H. C. OF A. 1907.

LUCAS v. GRAHAM.

Isaacs J.

that what *Hood* J. said was correct, viz., that the right to bring liquor on to his premises was not a right conferred on the licensee by the licence, but was a right which he possessed in common with all other persons, and therefore no statutory right was taken away from the licensee by upholding the conviction.

HIGGINS J. I concur.

Solicitor, for appellant, *Raynes W. S. Dickson*, Melbourne.

Solicitor, for respondent, *Guinness*, Crown Solicitor for Victoria.

B. L.

[HIGH COURT OF AUSTRALIA.]

IN RE DALEY.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1907.

SYDNEY, *Aug.* 13.

Barton, Isaacs and Higgins JJ.

Appeals to High Court—Suspension of solicitor by Supreme Court for professional misconduct—Discretion of Supreme Court as to punishment of its officers—Special leave.

A solicitor of the Supreme Court of New South Wales was suspended from practice by that Court for having by a false representation induced a barrister to accept a brief which otherwise he might not have accepted.

The High Court, being of opinion that the Supreme Court clearly had jurisdiction to deal with one of its officers who had been guilty of such misconduct as was alleged, and seeing no reason to differ from them in the conclusion to which they had come on the facts, refused to grant special leave to appeal from their decision.

The nature of the punishment in cases of professional misconduct on the part of an attorney is entirely within the discretion of the Supreme Court.

In re Coleman, 2 C.L.R., 834, followed.

Special leave to appeal from the decision of the Supreme Court: *In re Daley*, (1907) 7 S.R. (N.S.W.), 561, refused.

H. C. OF A. 1907.

IN RE DALEY.

APPLICATION for special leave to appeal from a decision of the Supreme Court of New South Wales.

The applicant, a solicitor practising in Sydney, was called upon by the Supreme Court to show cause why he should not be struck off the rolls, or otherwise punished, for professional misconduct. The misconduct alleged was that, for the purpose of inducing a barrister to accept a brief in a case to be tried in a Circuit Court, he falsely represented that, although he had not the money in hand at the time to pay the counsel's fees, his client had certain produce for sale in the hands of a wool selling firm in Sydney, and had given him an order to collect the proceeds of the sale, and that the fees would be paid out of those proceeds. Counsel, relying upon these representations, accepted the brief and did the work, but the fees were not paid. The evidence before the Supreme Court was conflicting, but they came to the conclusion that the charge had been made out, and suspended the solicitor from practice for a period of eighteen months: *In re Daley* (1).

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

Delohery, for the applicant. The Supreme Court came to a wrong conclusion as to the facts which were in dispute, and the inference which they drew from the admitted facts cannot be supported. There was no intent to defraud. This does not come within the class of cases in which the disciplinary power of the Court should be exercised.

[BARTON J.—Surely the Court was justified in punishing a solicitor for gross misrepresentation to the prejudice of a member of the other branch of the profession.

ISAACS J.—The Court disbelieved the applicant's version of the facts. You must satisfy us that they were wrong.]

Assuming that the Court was right in its conclusion, it was the duty of counsel to get his fees before accepting the brief. There is no duty on a solicitor's part to pay the fees himself, and there can be no "inducement," whatever he may say. There is

(1) (1907) 7 S.R. (N.S.W.), 561.

no capacity to contract. [He referred to *Kennedy* v. *Brown* (1); *Re Neville*; *Ex parte Pike* (2); *Angell* v *Oodeen* (3).]

[ISAACS J. referred to *Guilford* v. *Sims* (4).

HIGGINS J. referred to *In re Hall* (5).]

There was nothing in the nature of professional misconduct: *Re Four Solicitors* (6); *In re Stewart* (7).

The judgment of the Court was delivered by

BARTON J. This appeal is on a matter affecting the professional conduct of one of the officers of the Supreme Court. It is not to be looked at with reference to the personal or legal relations between the counsel concerned and the solicitor whose conduct is called in question. If there is jurisdiction in the Supreme Court to deal with one of its officers in the circumstances here alleged, and believed by that Court to have existed, then it seems to us to be a case in which we certainly ought not to interfere. Aug. 14.

A representation has been made by this solicitor to a barrister for the purpose and with the result of inducing him to accept a brief which otherwise he might not have accepted. That representation is believed by the Supreme Court—and we cordially agree with them in that respect—to have been false. As Mr. Daley has urged that there is nothing fraudulent in the transaction, we are bound to say that, in our opinion, the conduct of Mr. Daley was as nearly fraudulent in its essence as one can well conceive, whether it is conduct that is subject to a certain class of proceeding or not.

We have no doubt of the jurisdiction of the Supreme Court to deal with its officers when their conduct, considered in a purely professional aspect, is misconduct tending to uproot the confidence which should exist between solicitor and client.

In the case of *In re Coleman* (8) we used these expressions:—"That Court" (that is the Supreme 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." We apply the same statement to this case.

(1) 13 C.B.N.S., 677.
(2) 17 N.S.W. L.R. (B. & P.), 24.
(3) 29 L.J.C.P., 227
(4) 13 C.B., 370.
(5) 2 Jur. N.S., 1076.
(6) 7 T.L.R., 672.
(7) L.R. 2 P.C., 88.
(8) 2 C.L.R., 834, at p. 836.

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"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." We adhere to that opinion.

"In such cases the nature of the punishment is a matter entirely within the discretion of the Supreme Court itself."

Holding that opinion also, it seems to us that this is a case within the lines which the Court there laid down, and therefore that we ought not to grant special leave to interfere with the decision of the Supreme Court in any matter of such a character.

Appl Lovering v Brough (1985) 36 NTR 59

Special leave refused.

Solicitors, for applicant, *Sullivan Bros.*

C. A. W.

[HIGH COURT OF AUSTRALIA.]

MARGARET WALSH . . . . . APPELLANT;
DEFENDANT,

AND

THOMAS DOHERTY . . . . . RESPONDENT.
COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1907.

BRISBANE, *Oct.* 8.

Griffith C.J., Barton and Isaacs JJ.

Notice of prosecution—"Institution of proceedings"—Notice given after lodging of complaint—Licensing Act 1885 (*Qd.*), (49 *Vict. No.* 18), *sec.* 75 (2)—*Liquor Act* 1886 (*Qd.*), (50 *Vict. No.* 30), *sec.* 25—*Justices Act* 1886 (*Qd.*), (50 *Vict. No.* 17), *secs.* 42, 52.

In a prosecution under the Queensland *Liquor Act* 1886 for any of the offences named in sec. 25 of that Act, the provisions of that section—that notice in writing of the intended prosecution shall be given to the person intended to be prosecuted, specifying the section of the Act for breach of which the prosecution is intended to be instituted—are not satisfied by the