H. C. OF A. 1905.

MUTUAL LIFE INSURANCE CO. OF NEW YORK v. PECHOTSCH.

Griffith C.J.

that they will be protected if they pay it. For these reasons I think that the decision of the Supreme Court was right, and that the appeal should be dismissed.

BARTON and O'CONNOR, JJ., concurred.

Appeal dismissed with costs.

Solicitors, for the appellants, *Pigott & Stinson.*
Solicitor, for the respondent, *A. Deery.*

C. A. W.

Foll *Daley, In re* (1907) 5 CLR 193

[HIGH COURT OF AUSTRALIA.]

IN RE COLEMAN.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1905.

SYDNEY, *June* 16.

Griffith C.J., Barton and O'Connor JJ.

Practice—Special leave to appeal—Suspension of Solicitor by Supreme Court—Misconduct clearly established—Discretion of Supreme Court as to punishment.

The High Court will not grant special leave to appeal from an order of the Supreme Court of a State suspending a solicitor from practice, merely on the ground that the punishment inflicted was excessive. Where misconduct meriting punishment of some kind is clearly established, the nature of the punishment to be inflicted is a matter entirely within the discretion of the Supreme Court.

Special leave to appeal from the decision of the Supreme Court, *In re Coleman*, (1905) 5 S.R. (N.S.W.), 272, refused.

MOTION for special leave to appeal.

The applicant was a solicitor practising in New South Wales. One of his clients executed a mortgage over certain sheep to a

firm of stock and station agents, to secure an advance of £200. The mortgagor subsequently got into financial difficulties with the Bank of New South Wales, to whom he had given a mortgage over his station and stock before the date of the stock mortgage. The Bank took possession of the mortgagor's station and stock, including the sheep the subject of the second mortgage. These sheep were not included in the mortgage to the Bank, and the mortgagor, in order to protect them from the Bank, in the interests of the person from whom he had bought them, to whom he was still indebted for part of the purchase money, induced the applicant to write a letter to the mortgagees of these sheep, asking them to consent to the striking out of the consideration of £200 in the stock mortgage and the substitution of £850 in place of it. No further consideration was suggested, or apparently intended. It was suggested in the letter that the date of the mortgage should be altered in order that the new mortgage might be registered instead of the original one. Nothing came of the proposal, as the £200 mortgage had already been registered.

The Incorporated Law Institute of New South Wales, having had the matter brought to their notice, obtained a rule *nisi* from the Supreme Court, calling on the applicant to answer certain affidavits, and to show cause why he should not be struck off the roll of attorneys for misconduct.

The Full Court (consisting of *Owen*, *Cohen* and *Pring*, JJ.), on 31st May, when the applicant appeared to show cause, found the misconduct proved, and, by a majority (*Cohen* J. *dissentiente*), suspended the applicant from practice for twelve months, and ordered him to pay the costs of the proceedings. *Cohen* J. was of the opinion that the applicant would be sufficiently punished by being ordered to pay the costs: *In re Coleman* (1).

The present application was for special leave to appeal from this decision.

Edmunds, (*Want* K.C. with him), for the applicant. The conduct of the applicant was not such as merited punishment. There was no fraudulent intent, and no injury was caused to any person, nor would any have been caused if the proposal had been

(1) (1905) 5 S.R. (N.S.W.), 272.

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carried out. Punishment by suspension should not be inflicted unless the misconduct of the solicitor is so gross as to be dishonourable to him as a member of society or as a professional man, and has caused some injury to others either directly or indirectly: *In re Stewart* (1). Although the control of the officers of the Supreme Court is a matter within its discretion, and the exercise of that discretion will not under ordinary circumstances be interfered with, yet if there has been an injustice done, a Court of appeal will interfere: *Ex parte Renner* (2); *In re Cooke* (3). [He referred also to *Cordery on Solicitors*, 3rd ed., p. 180, and *Chitty's Archbold*, 12th ed., p. 148.] Even if this was a case in which some punishment should have been inflicted, it did not merit such a severe penalty as suspension. The justice of the case would have been met by an order to pay the costs.

Per Curiam. This is not a case in which special leave to appeal should be granted. Looking at all the circumstances of the case we can see no reason to doubt that the decision of the Supreme Court was substantially correct. That Court was of opinion that the applicant had been guilty of professional misconduct which merited punishment, and we see no reason to differ from them. That being so, it is difficult to see how we can properly interfere with the exercise of the Court's discretion in inflicting punishment upon one of its own officers. In such cases the nature of the punishment is a matter entirely within the discretion of the Supreme Court itself.

Leave refused.

Solicitor, for applicant, *George Croaker.*

C. A. W.

(1) L.R., 2 P.C., 88. (2) (1897) A.C., 218. (3) 86 L.T., 468.