[HIGH COURT OF AUSTRALIA.]

REYNOLDS . . . . . APPELLANT;
APPLICANT,

AND

STACY AND OTHERS . . . . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1956-1957. 1956, SYDNEY, *Nov.* 16; 1957. MELBOURNE, *Feb.* 18. Dixon C.J., McTiernan, Fullagar, Kitto and Taylor JJ.

Medical Practitioners—Drugs—Failure to keep register—Misdemeanour—Disciplinary tribunal—Inquiry—Jurisdiction—Medical Practitioners Act 1938-1955 (*N.S.W.*), *s.* 27 (1) (*a*).

Section 27 of the *Medical Practitioners Act* 1938-1955 (N.S.W.) provides:—"(1) A complaint or charge that any registered person—(a) has been convicted in New South Wales of a felony or misdemeanour, or elsewhere of an offence which, if committed in New South Wales would have been a felony or misdemeanour; . . . may be preferred to the Board of Health, which shall cause the same to be investigated."

Held, that by the word "misdemeanour" the sub-section refers only to indictable offences and does not include summary offences.

Pickup v. *Dental Board of the United Kingdom* (1928) 2 K.B. 459, discussed.

Decision of the Supreme Court of New South Wales (Full Court): *Ex parte Reynolds; Re Stacy* (1956) S.R. (N.S.W.) 372; 73 W.N. 445, reversed.

APPEAL from the Supreme Court of New South Wales.

Farrell John Reynolds a legally qualified medical practitioner registered under the *Medical Practitioners Act* 1938-1955 was on 25th June 1955 convicted at the Court of Petty Sessions, Kogarah of an offence under Pt. VI of the *Police Offences (Amendment) Act* 1908 for that on 14th March 1955 he did not keep or cause to be kept a register of drugs as required by the regulations made pursuant to such Act.

On 25th January 1956 one Walter James Madgwick, the chief food inspector of the Board of Health, preferred a complaint to the

Secretary of the Board of Health that by reason of the conviction the said Farrell John Reynolds had been convicted in New South Wales of a misdemeanour within the meaning of s. 27 (1) (*a*) of the *Medical Practitioners Act* 1938-1955 and thereby requested an investigation of such complaint by the Board of Health and, if warranted, a reference to the disciplinary tribunal constituted under s. 28 of such Act. After investigation the Board of Health referred the complaint to the disciplinary tribunal.

Upon the matter coming on to be heard before such tribunal, counsel for the said Farrell John Reynolds contended that the conviction by the court of petty sessions was not a conviction for a " misdemeanour " within the meaning of s. 27 (1) (a), which contention was overruled. The tribunal adjourned the further hearing of the complaint to enable the appellant to apply to the Supreme Court of New South Wales for a writ of prohibition. A rule nisi for a prohibition was obtained against the prosecutor and members of the tribunal upon the grounds (a) that the said tribunal had no jurisdiction to hear and determine the said complaint and (b) that the said complaint disclosed on its face that the conviction in respect of which the complaint was made was not one for a misdemeanour within the meaning of the *Medical Practitioners Act* 1938. The Full Court of the Supreme Court (*Street* C.J., *Herron* and *McClemens* JJ.) discharged the rule upon the ground that the expression " misdemeanour " included a summary offence as well as indictable offences below the degree of felony : *Ex parte Reynolds* ; *Re Stacy* (1).

From this decision the said Farrell John Reynolds by special leave appealed to the High Court.

J. D. Evans Q.C. (with him *T. E. F. Hughes*), for the appellant. In s. 27 (1) (a) the draftsman has drawn a distinction between the field covered by the word " offence " in the field covered by the words " felony " or " misdemeanour ", and it is clear that he regards the latter field as less extensive than the former. The word " misdemeanour " has two possible meanings in law, either an indictable offence other than a felony or any offence other than a felony and in s. 27 (1) (a) it bears the former meaning. [He referred to *Kenny, Outlines of Criminal Law*, 15th ed. (1936), p. 104 ; *Stroud's Judicial Dictionary*, 3rd ed. (1953), vol. 3, p. 1804 ; *Russell* on *Crimes*, 4th ed. (1865), vol. 1, p. 79 ; 10th ed. (1950), vol. 1, p. 6 ; *Halsbury's Laws of England*, 3rd ed., vol. 10, p. 293,

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par. 548; *Du Cros* v. *Lambourne* (1).] When ss. 27, 47 and 52 are read together they point the distinction drawn between the field covered by offences generally and that covered by felonies and misdemeanours. The Full Court erred in giving to the word " misdemeanour " in s. 27 (1) (a) the wider meaning of any offence other than a felony because of the power to deal with offences of a trivial nature in s. 29. [He referred to *Re Stubbs* (2); *Ex parte Freeman* (3).] Contrary to the view of the court below s. 27 (1) (a) can still have a sensible operation if " misdemeanour " is given a narrow meaning. [He referred to *Pickup* v. *Dental Board of the United Kingdom* (4).] A consideration of the *Medical Practitioners Act* 1912 supports the construction of the word " misdemeanour " for which the appellant contends. [He referred to ss. 9, 10 and 13 of such Act.] Section 20 (1) (g) of the *Police Offences (Amendment) Act* 1908 enables regulations to be made providing that " any specified breach of the regulations shall be regarded as ' infamous conduct in a professional respect ' within the meaning of any Act ". It would be unnecessary so to provide in order to bring it within s. 27 (1) (c) of the *Medical Practitioners Act* if the breach of a regulation being a misdemeanour brings it within s. 27 (1) (a) in any event. If " misdemeanour " is to be given a wider meaning, then, even if the disciplinary tribunal considered the offence trivial it would be obliged to reprimand or caution under s. 29 (1) (a). This is a further consideration for limiting the meaning of the word. The appeal should be upheld.

H. A. Snelling Q.C. (Solicitor-General for the State of New South Wales) (with him *W. H. Wilson*), for the respondent Walter James Madgwick. When attempting to ascertain the meaning of a word introduced into a statute at a particular date, two principal matters should be looked at—(a) the prevailing general law and (b) the context, including the history of the legislation, in which the word is found (see *Galloway* v. *Galloway* (5)). In the nineteenth century the prevailing general law was that " misdemeanour " meant all crimes less than felony. [He referred to *Russell* on *Crimes*, 7th ed. (1909), p. 10.] The original English Act is the *Medical Act* 1858 (21 & 22 Vict. c. 90) and ss. 29, 38-40 are comparable to those here under consideration. " Misdemeanour " is there used in the broad sense, as is indicated by the provision in s. 39 of an indictable misdemeanour. In the *Criminal Law (Amendment) Act* 1883

(1) (1907) 1 K.B. 40, at pp. 44, 45.
(2) (1947) 47 S.R. (N.S.W.) 329, at pp. 332, 340; 64 W.N. 53, at p. 56.
(3) (1951) 68 W.N. (N.S.W.) 111.
(4) (1928) 2 K.B. 459, at pp. 460, 461, 463.
(5) (1956) A.C. 299, at p. 310.

(N.S.W.) an attempt was made to simplify the distinction between felony and misdemeanour: see ss. 4, 5. For the purposes of that Act offences falling within s. 4 are felonies, within s. 5—even if punishable by fine only—are misdemeanours. Sections 7 and 8 of the *Medical Practitioners Act* 1898 (N.S.W.) merely describe misdemeanours which must be prosecuted by indictment. The later consolidating Acts of 1912 and 1938 contain no indication of an intention to change the meaning of the word "misdemeanour" from that which it bore in 1900. So far as the *Medical Practitioners Act* 1938 is concerned there can have been no intention on the part of the legislature when re-enacting the words "felony" and "misdemeanour" to alter the meaning which they had in 1900, particularly when it is realised that the 1938 Act is a consolidating statute. The appeal should be dismissed.

W. H. Wilson, for the respondent chairman and members of the disciplinary tribunal.

J. D. Evans Q.C., in reply.

Cur. adv. vult.

Feb. 18, 1957

The following written judgments were delivered:—

DIXON C.J. AND MCTIERNAN J. The appellant, being a medical practitioner registered under the *Medical Practitioners Act* 1938-1955 (N.S.W.), was convicted summarily of an offence against Pt. VI of the *Police Offences (Amendment) Act* 1908 (N.S.W.) as amended in that he did not keep or cause to be kept a register of drugs as required by reg. 11 of the regulations made under s. 20 of that Act.

In purported pursuance of s. 27 (1) of the *Medical Practitioners Act* the chief food inspector preferred a complaint or charge to the Board of Health that by reason of this conviction the appellant had been convicted in New South Wales of a misdemeanour within the meaning of s. 27 (1) (a) of that Act. The Board of Health, being of opinion that the circumstances warranted such a course, referred the complaint to the disciplinary tribunal constituted under s. 28 of the *Medical Practitioners Act* and notified the appellant.

When the complaint came on for hearing before the disciplinary tribunal the appellant's counsel objected that the summary conviction in question did not satisfy the requirement of s. 27 (1) (a); he had not been convicted of a misdemeanour within the meaning of the provision. The chairman, a judge of the District Court, ruled against this contention but the tribunal adjourned the hearing of the complaint so that the appellant might apply to the Supreme

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Court for a writ of prohibition. A rule nisi for a prohibition was obtained on the ground that the tribunal had no jurisdiction, the conviction not being one for a misdemeanour within the meaning of s. 27 (1) of the *Medical Practitioners Act*. The Full Court of the Supreme Court, however, discharged the rule nisi (1), deciding that the expression " misdemeanour " included a summary offence as well as indictable offences below the degree of felony. From the decision of the Full Court this appeal is brought by special leave.

Section 27 (1) provides that certain complaints or charges against persons registered under the *Medical Practitioners Act* may be preferred to the Board of Health which shall cause the same to be investigated. The complaints or charges are of three descriptions. The provision states them in lettered paragraphs as follows—a complaint or charge that any registered person (a) has been convicted in New South Wales of a felony or misdemeanour, or elsewhere of an offence which, if committed in New South Wales would have been a felony or misdemeanour; or (b) has been guilty of habitual drunkenness or of addiction to any deleterious drug; or (c) has been guilty of infamous conduct in any professional respect.

Section 27 (1) proceeds to place a duty upon a court " before which any registered person is convicted of a felony or misdemeanour " to forward particulars of such conviction to the Board of Health and to empower a coroner to direct the forwarding of a transcript of evidence before him which appears to implicate a registered person.

Next, sub-s. (1) provides for the Board of Health, where in its opinion the circumstances warrant such a course, referring the complaint or charge to the disciplinary board and informing the registered person of the grounds of the complaint or charge and that it has been so referred. Sub-section (2) relates to certain applications of the well-known expression " infamous conduct in any professional respect ", but that is a matter that does not arise in the present case.

The disciplinary tribunal consists of the members of the New South Wales Medical Board presided over by a judge of the District Court. Not less than four of the maximum number of nine members of the Board must sit with the judge. The disciplinary tribunal in making its inquiry is to " sit in open court " and the registered person concerned may be represented by solicitor or counsel. The decision of the chairman on any question of law or procedure is the decision of the tribunal, which otherwise decides by a majority, see s. 28.

(1) (1956) S.R. (N.S.W.) 372; 73 W.N. 445.

Apparently if the registered person is shown to have been convicted in New South Wales of a felony or misdemeanour then the disciplinary tribunal must adjudge him guilty of the complaint or charge. A better way might have been found for expressing the ascertainment of the fact that a conviction already existed of the registered person. But that seems to be what s. 29 (1) contemplates. The sub-section provides that where any registered person has been adjudged guilty by the disciplinary tribunal, that tribunal may by order (a) reprimand or caution such person; or (b) suspend such person from practice for a period not exceeding twelve months; or (c) direct that the name of such person be removed from the register.

Does this mean that the tribunal must do one or other of these things if it adjudges the registered person guilty? If so it imposes a duty at least to reprimand or caution a practitioner who has in truth been convicted of a misdemeanour. The question is not entirely beside the point. For if these are the only choices for the tribunal, a medical practitioner must incur some form of censure from the disciplinary body of his profession if the Board of Health choose to report the fact, of which the Act requires that it shall always be informed, that he has been convicted of a misdemeanour. To construe misdemeanour then as extending to all summary offences, however trivial and however remote from his professional work or status, would make the operation of such a law absurd. It is true that sub-s. (2) of s. 29 expressly protects him against the tribunal's making an order suspending him from practice or removing his name from the register where the offence is such, either from its trivial nature or from the circumstances in which it was committed, or the conduct is such, that it does not, in the public interest disqualify the person from practising his profession. But such a provision seems on the one hand to be necessary if "misdemeanour" is confined to indictable offences and on the other hand it would seem not to go far enough if misdemeanour covers every trivial summary offence.

But this after all is a subsidiary matter and the question whether s. 27 (1) (a) is confined to offences punishable on indictment or extends to offences that can only be punished summarily must depend on more general considerations and upon the application of the settled rules of construction. In the first place, has the word "misdemeanour" any prima facie meaning which includes summary offences? The word came into the vocabulary of the common law long after the word "felony". The crimes that grew out of trespass or developed under the influence of the Council took the

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name in the King's Courts : cf. *Holdsworth, History of English Law*, 2nd ed. (1937), vol. 4, pp. 502 et seq. ; vol. 8, p. 305. But they were triable in the King's Courts only on a presentment of twelve men or more. In other words they were as much indictable offences as felonies. See *Holdsworth, History of English Law*, 4th ed. (1935), vol. 3, pp. 317, 318 ; pp. 611 et seq. The grant of particular powers to one or more justices to inflict summary punishment for some specific misdeed had a later beginning and only long afterwards assumed importance : *Stephen, History of the Criminal Law of England* (1883), vol. 1, pp. 122 et seq. ; *Holdsworth, History of English Law*, 6th ed. (1938), vol. 1, pp. 293, 294 ; *Maitland, Constitutional History of England* (1908), p. 231. The distinction between felony and misdemeanour was, of course, all important, both in the consequences of a conviction and in the course of procedure both before and at a trial. But the differences were relevant only to indictable offences. The statute appointing a justice or justices as the tribunal and fixing the penalty gave a specific authority which must be pursued. No doubt the form in which powers of such a kind were conferred on justices became stereotyped. Even when *Jervis' Act* established courts of petty sessions, however, the statute defined the powers and prescribed the procedure for all summary cases. *Maitland* in his *Constitutional History* (1908), at pp. 230, 231, traces the steps and states the categories. It will be enough to extract the following sentences from the passage : " Below the felonies again stand the misdemeanours—minor crimes not punished with death, but punished in general by fine and imprisonment. Some are misdemeanours by common law ; many are the outcome of statute. The term misdemeanour is gradually appropriated to describe these minor crimes . . . . Treason, felonies, and misdemeanours are all indictable offences—every indictable offence falls under one of these three heads . . . . Then again below these indictable offences there was springing up a class of pettier offences, for which no general name had yet been found, offences which could be punished without trial by jury by justices of the peace. As yet they did not attract the attention of lawyers, and it is only in the eighteenth century that their number becomes considerable."

Blackstone contrasted these summary proceedings with what he called the regular and ordinary method of proceeding in courts of criminal jurisdiction : *Commentaries on the Laws of England*, 17th ed. (1830), Bk. IV, chh. 20 and 21. He remarks that, unless in the case of contempts, the common law was a stranger to summary proceedings. "In these", he says, "there is no intervention of a jury, but the party

accused is acquitted or condemned by the suffrage of such person only as the statute has appointed for his judge": Bk. IV, ch. 20, p. 280. It is evident that he regards the institution as outside the distinctions of the law of "regular" criminal procedure. Indeed, he concludes the passage with a warning of the manner in which it threatens that procedure. "But it" (the institution of summary proceedings) "has of late been so far extended as, if a check be not timely given, to threaten the disuse of our admirable and truly English trial by jury, unless in capital cases." To him it would seem that it stood outside the distinction between felony and misdemeanour which meant so much in the "regular" criminal proceeding. It is easy to say that what is not a felony must be a misdemeanour if it is punishable and that as summary offences are not felonies they are misdemeanours. But that does not seem to have been the earlier view of the classification and time has not led to its general adoption. Rather the distinction between felony and misdemeanour has been treated as one appertaining to indictable offences only, so that prima facie the word "misdemeanour" connotes that the offences of which it is used are indictable. *Tomlin's Law Dictionary*, 4th ed. (1835), appears to say so in terms: "Misdemesnor or misdemeanor. Any crime less than felony. The term misdemeanor is generally used in contradistinction to felony and comprehends all indictable offences which do not amount to felony; as perjury, libels, conspiracies, assaults etc." It seems unlikely that in using the word "comprehends" the author meant to leave room for the possibility of the word "misdemeanour" going beyond indictable offences. As the importance was reduced of the distinction between felony and misdemeanour by successive reforms in regard to indictable offences, it became easier to regard felony as applicable to certain indictable offences and all else as falling under the description of misdemeanour. Doubtless there have been not a few lawyers who instinctively accepted that dichotomy accordingly. It would account for *Shearman* J. saying in *Pickup* v. *Dental Board of the United Kingdom* (1) that the word "misdemeanour" in its ordinary sense means all those crimes and offences for which the law has not provided a particular name and which are punishable according to the degree of the offence by fine or imprisonment. But it would not account for his Lordship's parenthetical statement "as appears in all the text books relating to the subject". At the time Dr. *Courtney Kenny's Outlines of Criminal Law*, 12th ed. (1926), was in use and that learned writer classified crimes into indictable and petty offences and subdivided

(1) (1928) 2 K.B. 459, at p. 462.

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indictable offences only into felonies and misdemeanours. The first edition of *Halsbury's Laws of England*, vol. 9, p. 246, said: "All indictable crimes below the degree of treason are either felonies or misdemeanours". And in a note: "Offences created by statute and made punishable only on summary conviction are sometimes spoken of as misdemeanours." For this *Du Cros* v. *Lambourne* (1) is cited, and there is a "but see *Tomlin's Law Dictionary*, title Misdemeanour". (The second edition of *Halsbury's Laws of England*, vol. 9, p. 26 contains the same statement but a reference to *Pickup's Case* (2) is added to the citation of *Lambourne's Case* (3). In the third edition, *Halsbury's Laws of England*, vol. 10, p. 293, the text and passage stand except that the reference to *Tomlin's Law Dictionary* is removed from the note.) The late Mr. *Paul* in his *Justices of the Peace*, p. 83, summarised the position quite accurately as to the senses in which the word misdemeanour is employed. "Crimes or criminal offences may be divided into four classes, namely:—(i) Treasons; (ii) Felonies; (iii) Indictable misdemeanours; (iv) Offences created by statute and made punishable on summary conviction . . . . Although offences of the type (iv) are sometimes called 'misdemeanours' (simply), the term 'misdemeanour' is used here, and below, *in what is the more usual sense*, to refer to *indictable* misdemeanours only." In like manner in *Slape* v. *Byrne* (4), *Murray* C.J. described the meaning which restricted the word to indictable offences as the "technical sense" of misdemeanour, and that which extended its meaning to summary offences as "its widest sense".

It seems clear enough that at common law the primary meaning of misdemeanour connotes that the offence is indictable, but that a wider secondary meaning is recognised in which the word is sometimes employed covering all offences below the degree of felony whether indictable or not.

In New South Wales the application of the word "felony" is affected, if not governed, by statute. Section 9 of the *Crimes Act* 1900 provided that whenever in that Act a person is made liable to the punishment (of death or) of penal servitude the offence is declared to be, and shall be dealt with as, a felony. (Since Act No. 16 of 1955 the bracketed words have been omitted.) Section 9 went on to provide that wherever in the *Crimes Act* the term felony is used the same should be taken to mean an offence so punishable. It will be noticed that the definition is confined to the *Crimes Act*. But s. 29 of the *Interpretation Act of* 1897 (N.S.W.) defines felony

(1) (1907) 1 K.B. 40, at p. 44.
(2) (1928) 2 K.B. 459.
(3) (1907) 1 K.B. 40.
(4) (1918) S.A.L.R. 313.

in the same way for the purpose of any Act. The application of the word " misdemeanour " is affected by s. 4 (2) of the *Justices Act* 1902-1955 which provides that where by any Act, past or future, any person is made liable in effect to punishment by imprisonment or fine and no provision is made for the trial of such person and the offence is not declared by the Act to be treason felony or misdemeanour, the matter shall be heard and determined in a summary manner by two justices or a stipendiary magistrate. This seems plainly to mean that a misdemeanour is triable on indictment. What is the primary meaning at common law of the word is thus reinforced by statute.

If s. 27 (1) (a) of the *Medical Practitioners Act* is construed in the light of the foregoing there seems to be no reason why the expression " convicted in New South Wales of a . . . misdemeanour " should be understood as extending beyond indictable offences. The context or subject matter supplies no ground for giving it a more extended meaning. On the contrary there seems every reason for regarding the expression as referring to more serious offences and as not including breaches of any of the innumerable statutory provisions and regulations by which, in his enjoyment of life and liberty and his pursuit of happiness, modern man is surrounded but with which he collides at the risk only of an appearance before petty sessions.

The better interpretation of s. 27 (1) (a) of the *Medical Practitioners Act* 1938-1955 would appear to confine it to what are or would be indictable offences in New South Wales. The offence would not necessarily cease to be a misdemeanour because in a particular case under some special statutory provision it might be dealt with summarily : see *Commissioner of Railways* v. *Hailey* (1) ; *Commissioner of Railways* v. *Pitman* (2). An interpretation of the word " misdemeanour " in s. 27 (1) (a) which restricts its application to indictable offences does not mean that a medical practitioner who has been guilty of a summary offence is not exposed to a charge under s. 27 (1). It means that the charge must be made, and established, under s. 27 (1) (b) or (c). The complainant to the Board of Health cannot rely simply on the fact that the medical practitioner was convicted of a summary offence. He must go behind such a conviction and base his complaint or charge on the conduct of the practitioner.

The answer made to the above reasoning by the Solicitor-General for New South Wales who supported the decision of the Supreme Court is that it neglects the date when the legislation was adopted

(1) (1938) 60 C.L.R. 83. (2) (1936) 56 C.L.R. 144.

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and its history. He was not disposed to deny that if s. 27 (1) (a) had taken its place in the *Medical Practitioners Act* 1938 as a new provision it would be construed as relating only to indictable offences. But his contention was that when the provision came into the New South Wales law in 1900 by Act No. 33 which was assented to on 12th October of that year there were no considerations arising from the statute law of New South Wales which pointed to the word "misdemeanour" being restricted in its application to indictable offences; rather the contrary. Further, the law was adopted from English legislation and there it bore the wider meaning.

The provision found in s. 27 (1) (a) appears to take its inspiration from s. 29 of the *Medical Act* 1858 (Imp.) (21 & 22 Vict. c. 90). That section provided that if any registered medical practitioner should be convicted in England or Ireland of any felony or misdemeanour or in Scotland of any crime or offence or should after due inquiry be judged by the general council to have been guilty of infamous conduct in any professional respect, the general council might if they saw fit direct the registrar to erase the name of such medical practitioner from the register. The suggestion of the learned Solicitor-General was that at the time this provision was passed the reference in it to misdemeanour would have been understood as including summary offences.

For the reasons already given, this suggestion does not seem to be well founded. An examination of such definitions or statements about the application of the word "misdemeanour" as were then current does not show that anyone held or expressed the definite and unambiguous view that the word included summary offences. For example, the third edition of *Russell* on *Crimes and Misdemeanours* (1843) vol. 1, p. 45, is not unambiguous but is expressed in terms which, considered as a whole, would be appropriate only to indictable offences. This is true too of the twenty-seventh edition of *Burn's Justice* (1834), vol. 3, p. 564, on which *Russell* based his text.

From what appears in the earlier part of this judgment it should be clear that as you go back in point of time you are less likely, not more, to find in England examples of the word "misdemeanour" employed to cover summary offences. One may be reasonably sure that the prima facie meaning that would be attached to "misdemeanour" in s. 29 of the *Medical Act* 1858 at the time it was passed would be indictable offence below the degree of felony. Whether the allusion in the context to a crime or offence in Scotland would have led English Courts to place the secondary and extended meaning to "misdemeanour" seems doubtful.

"Crime or offence" cannot, it seems, be regarded as a technical expression in Scots law and it is not easy to be sure how far it would be understood to extend (cf. *Encyclopedia of the Laws of Scotland*, vol. 5, pars. 116-119: *Strathern* v. *Padden* (1)), but it may be supposed that it would not be confined to indictable offences. However that may be it would scarcely accord with the canons of interpretation to follow the course proposed. It would involve these steps,—first to extend the primary meaning of the word "misdemeanour" as it is used by the statute of the United Kingdom in its application to England because the parallel provision relating to Scotland had a wider operation, and then having done that next to transfer that meaning of misdemeanour to the word in the New South Wales statute because the relevant provision of the latter appeared to be derived from the former.

As to the statutory provisions of the law of New South Wales affecting the meaning of misdemeanour, it was pointed out that what is s. 4 of the *Justices Act* 1902 was first adopted as s. 4 of Act No. 71 of 1900 which was assented to on 7th December 1900. The material part of s. 27 (1) of the *Medical Act* 1938, viz. par. (a), was first enacted in New South Wales by s. 2 of the *Medical Practitioners Act* 1900 (No. 33 of 1900). Doubtless an inference based on s. 4 of the *Justices Act* would at that date have been much more uncertain. But as the provision conforms with the common law meaning of the word, as well as confirming it, and as the statutes are of the same year there is no ground for denying all weight to the inference.

A stronger support for the Solicitor-General's position is supplied by *Pickup* v. *Dental Board of the United Kingdom* (2), decided on s. 13 of the *Dentists Act* 1878 (41 & 42 Vict. c. 33). But there are two or three observations which may be made about that decision. In the first place, the passage which Lord *Hewart* C.J. (3) takes from the judgment of Lord *Alverstone* C.J. in *Du Cros* v. *Lambourne* (4), and relies upon, related to s. 8 of the *Accessories and Abettors Act* 1861 (24 & 25 Vict. c. 94), on which the court did not rest its decision and about which Lord *Alverstone* said no more in the end than that he was not prepared to say it did not apply to summary convictions. Without that section the principle it embodied applied to summary offences as well as to misdemeanours in the

(1) (1926) S.C. (J.C.) 9.
(2) (1928) 2 K.B. 459.
(3) (1928) 2 K.B., at p. 461.
(4) (1907) 1 K.B. 40, at p. 44.

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narrower sense: see *Gould & Co.* v. *Houghton* (1), per Lord *Reading* C.J. (2) and per *Acton* J. (3). In the next place, at least one of the offences of which Pickup had been convicted was an indictable misdemeanour although punishable summarily. In the third place, the quotations from *Burn's Justice*, carried into *Pickup's Case* (4) from *Lambourne's Case* (5), will not on examination bear the weight placed upon them.

It must not be forgotten that the *Medical Practitioners Act* 1938 is a consolidating statute taking its place in the law of New South Wales as at the time of its coming into force and enacted so that there may be a single and authoritative text. Unless on the face of the statute there is some reason to regard that text as inadequate to elucidate the meaning of the statute with sufficient certainty, it is proper to construe it according to its terms and as at the date of its enactment without going back to the prior legislation.

All the foregoing reasons lead to the conclusion that a complaint that a medical practitioner summarily convicted has been convicted of a misdemeanour is not within s. 27 (1) (a) of that Act. The question was not raised whether such a conclusion is a ground for granting a common law writ of prohibition directed to the disciplinary tribunal; and, seeing that a misapprehension in law is involved of the subject matter which may be referred to the tribunal for inquiry, perhaps it was rightly assumed to amount to a ground for prohibition. But in view of the fact that we know nothing of the circumstances forming the foundation of the conviction and in view of the jurisdiction which the tribunal might for all we know obtain hereafter under s. 27 (1) (c) over the case, the writ should be strictly confined to prohibiting the disciplinary tribunal from further proceeding upon the complaint or charge, now before it, based on the ground that the summary conviction for the offence mentioned at the commencement of this judgment was for a misdemeanour within the meaning of s. 27 (1) (a).

FULLAGAR J. In this case I agree with the judgment of the Chief Justice and *McTiernan* J., which I have had the advantage of reading. I also agree with the additional observations made by *Taylor* J.

KITTO J. The considerations which have been stated by the Chief Justice and *McTiernan* J. and those to which my brother *Taylor* will refer satisfy me that " misdemeanour ", as used in s. 27

(1) (1921) 1 K.B. 509.
(2) (1921) 1 K.B., at p. 515.
(3) (1921) 1 K.B., at p. 523.
(4) (1928) 2 K.B. 459.
(5) (1907) 1 K.B. 40.

(1) (a) of the *Medical Practitioners Act* 1938-1955 (N.S.W.), does not extend to an offence punishable only on a summary conviction. I agree that the appeal should be allowed, and that prohibition should go in the limited form proposed in the joint judgment.

TAYLOR J. I agree with the observations of the Chief Justice and *McTiernan* J. and merely wish to add a few words. No doubt the expression " misdemeanour " has not infrequently been used to describe all offences other than treasons and felonies. But there can be no doubt that in its true signification it describes only those indictable offences which are not treasons or (" other ") felonies. Nor does consideration of the provisions of the *Medical Practitioners Act* 1938-1955 (N.S.W.) and its predecessors leave any room for doubt that, at least in a number of places, a clear distinction is drawn between offences which are punishable only upon summary conviction on the one hand and misdemeanours on the other.

Before referring to the provisions of the *Medical Practitioners Act* it is convenient to refer to s. 4 (2) of the *Justices Act* 1902-1955 (N.S.W.) which provides that where by any Act, past or future, any person is made liable to imprisonment or other punishment, or to any fine, penalty, or forfeiture, and no provision is made for the trial of such person, and such offence, act, or omission is not by the Act declared to be treason, felony, or misdemeanour, the matter shall be heard and determined in a summary manner by two or more justices or by a stipendiary or police magistrate. Precisely similar provision was to be found in s. 4 (2) of the *Justices (Amendment) Act* 1900 (N.S.W.) and it is beyond question that these Acts did not and do not regard offences punishable only upon summary conviction as misdemeanours. Nor did this, in my opinion, represent a departure from the previously established view.

By Pt. V of the *Medical Practitioners Act* 1938-1955 a number of offences are created. Section 42, for example, provides that any person, not registered under the Act who (*inter alia*) takes or uses any title, which having regard to the circumstances in which it is taken or used indicates that he possesses a degree, diploma, or other qualification of a nature which would entitle him to be registered as a medical practitioner, shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding fifty pounds. Sections 40, 41, 43, 44, 45 and 46 similarly create other " offences " punishable by fine. But s. 47 quite pointedly departs from this form. It provides that any person who, *inter alia*, makes or causes to be made any falsification in the register or in any matter relating to the register shall be guilty of a misdemeanour and shall be liable

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on conviction on indictment to imprisonment for any term not exceeding three years. In all s. 47 prescribes ten categories of misdemeanours. That a sharp distinction between the " offences " created by s. 47 and those created by the other sections referred to was intended is left beyond all doubt whatever by the provisions of s. 52. That section provides that all proceedings in respect of offences against the Act, not being indictable offences, shall be disposed of in a summary manner before a stipendiary or police magistrate or any two justices in petty sessions and the only offences created by the Act capable of being regarded as indictable offences are those which the Act designates as " misdemeanours " and not merely as " offences ". The same clear distinction is to be seen in the *Medical Practitioners Act* 1912 (ss. 10, 11, 12 and 13). Both the *Medical Practitioners Act* 1898 and the *Medical Practitioners Registration Act* 1855 created a number of misdemeanours and the conclusion that they were so designated as indictable offences is inescapable.

But a review of the provisions of the *Medical Practitioners Act* 1938-1955 alone is more than sufficient to indicate that in Pt. V the expression " misdemeanour " was used exclusively to describe indictable offences and there can be no reason to suppose that when it was used in s. 27 it was used loosely or without its true significance. On the contrary if there were, otherwise, any real doubt about the matter, a general consideration of the statute would be sufficient to resolve the question in favour of the appellant. I agree that the appeal should be allowed.

Appeal allowed. Order of the Supreme Court discharging rule nisi set aside. In lieu thereof order that the rule nisi be made absolute. The respondent Madgwick to pay the costs of the appeal and the costs of the proceedings in the Supreme Court.

Solicitors for the appellant, *T. C. Redmond & Daley.*

Solicitor for all respondents, *F. P. Macrae,* Crown Solicitor for New South Wales.

R. A. H.