[HIGH COURT OF AUSTRALIA.]

WINSOR AND OTHERS . . . . . APPELLANTS;
RESPONDENTS,

AND

BOADEN . . . . . RESPONDENT.
APPLICANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1953.

SYDNEY, *Aug.* 19.

Dixon C.J., Webb, Fullagar, Kitto and Taylor JJ.

Railways (N.S.W.)—Employees—"Imprisonment for any term of or exceeding six months"—Vacation of office—Statutory provision destroying accrued rights—Method of construction—"Sentence"—Government Railways Act 1912-1951 *(N.S.W.) (No.* 30 *of* 1912—*No.* 15 *of* 1951), *s.* 80.

The *Government Railways Act* 1912-1951 (N.S.W.), s. 80 provides, *inter alia*, that if any officer is convicted of any felony or is sentenced to imprisonment for any term of or exceeding six months he shall be deemed to have vacated his office. The respondent was convicted by a court of petty sessions in respect of three offences, and was sentenced to imprisonment for three months on each charge. In respect of the third charge, the imprisonment was to "commence at the expiration of the imprisonment" for the first offence.

Held, that the respondent had not been sentenced to imprisonment for any term of or exceeding six months.

It is a principle of construction that a statutory provision which destroys accrued rights is not to be given a wider or more ample operation than the literal, natural or grammatical meaning of the words conveys unless the context or subject matter so demands.

The word "sentence" connotes a judicial judgment or pronouncement fixing a term of imprisonment. A term of imprisonment is the period fixed by the judgment as the punishment for the offence.

Decision of the Supreme Court of New South Wales (Full Court): *Ex parte Boaden*; *Re Winsor* (1953) 70 W.N. (N.S.W.) 152, affirmed.

H. C. OF A. 1953.

WINSOR v. BOADEN.

APPEAL from the Supreme Court of New South Wales.

The respondent, an officer in the employ of the railway commissioner, was convicted by a court of petty sessions on three charges of knowingly having goods in custody reasonably suspected of being stolen, and was sentenced to three months' imprisonment on each charge. In respect of the third charge he was "adjudged . . . to be imprisoned in the gaol at Parramatta, . . . there to be kept to hard labour for the space of three months to commence at the expiration of the imprisonment for the offence first mentioned. Section 80 of the *Government Railways Act* 1912-1951 is in the following terms:—If any officer is convicted of any felony or is sentenced to imprisonment for any term of or exceeding six months, or becomes bankrupt, or applies to take the benefit of any Act for the relief of insolvent debtors, or by any deed or other writing compounds with his creditors, or makes an assignment of his salary for their benefit, he shall be deemed to have vacated his office.

The appellants, the members of the board constituted under Pt. IX of the *Government Railways Act* 1912-1951 took the view that, by virtue of s. 80, the respondent was to be deemed to have vacated his office under such circumstances that he had forfeited his right to superannuation. The respondent applied to the Supreme Court for the issue of a writ of mandamus directing the board to certify, under s. 124 of the Act, what moneys were payable to him by way of superannuation allowance. The Supreme Court (*Street* C.J., *Owen* and *Clancy* JJ.) made the rule absolute with costs (1).

From this decision the board appealed to the High Court.

D. F. Lewis, for the appellants.

J. A. Clapin, for the respondent.

The judgment of the Court was delivered by:—

DIXON C.J. This appeal involves the interpretation of s. 80 of the *Government Railways Act* 1912-1951. That section provides that if any officer is convicted of any felony or is sentenced to imprisonment for any term of or exceeding six months he shall be deemed to have vacated his office. It also provides for other conditions in which he would vacate his office but they are not material to this case. The respondent in this appeal was convicted before a court of petty sessions on one day in respect of three offences. The offences were alleged to have been committed at the same place and on the same day. On the first charge he was sentenced to imprisonment for

(1) (1953) 70 W.N. (N.S.W.) 152.

three months. On the second he was also sentenced to imprisonment for three months. These sentences were to be served concurrently. On the third charge he was sentenced to three months' imprisonment in the same gaol " there to be kept to hard labour for the space of three months to commence at the expiration of the imprisonment " for the two other offences. The problem is whether in these circumstances he was, within the meaning of s. 80, sentenced to imprisonment for any term of or exceeding six months. The Supreme Court of New South Wales has decided that the provisions of the section were not satisfied, although the cumulative terms did amount to a period of six months. The construction the Supreme Court gave to s. 80 was that there must be one sentence and that the sentence must be for a term of six months or more. That appears to us to be the natural prima facie meaning of the words. The section is one which destroys accrued rights. It is a principle of construction that a provision of that kind is not to be given a wider or more ample operation than the literal, natural or grammatical meaning of the words conveys unless there is a context or a subject matter which so demands. During the argument a number of considerations was canvassed which, it was suggested, tended to support the literal meaning of the words and brought out difficulties which would ensue if the period of six months mentioned in the section were to be made up of independent sentences of smaller terms. But independently of those considerations, we think that what we take to be the literal or natural meaning of the words should be adhered to. The word " sentence " connotes a judicial judgment or pronouncement fixing a term of imprisonment. A term of imprisonment is the period fixed by the judgment as the punishment for the offence. In our opinion there is nothing in s. 80 to show that the word is used in that section in any other sense. We agree with the Supreme Court in their construction of the section, and consequently the appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellants, *F. P. McRae.*
Solicitors for the respondent, *Colquhoun & King.*

G. D. N.