

[HIGH COURT OF AUSTRALIA.]

FARRAN APPELLANT;
DEFENDANT,

AND

GEE RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Chemist and Druggist—Pretending to be dispensing chemist—Unregistered person
1917. carrying on business as chemist—Evidence—Pharmacy Act 1897 (N.S.W.) (No. 7
of 1897), secs. 17, 24.*

SYDNEY,
April 5.

Barton A.C.J.,
Isaacs,
Gavan Duff
and Rich JJ.

By sec. 17 of the *Pharmacy Act* 1897 (N.S.W.) it is provided that “any person who . . . , not being . . . a registered pharmacist, pretends to be a registered pharmacist, or a chemist, druggist, pharmacist, pharmaceutist, pharmaceutical chemist, homœopathic chemist, dispensing chemist, or dispensing druggist, or who takes or uses any title or term, sign or symbol, which may be construed to mean that he is qualified to perform the duties of a pharmacist, shall for each offence be liable to a penalty not less than five pounds and not more than fifty pounds.” By sec. 24 the term “pharmacist” is defined as meaning “a pharmaceutical chemist, pharmaceutist, chemist and druggist, chemist, druggist, homœopathic chemist, dispensing chemist, dispensing druggist”; and the term “registered pharmacist” as a “pharmacist whose name is entered on the register kept in pursuance of this Act.”

Held, that a person who, not being a registered pharmacist, in his shop, which appeared to be that of a chemist, dispensed medicine as ordinarily a dispensing chemist does, was properly convicted of pretending to be a dispensing chemist.

Special leave to appeal from the Supreme Court of New South Wales: *Ex parte Farran*, 17 S.R. (N.S.W.), 110, refused.

APPLICATION for special leave to appeal.

H. C. OF A.

1917.

FARRAN

v.
GEE.

At the Court of Petty Sessions at Paddington in New South Wales an information was heard whereby Samuel Gee, an Inspector for the Pharmacy Board, charged that Michael Joseph Farran, on 24th August 1916, not then being a registered pharmacist under the *Pharmacy Act* 1897, did pretend to be a dispensing chemist. From the evidence for the prosecution it appeared that the defendant, who was not a registered pharmacist, had a shop on the outside of which his name and the words "late of the Children's Hospital" were written, and there was also displayed an advertisement for "Little Liver Pills." In the window were soaps, brushes and patent medicines. The informant went into the shop and presented a prescription to the defendant, asking him to make it up. The defendant said he would make it up, and afterwards handed to the informant a bottle containing medicine made up in accordance with the prescription, and having upon it a label on which were set out directions as to taking the medicine, the name of the defendant and his place of business. The defendant, having been convicted and fined £20, obtained a rule *nisi* for a prohibition on the grounds that there was no evidence to support the conviction, and that there was no evidence that the defendant pretended to be a dispensing chemist within the meaning of the *Pharmacy Act* 1897. The Full Court of the Supreme Court discharged the rule *nisi*: *Ex parte Farran* (1).

The defendant now applied for special leave to appeal to the High Court from that decision.

Armstrong, for the appellant. The word "pretends" in sec. 17 of the *Pharmacy Act* 1897 means "falsely pretends." The Act does not forbid the carrying on the business of a chemist by a person who is not a registered pharmacist, but its object is to prevent deception of the public. A person who in fact carries on the business of a chemist does not falsely pretend to be a chemist. The interpretation of the section adopted by the Supreme Court would make it an offence for a company to carry on the business of a chemist. A person is a chemist if he carries on the business of a

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FARRAN
v.
GEE.

[During argument reference was also made to *Carroll v. Shilling-law* (1); *Pharmacy Act* 1897, secs. 9, 18, 24; *Halsbury's Laws of England*, vol. xx., p. 356.]

The judgment of the COURT, which was delivered by BARTON A.C.J., was as follows:—

We are all of opinion that there is no reason to doubt the accuracy of the decision of the Full Court. Special leave to appeal will be refused.

Special leave to appeal refused.

Solicitor for the appellant, *A. C. Roberts.*

B. L.

(1) 3 C.L.R., 1099.

[HIGH COURT OF AUSTRALIA.]

KING APPELLANT;
DEFENDANT,

AND

KIRKPATRICK RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A.

1916.

SYDNEY,
Dec. 21.

Prohibition—Dismissal of Information—Order for costs—“Summary conviction or order”—“Person aggrieved.”—Information disclosing no offence—Justices Act 1902 (N.S.W.) (No. 27 of 1902), secs. 65, 112—Crimes Act 1900 (N.S.W.) (No. 40 of 1900), sec. 527.

Griffith C.J.,
Barton, Isaacs,
Gavan Duffy
and Rich JJ.

Practice—High Court—Appeal from Supreme Court of State—Special leave—Appeal as to costs only.