opinion of such justice or justices sufficient to put the accused on his trial, but it appears to him or them that the case may properly be disposed of summarily, the said justice, or justices, shall, if—(1) the accused consents to it being so disposed of, and does not desire to have the case determined by a jury; and (2) the subject matter of the charge, or charges, that may be made in respect of any of the offences mentioned, or the value of the property involved, does not amount to one hundred pounds, have jurisdiction to hear and determine the charge in a summary manner, and pass sentence upon the person so charged." Sec. 477: "The offences referred to in the last preceding section are . . . (*c*) committing simple larceny." Sec. 478: "Where any person pleads guilty to, or is convicted under the provisions of this chapter of, an offence under the last preceding section, he shall be liable to imprisonment for twelve months, or to a fine of fifty pounds."

Sec. 29 of the *Interpretation Act* 1897 (N.S.W.) provides: "The expression 'felony' used in an Act shall mean a crime in respect of which the punishment of death, or of penal servitude, may be awarded."

At the hearing of the action in the Metropolitan District Court before me on 20th and 30th August 1937 the following facts were proved or admitted :—

1. That prior to 7th December 1936 the plaintiff was an officer within the meaning of the *Government Railways Act* 1912 (N.S.W.) as amended, and employed by the defendant as a night officer.

2. That on 7th December 1936 the plaintiff appeared before two justices of the peace sitting at Moss Vale Police Court, New South Wales, on a charge of stealing four gallons of benzine valued at eight shillings, the property of the defendant.

3. That the requirements of secs. 476 and 479 of the *Crimes Act* 1900 (N.S.W.) as amended were duly complied with and that the plaintiff consented to the case being disposed of summarily.

4. That the plaintiff thereupon pleaded guilty and was convicted of the offence by the justices and was fined £2 or in default four days' imprisonment with hard labour.

5. That the plaintiff has never been dismissed from the service and that if the plaintiff succeeded in this action he would be entitled to salary from 7th December 1936, the date of the above-mentioned conviction, to 16th April 1937, the date of service of the notice of action herein.

Upon the above facts proved or admitted I held that the plaintiff on 7th December 1936 had been convicted of a felony within the meaning of sec. 80 of the *Government Railways Act* 1912 as amended and thereby must be deemed to have vacated his office as from that date. I therefore found a verdict for the defendant and entered judgment accordingly.

The questions for the opinion of the court were :—

1. Whether the decision was erroneous in law.
2. Whether the plaintiff on 7th December 1936 had been convicted of a felony and therefore must be deemed to have vacated his office within the meaning of sec. 80 of the *Government Railways Act* 1912 as amended.
3. Whether the plaintiff was entitled to a verdict for £76 17s. 2d.

The Full Court of the Supreme Court answered the questions as follows : 1. Yes ; 2. No ; and 3. Yes. It ordered that the appeal

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be allowed with costs and that judgment be entered for the plaintiff for £76 17s. 2d.: *Hailey* v. *Commissioner for Railways* (1).

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

Evatt K.C. (with him *Dwyer*), for the respondent. It is submitted as a preliminary point that the special leave to appeal granted herein should be rescinded. Upon the passing of the *Transport (Division of Functions) Act* 1932, the respondent ceased to be an officer within the meaning of sec. 80 of the *Government Railways Act* and became an officer under the first-mentioned Act (*Hamilton* v. *Halesworth* (2)).

Bradley K.C. (with him *Chambers*), for the appellant. The preliminary point raised on behalf of the respondent is concluded against him by par. 1 of the special case. This court has never before directly considered sec. 476 of the *Crimes Act*, under which the respondent was charged and convicted. For that reason *Commissioner for Railways (N.S.W.)* v. *Cavanough* (3) and *Commissioner for Railways (N.S.W.)* v. *Pitman* (4), in which sec. 501 of the *Crimes Act* was the particular statutory provision concerned, are distinguishable and do not apply. The respondent was convicted under secs. 476 and 477 of the offence of committing simple larceny and, by the joint operation of secs. 116, 117 and 481 of the Act, he thereupon became liable to penal servitude; thus the offence of which he was convicted was a felony within the meaning of sec. 9 of the Act and brought him within the scope of sec. 80 of the *Government Railways Act*. The respondent's offence does not come within the exceptions provided for by sec. 117. Those exceptions are only as to the term and are not as to the quality of the punishment. The procedure under sec. 476 is different from the procedure under sec. 501. The jurisdiction and powers exercisable by justices under sec. 476 differ from those exercisable by magistrates under sec. 501 (*In re Burley* (5)). The test under sec. 9 is the offence and the punishment therefor to which the offender has rendered

(1) (1937) 37 S.R. (N.S.W.) 482; 54 W.N. (N.S.W.) 182.
(2) (1937) 58 C.L.R. 369.
(3) (1935) 53 C.L.R. 220.
(4) (1936) 56 C.L.R. 144.
(5) (1932) 47 C.L.R. 53, at pp. 55, 58.

himself liable. The actual punishment awarded is immaterial (*Cavanough* v. *Commissioner for Railways* (1); *Commissioner for Railways* (*N.S.W.*) v. *Pitman* (2)). The provisions of sec. 481 have an important bearing on the matter. The simple larceny referred to in secs. 476 and 477 is the simple larceny caught up by secs. 9 and 117 and which existed from the commencement of the *Crimes Act* in 1900. Sec. 501 is a comparatively recent amendment to the Act and refers to offences different from those referred to in those other sections.

Evatt K.C. Upon the assumption that the decision in *Commissioner for Railways* (*N.S.W.*) v. *Pitman* (3) is not challenged, the appellant is limited to a consideration of sec. 481 only. Except for certain specified functions, the control, management and administration generally of the railways service are no longer effected under the *Government Railways Act*. The powers, duties and functions of the appellant commissioner were conferred and imposed upon him by the *Transport* (*Division of Functions*) *Act* 1932, and, in the exercise of those powers and the performance of those duties and functions, he is assisted by officers, of whom the respondent is one, who became such " officers and employees of the Department of Railways " by virtue of sec. 21 (1) of that Act, that is, they became officers and employees of the commissioner. See also *Ministry of Transport Act* 1932, secs. 9, 10. Upon the passing of those Acts the respondent ceased to be a person employed by the commissioner " to assist in the execution of " the *Government Railways Act*, within the meaning of sec. 3 of that Act. It follows that, although sec. 80 of that Act has not been repealed, it has been rendered sterile. Regard should be had to the Act by which an office or position was created in order to determine the rights, privileges, powers, duties and obligations of occupants of that office or position (*Hamilton* v. *Halesworth* (4)), that is to say, here, in the circumstances, the respondent is not affected by sec. 80 of the *Government Railways Act* because although, as stated in par. 1 of the special case, he was prior

(1) (1935) 35 S.R. (N.S.W.) 162, at pp. 165-167; 52 W.N. (N.S.W.) 31, at pp. 32, 33.

(2) (1936) 56 C.L.R., at pp. 150, 154, 156, 157.

(3) (1936) 56 C.L.R. 144.

(4) (1937) 58 C.L.R. 369.

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to 7th December 1936 an officer under that Act, he was not such an officer when he pleaded guilty to the offence ; he was then employed by the appellant as a night officer. Alternatively, and assuming that the respondent is an officer within the meaning of sec. 80, he was not convicted of a felony within the meaning of that section. The *Crimes Act* does not provide that every larceny shall be a felony. An examination of that Act shows that larcenies fall into two categories, namely, felonies and misdemeanours. The Act makes the value of the stolen goods an essential feature of larceny. In many sections acts of larceny are made punishable by a punishment less than penal servitude ; those larcenies, therefore, obviously are not felonies, and as the punishment expressly provided by sec. 478 is considerably less than the punishment specified in sec. 117, it follows that the offence under sec. 476 to which the respondent pleaded guilty is one of the cases excepted from the operation of sec. 117. The real purpose of secs. 480 and 481 is to deal with the effect of dismissal or conviction. The effect of a conviction under sec. 476 was considered in *Ex parte Pritchard* (1). Sec. 9 of the *Crimes Act* is not concerned with the general classification of crimes : it relates to the wrongdoing of an offending person and deals with a specific instance at a specific point of time.

Bradley K.C., in reply. Upon a true interpretation of the *Ministry of Transport Act* 1932 and the *Transport (Division of Functions) Act* 1932, the Commissioner for Railways and his officers are in the same position as if he and they were the commissioner and officers respectively under the *Government Railways Act*. Either the present commissioner " stands in the shoes " of the commissioners appointed under that Act, or, alternatively, by virtue of sec. 21 of the *Transport (Division of Functions) Act* 1932, the officers and employees are officers and employees of the Department of Railways, which is a different employer from the administrator of the Act, namely, the present body corporate. If that be correct the appellant is not an employer at all, and, therefore, is not liable for the amount claimed. Sec. 481 deals with two different matters, namely, (*a*) that a conviction shall have the same effect as a conviction

(1) (1918) 18 S.R. (N.S.W.) 434 ; 35 W.N. (N.S.W.) 129.

upon an indictment, and (*b*) that upon conviction or dismissal no person shall be afterwards liable to prosecution for the same cause.

[EVATT K.C., by leave, referred to *Ex parte Cusack*; *Re Searson* (1).]

Cur. adv. vult.

May 5.

The following written judgments were delivered :—

LATHAM C.J. The question which arises upon this appeal is whether the plaintiff Hailey was on 7th December 1936 convicted of a felony so that he vacated his office as an officer employed by the Commissioner for Railways. Hailey was, on the date mentioned, convicted by two justices of the peace on the charge of stealing four gallons of benzine valued at eight shillings. He was prosecuted under the provisions of sec. 476 of the *Crimes Act* 1900 as amended. That section provides that where a person is charged before a justice or justices with an offence mentioned in sec. 477 and the evidence for the prosecution is, in the opinion of the justice or justices, sufficient to put the accused on his trial, but it appears to the justice or justices that the case may be disposed of summarily, then the said justice or justices shall, if the accused consents to it so being disposed of and does not desire to have the case determined by a jury, and the subject matter of the charge does not amount to one hundred pounds, have jurisdiction to hear and determine the charge in a summary manner. Among the offences specified in sec. 477 is the offence of committing simple larceny. The requirements of sec. 476 were satisfied, the accused consenting to the charge being dealt with by the justices. He pleaded guilty and was fined £2 or in default four days' imprisonment. Sec. 478 provides that where a person pleads guilty to an offence which is dealt with under secs. 476 and 477 the punishment may be imprisonment for twelve months or a fine of £50.

Sec. 80 of the *Government Railways Act* 1912 provides that "if any officer is convicted of any felony . . . he shall be deemed to have vacated his office." The *Crimes Act* 1900, sec. 9, is as follows: "Whenever by this Act a person is made liable to the

(1) (1935) 52 W.N. (N.S.W.) 214.

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punishment of death, or of penal servitude, the offence for which such punishment may be awarded is hereby declared to be and shall be dealt with as a felony, and wherever in this Act the term 'felony' is used, the same shall be taken to mean an offence punishable as aforesaid." The *Interpretation Act* 1897, sec. 29, provides that the expression "felony" used in an Act shall mean a crime in respect of which the punishment of death or of penal servitude may be awarded. Sec. 117 of the *Crimes Act* provides as follows: "Whosoever commits simple larceny, or any felony by this Act made punishable like simple larceny, shall, except in the cases hereinafter otherwise provided for, be liable to penal servitude for five years."

When a person is convicted of simple larceny under sec. 476 of the *Crimes Act* he is not liable to penal servitude (See sec. 478, already referred to). Accordingly it is urged on behalf of the plaintiff that it cannot be said that he was convicted of a felony and that, therefore, sec. 80 of the *Government Railways Act* does not apply, with the result that he is entitled to payment of salary notwithstanding his conviction.

A similar question has arisen with respect to sec. 501 of the *Crimes Act* which also provides for summary proceedings in the case of simple larceny, and which also does not authorize a sentence of penal servitude to be imposed. Cases which arise under sec. 501 were considered in *Cavanough* v. *Commissioner for Railways* (1); on appeal (2); and in *Commissioner for Railways (N.S.W.)* v. *Pitman* (3). In *Pitman's Case* (3) there was an even division of opinion in this court and the result was that the decision of the Full Court of New South Wales was affirmed. That decision was that a conviction for simple larceny under sec. 501 did not constitute a conviction for a felony within the meaning of sec. 80 of the *Government Railways Act*. The Full Court took the view in this present case that it followed from the cases mentioned that the prosecution in the present case must be regarded as a prosecution for an offence created by sec. 501 under a procedure provided by sec. 476 and that, therefore, in accordance with the decisions in those cases, the plaintiff had not been convicted of a felony.

(1) (1935) 35 S.R. (N.S.W.) 162; 52 W.N. (N.S.W.) 31.

(2) (1935) 53 C.L.R. 220.

(3) (1936) 56 C.L.R. 144.

In my opinion, however, this case can be decided without considering the questions which arose in *Cavanough's Case* (1) and *Pitman's Case* (2). There is a provision in the *Crimes Act* which specifically applies to convictions under sec. 476, but which is not made applicable to convictions under sec. 501. This provision is sec. 481. That section is as follows: "Every conviction in any such case shall have the same effect as a conviction upon an indictment for the offence would have had, and no person convicted as aforesaid, or who obtains a certificate of dismissal under the last preceding section, shall be afterwards liable to prosecution for the same cause."

It is argued for the respondent that the effect of this section is simply to make available the defence of *autrefois convict* to a person committed under sec. 476. But this construction gives no effect whatever to the first part of the section. That first part is an express provision that every conviction under sec. 476 shall have "the same effect as a conviction upon an indictment for the offence would have had." There is no doubt that if a person were convicted of simple larceny upon indictment he could be punished by penal servitude (sec. 117). Sec. 478 prevents the infliction of penal servitude, but sec. 481 preserves such other "effect" as follows by law upon a conviction upon indictment. Vacation of office under such a provision as sec. 80 of the *Government Railways Act* is an "effect" of a conviction upon indictment in the case of simple larceny, and therefore, in my opinion, the conviction of the plaintiff under sec. 476 must be regarded as producing the same result. Vacation of office is a direct and immediate effect of such a conviction. It is a result produced by the conviction itself.

It has been argued that the consequences of this view are such as to show that it should not be adopted if any other view is possible. It is said, for example, that one result would be that there would be an appeal to the Court of Criminal Appeal from convictions by magistrates under sec. 476, because sec. 5 of the *Criminal Appeal Act* 1912 gives a right of appeal to a person "convicted on indictment." It is not necessary for the purpose of the present appeal to decide this and other questions of a similar kind which were raised

(1) (1935) 35 S.R. (N.S.W.) 162; 52 W.N. (N.S.W.) 31; 53 C.L.R. 220.
(2) (1936) 56 C.L.R. 144.

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in argument. But it may be pointed out that a person convicted under sec. 476 is not in fact a person who has been convicted on indictment, and that sec. 481 does not purport to make him such a person.

It has been further argued in this court, though not in the Supreme Court, that the plaintiff is not an officer within the meaning of sec. 80 of the *Government Railways Act*. This contention is not, in my opinion, open upon the case which has been stated. Par. 1 of the case is as follows : " That prior to 7th December 1936 the plaintiff was an officer within the meaning of the *Government Railways Act* 1912 as amended, and employed by the defendant as a night officer." These words are clear, and it is not open to either party upon appeal to this court to contest the accuracy of propositions contained in the case stated. It was, however, urged that it was legally impossible for the plaintiff to be an officer within the meaning of the *Government Railways Act* because statutory alterations made in the provisions relating to the administration of the railways department made it impossible for him to be a person employed by the commissioner " to assist in the execution of this Act " (*Government Railways Act*, sec. 3). The argument was founded upon *Hamilton* v. *Halesworth* (1). In that case, it was held that a special constable appointed under the *Police Offences Act* was entitled to the protection of a limitation section applying in the case of acts done in pursuance of the Act even though he had exercised a power which was conferred upon him by another statute. The decision in *Hamilton* v. *Halesworth* (1) established the positive proposition that the defendant in that case was acting in pursuance of the Act under which he was appointed, and therefore was entitled to the protection of the relevant section. But it did not establish and does not support the negative proposition that he was therefore not acting in pursuance of any other Act (See per *Starke* J. (2), where the matter is expressly left open, and per *Dixon* and *McTiernan* JJ. (3)). Thus, even if the appellant in the present case were employed under a statute other than the *Government Railways Act* 1912, there is nothing in the decision of *Hamilton* v. *Halesworth* (1), or, I add, in any general

(1) (1937) 58 C.L.R. 369.
(2) (1937) 58 C.L.R., at p. 376.
(3) (1937) 58 C.L.R., at pp. 379, 380.

principle of law, to make it impossible for him to be an officer employed " to assist in the execution " of the *Government Railways Act*.

An examination of the relevant statutes shows that the contention submitted cannot be supported on the words of the Acts. My brother *Dixon* has examined this question in detail, and it is sufficient for me to say that I agree in his reasoning and in his conclusion.

I am, therefore, of opinion that the appeal should be allowed and that the questions in the special case should be answered as follows :— 1. No. 2. Yes. 3. No. The judgment of the Supreme Court should be set aside, and the judgment of the learned District Court judge should be restored.

RICH J. I have read the judgments of the Chief Justice and *Dixon* J., and agree that the appeal should be allowed and that the questions in the special case should be answered as follows :—1. No. 2. Yes. 3. No.

DIXON J. The plaintiff was employed in the Department of Railways as a night officer. A charge was laid against him of stealing four gallons of benzine, valued at eight shillings, the property of the Commissioner for Railways. The charge was heard before two justices, who were of opinion that the evidence was sufficient to put him on his trial, but that the case might properly be disposed of summarily. The plaintiff thereupon consented to the case being so disposed of. Under sec. 476 of the *Crimes Act* 1900 this gave the justices jurisdiction to hear and determine the charge in a summary manner. After following the procedure laid down in such a case they convicted the plaintiff and fined him two pounds or in default four days' imprisonment. Sec. 80 of the *Government Railways Act* 1912 provides that, if any officer is convicted of any felony, he shall be deemed to have vacated his office.

The question for decision is whether the plaintiff lost his office under this provision.

His counsel advances two reasons against an affirmative answer. First, it is said that he does not fall within the statutory definition of an officer ; secondly, it is said that the crime of which he was

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convicted does not answer the statutory definition of felony. The first contention depends on the definition of the word "officer" contained in sec. 3 of the *Government Railways Act* 1912-1931. The word means a person "employed by the commissioners to assist in the execution of this Act." The contention is that, since the passing of the *Transport (Division of Functions) Act* 1932, officers of the Department of Railways are no longer employed to assist in the execution of the *Government Railways Act*. The statutory reorganization of the control of transport brought about by the *Transport (Division of Functions) Act* 1932 supplies the foundation of the argument. A Department of Transport had been created under an earlier Act of the same year, viz., the *Ministry of Transport Act* 1932 (*No.* 3), the plan of which, however, was allowed full operation for nine months only. It was to include the government department which administered the *Government Railways Act* 1912-1931. A Board of Commissioners was erected who were to execute and perform the duties, powers, authorities and functions of various bodies, including the Railway Commissioners, who were directed to "cease to function." The statute provided that, in the construction of any Act passed for the exercise of any power, authority, function, or duty transferred to the Board of Commissioners, a reference to the Railway Commissioners should be read as a reference to the Board of Commissioners (See secs. 5 (3), 6 (1) (*a*), 9 (1) and 12 (2) of Act No. 3 of 1932).

It will be seen that, while this Act was in full operation, railway servants, though no longer employed by the commissioners, continued to be employed to assist in the administration of the *Government Railways Act* 1912-1931, a task transferred to the Board of Commissioners as a body within the Department of Transport. The result of reading the references to the Railway Commissioners in the latter Act as references to the Board of Commissioners would appear to be that railway servants were employed by the board. But, in any case, it is clear that they continued to be governed by the provisions of the *Government Railways Act* 1912-1931.

The *Transport (Division of Functions) Act* 1932 establishes a Ministry of Transport divided into departments, one of which is the Department of Railways. Under this Act, it is to be administered

by a Commissioner for Railways who is to exercise and perform the powers, authorities, duties and functions which, at the commencement of the Act, were exercised and performed by the Board of Commissioners. The powers, authorities, duties and functions of that board, which was in its turn to "cease to function," are to be executed and performed by the respective commissioners appointed under the *Transport (Division of Functions) Act*, one of which is the Commissioner for Railways. Employees of the Department of Transport employed in connection with the administration of any power, authority, duty or function of the Board of Commissioners required or permitted under the *Transport (Division of Functions) Act* to be exercised and performed by the Commissioner for Railways are to become employees of the Department of Railways. References in any Act to the Board of Commissioners are to be read as references to the appropriate commissioner appointed under the *Transport (Division of Functions) Act* (See secs. 3 (1) (*a*), 4 (3) (*a*), 14 (1), 20 and 21 (1) of Act No. 31 of 1932). These provisions appear to me effectually to place the administration of the *Government Railways Act* 1912-1931 under the Commissioner for Railways, and to continue that statute in operation, subject only to the substitution of the Commissioner for Railways for the Railway Commissioners mentioned in it. It is not, I think, material to inquire whether the commissioner or the Crown is to be regarded as the employer. If the latter, the definition of officer in the *Government Railways Act* 1912-1931 must be taken as no longer applicable according to its exact terms. If the former, the operation of sec. 20 of the *Transport (Division of Functions) Act* 1932 upon sec. 12 (2) of the *Ministry of Transport Act* 1932 is simply to make the definition refer to the Commissioner for Railways. In any event, it appears to me that railway employees remain subject to the *Government Railways Act* 1912-1931, which governs the terms of their employment, including tenure. In my opinion the plaintiff was an officer within the meaning of sec. 80 of the last-mentioned Act. He lost his office, if, when he was convicted by the magistrates, he was convicted of a felony.

The second contention is that it was not a conviction of felony. The magistrates acted under secs. 476-478 of the *Crimes Act* 1900,

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not under sec. 501, the provision upon which *Commissioner for Railways (N.S.W.)* v. *Pitman* (1) turned. In that case, however, the operation of secs. 476-478 and of sec. 481 was discussed. I expressed my opinion that a conviction under those provisions produced the same effect as a conviction for the same offence or offences upon indictment (2). I can see no reason to restrict the meaning of sec. 481, which I should have thought was designed to insure, among other things, that the consequences to the status of the prisoner flowing from a conviction on indictment for any of the offences enumerated in sec. 477 should flow from a conviction for the same offence by justices under secs. 476, 478 and 479. In my opinion the plaintiff lost his office.

I think the appeal should be allowed. The order of the Supreme Court should be discharged. In lieu thereof it should be ordered that the questions in the special case should be answered: 1. No; 2. Yes; 3. No, and the appeal from the District Court to the Supreme Court should be dismissed with costs. No term in relation to costs was imposed by the order of this court granting special leave to appeal, but I think that no order as to costs of this appeal should be made.

Appeal allowed. No order as to costs. Judgment of Supreme Court set aside. Questions in special case answered as follows:—(1) *No.* (2) *Yes.* (3) *No. Judgment of the District Court restored.*

Solicitor for the appellant, *Fred. W. Bretnall*, Solicitor for Transport.

Solicitors for the respondent, *Abram Landa & Co.*

J. B.

(1) (1936) 56 C.L.R. 144.

(2) (1936) 56 C.L.R., at pp. 148, 149.