must be allowed, the decision of the majority of the Court must be set aside, and the judgment of Mr. Justice *Burnside* must be restored.

H. C. OF A. 1909.

REGISTRAR OF TITLES v. SPENCER.

O'Connor J.

Appeal allowed.

Solicitor, for appellant, *Barker*, Crown Solicitor.
Solicitor, for respondent, *Haynes & Canning*.

H. V. J.

[HIGH COURT OF AUSTRALIA.]

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES . . . APPELLANT;

AND

RICHARD DENIS MEAGHER . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1909.

SYDNEY, *Nov.* 15, 16, 17, 18, 26.

Griffith C.J. Isaacs and Higgins JJ.

Special leave to appeal—Judicial order—Solicitor struck off roll—Order for re-admission—Exercise of discretion—Question of fact—The Constitution (63 & 64 *Vict.* c. 12), *sec.* 73—*Judiciary Act* 1906 (*No.* 3 *of* 1906), *sec.* 49.

The Court has jurisdiction to entertain an appeal from an order of the Supreme Court of a State re-admitting to practice a solicitor who had been struck off the roll for misconduct.

Attorney—Misconduct—Re-admission to roll—Onus of proof—Discretion of Court—Fit and proper person—Conditional promise by Court—Charter of Justice (*N.S.W.*), *sec.* 10.

By sec. 10 of the *Charter of Justice* the Supreme Court of New South Wales has power to admit any "fit and proper person" to act as attorney and solicitor of that Court. In 1896 the respondent was struck off the roll of solicitors for being a party to a conspiracy to pervert the course of

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

justice. In 1904 the respondent applied to be re-admitted to practice. The Court refused to grant the application, but intimated that the application would probably be granted if the respondent applied on or after 1st June 1906, provided that he then gave evidence of continued good conduct. In 1906 the Court refused to deal with the respondent's application by reason of certain facts which had been disclosed, tending to show that the respondent had been guilty of improper practices while carrying on the business of a land agent in connection with the disposal of Crown lands. In 1909 the respondent renewed his application, and the Court held that it was bound to re-admit the respondent to practice by reason of the promise made by the Court in 1904, unless it were conclusively proved that the respondent had since been guilty of misconduct, that though there were circumstances of grave suspicion, misconduct had not been conclusively proved, and that the application should be granted.

Held, that the intimation made by the Supreme Court in 1904 was not to be regarded as a promise binding the Court, and that the respondent having been struck off the roll for a serious criminal offence, it was incumbent upon him, upon an application for re-admission, to show affirmatively that he was a "fit and proper person" to be admitted as a solicitor.

Held, also, upon the evidence, that the Supreme Court was not justified in coming to the conclusion that the respondent was a "fit and proper person" to be admitted as a solicitor, and that the application should have been refused.

Per Griffith C.J.—A Judge is not entitled to bind himself or his successor by a promise as to future action on problematical facts.

Per Higgins J.—The true question is not whether the respondent has been proved guilty of misconduct since 1896, but whether he has proved that notwithstanding his misconduct before 1896 he is now a "fit and proper person" to be admitted.

Decision of the Supreme Court: *In re Meagher*, 9 S.R. (N.S.W.), 504; 26 W.N. (N.S.W.), 99, reversed.

APPEAL by special leave from an order of the Supreme Court of New South Wales, re-admitting the respondent to practice as a solicitor.

In 1906 the respondent, who was then a solicitor of the Supreme Court, was retained as solicitor for one Dean, who was convicted of administering poison to his wife with intent to kill her. After the trial the respondent represented to his senior partner, Mr. Crick, that Dean had been prejudiced by certain proceedings that had taken place at the trial, and Crick requested the respondent to interview Dean at Darlinghurst, where he was

confined, and ascertain whether he was really guilty or not of the offence for which he had been convicted. At this interview the respondent ascertained from Dean that he was in fact guilty, but he nevertheless told Crick that he believed Dean was innocent, and induced Crick, who was then a member of the Legislative Assembly, to ask for the appointment of a Royal Commission to inquire into the question of Dean's guilt or innocence. After the appointment of this Commission the respondent attended a public meeting in which he asserted his belief in Dean's innocence, attended before the Royal Commission, took precautions in one instance to prevent the truth from appearing, and was the cause of a maladministration of justice, the pardon of Dean, and his discharge from custody. He subsequently attended a meeting of Dean's supporters, at which he stated that he believed Dean to be the victim of a foul conspiracy. Ultimately circumstances arose which induced the respondent to confess that all through the proceedings which took place after the trial he had known of Dean's guilt. For this offence the respondent was struck off the roll of solicitors in June 1896. In May 1900 and in August 1902 applications made by the respondent for re-instatement were refused by the Court. In November 1904 this application was renewed, and was again refused, but the Court in delivering judgment intimated that if on or after June 1906 the respondent again applied to the Court for re-instatement, and showed by affidavits that up to that time he had maintained the high character which he appeared to have held since he had been struck off the roll, it was more than probable that he would be re-admitted to practice.

In May 1905, in consequence of certain facts which had been made public in connection with the administration of the Department of Lands, Mr. Justice *Owen* was appointed a Royal Commissioner with directions to inquire and report (*inter alia*) "upon the work of land agents in connection with applications for and dealings with Crown Lands, under the Crown Lands Acts, and into the fees and charges in connection therewith, and also to report generally upon the best method of regulating the work of such agents and their fees and charges therefor." The Commission was afterwards extended to include an inquiry into the

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

lodgment and disposal of applications for improvement leases. In the course of the inquiry, at which a great number of witnesses were examined, it appeared that very large fees had been paid to land agents, and especially to one Willis, for their services in obtaining for their clients portions of Crown lands under various tenures under the Crown Lands Acts. It also appeared that the respondent had since 1896, when he was struck off the roll, been carrying on the business of a land agent. In May 1906 the Commissioner made an interim report as to the result of the inquiry, from which it appeared that Willis had been guilty of corrupt and fraudulent practices in connection with his business as a land agent. The respondent gave evidence before the Commission, and it appeared from his evidence that he had been in intimate association with Willis during the period in question.

The respondent applied to the Court in August 1906 for readmission, but the Court declined to entertain the application in view of the facts that had been disclosed before the Commission, and also in view of the fact that the Commission had not then closed.

In April 1909 the respondent renewed his application for readmission to the roll. The respondent was informed that on the hearing of this motion the Law Institute intended to submit that the evidence given before the Royal Commission pointed very strongly to an improper business association between the respondent and Willis in connection with improvement leases, and that the evidence given before the Commissioner by the respondent was insufficient to negative such association. Portions of the evidence, exhibits and report to which it was intended to refer were specified, and it was also stated that it was intended by the Law Institute to refer to the whole of the report and the evidence to show the nature of the business of Willis in connection with improvement leases.

In support of his application the respondent, who was a member of the Legislative Assembly, an alderman of the City of Sydney, and a member of the Metropolitan Board of Water Supply and Sewerage, filed a large number of affidavits from various influential people stating that they had known the respondent for many years, that they had the fullest confidence in his integrity,

and were prepared to entrust him professionally with their own business.

The evidence, exhibits, and report of the Royal Commission were also before the Court.

The Supreme Court, consisting of *Simpson* A.C.J., *Cohen* and *Pring* JJ., by majority (*Pring* J. dissenting), granted the application and re-admitted the respondent to the roll.

The Incorporated Law Institute, who had opposed the respondent's application, obtained special leave to appeal from this decision upon the following grounds:—

(1) That the Court held that on an application to re-admit a person to the roll the onus of proof rests on the Incorporated Law Institute to show as in a criminal case circumstances which establish conclusively the guilt of the applicant. (2) That the Court held that the decision of the Supreme Court, reported in 4 S.R. (N.S.W.), 647, amounted to a condonation of the offence for which the respondent was originally struck off the roll, and was in effect a promise by the Court to restore the respondent to the roll at some future time, unless he had in the meantime forfeited his good character by some misconduct subsequent to his being struck off the roll. (3) That the Court did not determine whether the respondent by reason of his original offence should ever be re-admitted as a solicitor of the Supreme Court. (4) That the judgment of the Court was against evidence and the weight of evidence, inasmuch as either the evidence relating to *Dean's Case*, or the evidence relating to the land matters, was in itself sufficient to establish that the respondent was not a fit and proper person to ever be reinstated on the said roll, or this evidence taken conjointly was sufficient to do so. An application by the respondent to rescind the special leave to appeal was argued with the appeal.

The further facts and the arguments are sufficiently stated in the judgment of *Griffith* C.J.

Shand K.C. and *Chubb*, for the Incorporated Law Institute, in support of the appeal, referred to *In re Rofe* (1); *In re Garbett* (2); *Charter of Justice*, sec. x.

(1) 6 S.R. (N.S.W.), 669.

(2) 18 C.B., 403.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Sir George Reid K.C., *Wise* K.C., and *W. A. Walker*, for the respondent, referred to *In re Poole* (1); *In re Stewart* (2); *In re Four Solicitors* (3); *In re Moss* (4); *Backhouse* v. *Moderana* (5); *Johansen* v. *City Mutual Life Assurance Society Ltd.* (6); *Murray* v. *Munro* (7); *Bataillard* v. *The King* (8); *Cameron* v. *Irwin* (9); *In re Daley* (10); *In re Coleman* (11); *Macdonald* v. *Foster* (12); *Wigney* v. *Wigney* (13); *Ex parte Bradley* (14); *Ex parte Secombe* (15); *In re Hardwick* (16); *In re Eede* (17); *In re A Solicitor* (18); *In re Grey* (19); *Ex parte Ramshay* (20); *In re Smith* (21); *Re Hopper* (22); *In re A Solicitor* (23); *In re Whitehead* (24).

Shand K.C., in reply, referred to *Ex parte Renner* (25); *Rodger* v. *Comptoir D'Escompte De Paris* (26); the *Judiciary Act* 1906 (No. 3), sec. 49; the *Constitution Act* (63 & 64 Vict., c. 12), sec. 73.

Cur. adv. vult.

The following judgments were read :—

November 26.

GRIFFITH C.J. This is an appeal by special leave from an order of the Supreme Court of New South Wales, by which it was directed that the respondent should be re-instated on the roll of attorneys, solicitors and proctors of the Court, from which his name had been struck off in the year 1896 for conduct to which I will afterwards refer. The effect of the re-instatement, if it stands, is that the respondent becomes automatically, under sec. 49 of the *Judiciary Act*, a practitioner of the High Court, and entitled as such to practice in every federal Court.

The respondent moved to rescind the special leave to appeal on the ground, amongst others, that the order is not one made by

(1) L.R. 4 C.P., 350.
(2) L.R. 2 P.C., 88.
(3) (1901) 1 K.B., 187.
(4) 1 S.R. (N.S.W.), 295.
(5) 1 C.L.R., 675.
(6) 2 C.L.R., 186.
(7) 3 C.L.R., 788.
(8) 4 C.L.R., 1282.
(9) 5 C.L.R., 856.
(10) 5 C.L.R., 193.
(11) 2 C.L.R., 834.
(12) 6 Ch. D., 193.
(13) 7 P.D., 177.
(14) 7 Wall., 364.
(15) 19 How.,9.
(16) 12 Q.B.D., 148.
(17) 25 Q.B.D., 228.
(18) 5 T.L.R., 486.
(19) (1892) 2 Q.B., 440.
(20) 21 L.J.Q.B., 238.
(21) (1896) 1 Ch., 171.
(22) 34 Sol. J., 568.
(23) 37 W.R., 598.
(24) 28 Ch. D., 614.
(25) (1897) A.C., 218.
(26) L.R. 3 P.C., 465.

the Supreme Court in the exercise of judicial functions, but is in the nature of an order made by a domestic forum dealing with its own internal arrangements.

Under the Constitution the High Court has jurisdiction to hear appeals from all judgments, decisions, orders, and sentences of the Supreme Court. It is not disputed that the order by which the respondent was struck off the roll was a judicial order or sentence. The order re-instating him is in substance an order varying that order, and I fail to understand how the operation of a judicial order can be varied except by a like order. Apart from that point, I think that the universal practice of the Courts in Great Britain and Australia shows that an application for the admission, removal, suspension or re-instatement of a practitioner has always been regarded as a judicial proceeding. It is not disputed that this is so in the case of an order for suspension or removal, and it is plain that the nature of the proceeding cannot depend upon whether the result is favourable or unfavourable to the practitioner.

I cannot therefore entertain any doubt as to the jurisdiction of this Court to entertain the appeal.

Another ground on which it was asked that leave should be rescinded was that the jurisdiction of the Supreme Court in such a case is of a disciplinary character, and that the discipline to be exercised by the Supreme Court is a matter affecting itself alone in which this Court should not interfere. For the reasons I have already given, this argument wants foundation in fact, since the public of the whole Commonwealth are affected by the order. Moreover, it is not a matter affecting the members of the Supreme Court personally, but one affecting the public, to whom the practitioner is accredited as a fit person to enjoy the privileges and exercise the very large powers for good and evil possessed by a solicitor. It was finally urged that the question for determination was one of fact, upon which different minds might come to different conclusions, and that it is not the practice of this Court to grant special leave in such cases. But, as will appear in the course of this judgment, I do not regard the case as one of that kind. I regard it as one of the proper inference to be drawn

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Griffith C.J.

from facts clearly ascertained so far as they are relevant to the decision to be pronounced.

Before adverting in detail to the facts of the case I will refer to the principles to be applied, as laid down by the Court of Common Pleas in two cases of high authority, premising that the offence for which the respondent was struck off the rolls in 1896 was a conspiracy, attended by circumstances of great aggravation, to pervert the course of justice: *In re Meagher* (1). The case is known as *Dean's Case*. The facts are fully set out in the judgment of *Darley* C.J. and I need not repeat them.

In *Re Garbett* (2) the attorney had been guilty of perjury and subornation of perjury, and had also been convicted of forgery, but the conviction had been quashed on technical grounds, and had not been brought to the notice of the Court. After a lapse of seven years he applied for re-admission, and supported his application by affidavits and testimonials to the effect that his conduct had in the meantime been blameless, and that the signatories vouched him as being in their opinion a fit and proper person to be restored to the roll. *Jervis* C.J. said in the course of his judgment:—"I am of opinion that there is no pretence for this application. It is not now sought to strike Mr. Garbett off the roll of attorneys of this Court, or to suspend him from practising as an attorney, for any alleged malpractice or misconduct. But the question is, whether, he having already been removed from the roll for an offence of the most grave and serious character, we ought to be called upon to restore him, and so to invest him with a power and authority which in my opinion would make him a most dangerous individual. It appears that, in the year 1847, he was tried and found guilty of forgery, and that he afterwards received a free pardon, because a portion of the evidence which led to his conviction consisted of admissions made by him under circumstances, that, in the opinion of the Court of Appeal, rendered them legally inadmissible. But, notwithstanding that conviction was quashed, and notwithstanding the pardon accorded to him in consequence, there was abundant evidence to show that Garbett really was guilty of the crime laid to his charge. Are we, under these circumstances, now to say

(1) 17 N.S.W. L.R., 157. (2) 18 C.B., 403, at p. 413.

that this person is one to whom we can safely and properly give authority to practise as an attorney of this Court? We start with the knowledge, derived from the best possible source, viz. his own confession, that he has been guilty of forgery: and this Court has adjudged him guilty of perjury and subornation of perjury for the fraudulent purpose of putting into his own pocket money to which he was not justly entitled. This, therefore, is an application for re-admission of a person confessedly guilty of forgery, and adjudged to be guilty of perjury; and the main ground of the application is, that he has already, by being seven years off the roll, suffered punishment enough for his delinquency. It seems to me that we should be guilty of the greatest possible dereliction of our duty, if we were to re-admit a man so tainted with crimes which of all others are the most calculated to engender suspicion and distrust. . . . Upon the whole, giving its due weight to all that has been urged on his behalf, I think I should be almost as criminal as the applicant himself if I were to yield to this application." *Williams* J. said (1):—"I, therefore, agree with my Lord in thinking that we should be guilty of a very gross dereliction of our duty, if, by replacing this man upon the roll of attorneys, we were to put him in a position to exert his talents to the possible detriment of the public." In *In re Poole* (2) the attorney had been struck off the roll for fraudulent appropriation of the moneys of a client. After a lapse of six years he applied for restoration to the roll on materials similar to those used in *In re Garbett* (3). *Willes* J. (with whom *Montague Smith* and *Brett* JJ. concurred), after referring to the facts, said (4):—"Upon the whole, looking at the power vested in this Court of admitting to the responsible position of attorneys and officers of the Court persons who thus have the sanction of the Court for saying that, *primâ facie* at least, they are worthy to stand in the ranks of an honourable profession, to whose members ignorant people are frequently obliged to resort for assistance in the conduct and management of their affairs, and in whom they are in the habit of reposing unbounded confidence; and looking to the fact that in restoring this person to the roll we should be sanctioning the con-

(1) 18 C.B., 403, at p. 414.
(2) L.R. 4 C.P., 350.
(3) 18 C.B., 403.
(4) L.R. 4 C.P., 350, at p. 353.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Griffith C.J.

clusion that he is in our judgment a fit and proper person to be so trusted; I think we ought not to do so, except upon some solid and substantial grounds."

In my judgment, therefore, the question which we are now to ask ourselves is this: Are we justified upon solid and substantial grounds in sanctioning the conclusion that the respondent is a person of such a character? The question is not whether if the acts subsequent to 1896, to which reference has been made, had been done by a solicitor on the roll, the suspension which would perhaps have followed would have been for a longer or shorter period, but whether in the light of those acts the respondent can show affirmatively that he ought to be regarded as a "fit and proper person to be so trusted."

I pass now to the later facts.

In May 1900 an application was made to the Supreme Court to restore the respondent to the roll, supported by the usual testimonials. The Court refused the application on the ground that it was premature, but held out hopes that it might some day be granted if the applicant's conduct continued to be blameless. The Law Institute, who were represented by counsel, neither opposed nor supported the application. In August 1902 a second application was made, which was opposed by the Law Institute, and was refused on the ground that it was still premature.

In November 1904 a third application was made and was also refused, but *Darley* C.J., speaking for the Court, said (1):—"We have, however, considered the matter, and have come to the conclusion that we cannot re-admit him now, but I think that the time has come when we should name a time when he may again apply to the Court. Of course, he must then come provided with affidavits showing that from the present up to the time to be fixed he has maintained the high character which he appears to have held since he was struck off the roll. We now name the time when he may again apply. He may come to the Court on or after the 1st June 1906, at which date he will have been off the roll for a period of ten years. We cannot say that the Judges then sitting on the bench will admit him, but I do say that if Mr. Meagher produces similar affidavits to those which have been read to-day, that it is

(1) 4 S.R. (N.S.W.), 647, at p. 650.

more than probable that they will do so. More than that I cannot say."

Reliance has been placed on these observations as amounting to a promise honourably, though not legally, binding upon the Court. I cannot assent to the proposition that any Judge is entitled to bind either himself or his successor by a promise as to future action to be taken on problematical facts, but that point is quite unimportant, for it is obvious that in whatever light the so-called promise is regarded, it was subject to two conditions, one express and one implied. The express condition was proof of continued good conduct. The implied condition was that the promise had not been induced by the concealment or non-disclosure of facts which, if known, would have prevented it from being made. All the relevant facts now relied upon by the appellants had occurred in the year 1903, so that if they were such as would, if then known to the Court, have induced them to refrain from holding out such a hope of restoration, the respondent cannot base any argument upon it. It is indeed conceded that the reference to future maintenance of high character impliedly includes the absence of misconduct either before or after November 1904.

Simpson, Acting C.J., thought that, having regard to the language used by the Court on that occasion, "the original offence was, as it were, condoned by the Court, and it was so far obliterated that it was not to militate against Mr. Meagher in any application which he might make on or after 1st June 1906, unless he had forfeited his good character by such misconduct as would, in the opinion of the Court, justify a refusal of his application for restoration" (1).

If this means that the original offence is to be left out of consideration in dealing with the present application, I cannot agree with the learned Judge. I think that the conduct now under consideration is to be regarded not as a first offence, if offence it be, committed by a person of previously blameless character, but as one committed by a person whose reputation is already grievously tainted, and who has been already convicted of an

(1) 9 S.R. (N.S.W.), 504, at p. 512.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Griffith C.J.

offence for which nothing short of absolute removal from the rolls would have been an appropriate punishment.

Before 1st June 1906 had occurred what has been spoken of as the land scandals. By the *Crown Lands Act* 1895, sec. 26, a new form of tenure of Crown lands had been created under the name of improvement leases. The lands in respect of which they might be granted were lands which for various reasons were not suitable for settlement until improved, and could only be rendered suitable by the expenditure of large sums of money in their improvement. The tenure was not to exceed 28 years, the maximum area was 32 square miles, the lease was to be offered at auction or to public tender, but an upset price might be fixed, and the Governor was not bound to accept any tender. The conditions of the lease were to be fixed at the time of offering the land. The administration of this part of the land law was entirely in the hands of the Minister for Lands until 1st January 1904, after which day, under the provisions of the *Crown Lands Act Amendment Act* 1903, sec. 31, the power to grant improvement leases could not be exercised except upon the recommendation of the local Land Board. Before 1903 it had been discovered that pastoral tenants, whose tenure was practically at will, could obtain very substantial advantages if they could induce the Land Minister to grant them a 28 years' lease of part of their land under these provisions. It was found also that the highest tenderer did not always obtain the lease, and, in short, that much might be obtained by conciliating the favour of the Minister. A class of persons called land agents came into existence, a great part of whose business appears to have been to endeavour to induce the granting of improvement leases to their clients, for which services three of them charged enormous sums of money—in one case £6,000—the destination of which was suspected to be in great part illicit. The most conspicuous of these three was one W. N. Willis, who was a member of the Legislative Assembly. Respondent, who was also a member of the Legislative Assembly, was another land agent.

On 1st May 1905, Mr. Justice *Owen* was appointed a Royal Commissioner to inquire, amongst other things, into the applications of certain persons to convert their settlement leases into

improvement leases, and the administration of the Lands Department in connection therewith, and whether on the part of any one there had been any interference or attempt at interference with the purity of parliamentary or departmental action. The scope of the inquiry was subsequently extended to the lodgment and disposal of applications for improvement leases generally. Two hundred and fifty-one witnesses were examined by the Commissioner, who made a report on 23rd May 1906, which was, however, incomplete, inasmuch as in consequence of facts disclosed in the course of the inquiry, Mr. W. P. Crick, who had been Minister for Lands during part of the period in question, had been put on his trial for accepting a bribe in connection with an improvement lease, and the Commissioner thought that he could not report on that matter without prejudicing his trial. Parliament afterwards in 1896 authorized the cancellation of the improvement leases in question upon certificates by Mr. Justice *Owen* that they had been improperly obtained.

This report and the accompanying minutes of evidence and exhibits contained a good deal of matter relating to the respondent's actions as a land agent in connection with various improvement leases, as to his association with Willis in regard to them.

In August 1906 the respondent renewed his application for restoration to the roll, but the Court, in view of what had taken place before the Commissioner and of the fact that the Commission had not been closed, declined to listen to the application.

The Commissioner did not make any further detailed report, and on 31st May 1909 the application was once more renewed, and was granted. The appellants had notice of the intended motion, and in answer to a letter from the respondent's solicitors their solicitor informed him that the Law Institute intended to submit " that the evidence given before the Royal Commission points very strongly to an improper business connection between Mr. Meagher and Mr. W. N. Willis in connection with improvement leases, and that the evidence given by Mr. Meagher before the Commission is insufficient to negative such association." They suggested that Meagher should make any further reply he might

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Griffith C.J.

desire by affidavit, and gave particulars of the portions of the evidence on which they relied.

Respondent accordingly made an affidavit to which I will afterwards refer.

With regard to the association of the respondent with Willis, it appeared abundantly upon the evidence before the Commission that such an association existed in fact. About the beginning of 1902 Willis went to South Africa, and was absent until November of that year. At his request a plate bearing respondent's name was put up on Willis's office door, at 21 Bligh Street, Sydney, and remained there during the whole period of his absence, but was removed on his return. The transactions now in question all occurred in 1903. It appeared that letters signed by respondent in connection with land matters were frequently dated from Willis's office. The respondent's explanation on this point is contained in paragraph 16 of his affidavit, which is as follows:—"In reference to letters addressed from 21 Bligh Street I unreservedly say that I cannot call to mind actually writing a letter from Bligh Street in my life. Mr. McNair, Willis's manager, has on several occasions presented written or typed letters to me for signature on matters where I consented to appear as agent. In most instances I have appended my signature to letters purporting to be addressed from Bligh Street in the writing room for members at Parliament House. In the afternoon, while attending to heavy correspondence with Progress Associations and country constituents, Mr. Willis has approached me with typewritten communications on land matters wishing me to act as agent. In the pressure of business I have merely asked him for a verbal *precis* of such communications, and have signed them in good faith and without the slightest suspicion of any *mala fides*, and kept no record or note of such communications which probably were headed Bligh Street."

In connection with this, paragraph 19 should also be read:—"Mr. Willis employed me or other agents just as it suited him. I have signed communications *re* improvement leases for Willis's clients either (*a*) because the land applied to be made available for improvement lease was in the vicinity of the property of some other client of Willis's who might feel annoyed at him so acting,

(*b*) or because it conflicted with the interest of some land-holder or pastoralist who was a supporter of Willis's, (*c*) or because he desired me to conduct the inquiry before the local Land Board and thus have my name on the record from the initiation."

From this and other evidence to which I will refer I can only draw the inference that respondent lent his name to be used by Willis exactly as the latter pleased, and signed anything that Willis put before him. Whether he knew what he was signing or not is not, I think, very important for the purpose of ascertaining the extent of the intimacy of the association between them. An illustration of the intimacy is afforded by a letter addressed by the director of a company, owners of a station called Burrawang, to the Under Secretary for Lands, by which he was requested to address all letters for his firm to "care of R. D. Meagher, M.L.A., 21 Bligh Street." The owners of Burrawang were applicants for an improvement lease which was granted. Respondent was informed of the grant by letter of 26th March 1903, presumably sent to that address. Respondent in his affidavit says that he had nothing to do with the application, and never saw any letters upon the matter addressed to him or anyone else. Willis was, in fact, the land agent who acted in connection with the matter, and he received a fee of £6,000 for his services.

In another case, spoken of as Wallace's improvement lease, respondent signed a letter of 31st July 1903, dated from 21 Bligh Street, and addressed to a Mr. Wallace at Nyngan (which is distant some hundreds of miles from Sydney). In this letter Wallace is informed that the matter in hand, (the cancellation of an existing lease and substitution of an improvement lease), "is one of considerable difficulty and will require a lot of work and delicate handling," and the writer adds: "However, I think I see my way to procure it for you at a reduction of rent—say something between £30 and £50 per annum—and to have the tenure increased to 28 years, but to do this a pretty substantial fee would be required." He then asks what amount Wallace is prepared to pay to secure the land for the full period of 28 years, and says that if they can agree as to the amount of fee he will take the matter in hand and put it through.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Griffith C.J.

A letter of 15th August, signed by Willis "per B.H." (that is, one Bernard Hoskins, a clerk of Willis), and also dated from 21 Bligh Street, begins: "Mr. R. D. Meagher, M.L.A., who works in conjunction with me, has handed me your letter of the 11th inst. to reply to as he does all the outside work and I attend to the office work and I now beg to agree to the amount of fee you offered." The letter contains the following passage:—"I have to ask you to inform me of the date on which the rent is due and for you on no account to pay the rent without first consulting me, as this is most important. . . . The simple procedure will be that upon my handing to you the *Gazette* notice" (that is the notice offering the land for tender) "you hand me your cheque for fees." In reply to this letter Wallace wrote to respondent at 21 Bligh Street, saying that he had received a communication from Willis, "who purports to be acting with you," but desiring an acceptance of his terms from respondent himself. The terms were, 28 years tenure, minimum rent £30 £100 payable on gazettal of those terms. Respondent replied by letter of 21st August (the place of writing not mentioned), accepting the terms, and adding "Hoping you will bear in mind my request to you not to pay the rent" &c. On 28th October respondent, dating again from 21 Bligh Street, sent the *Gazette* containing the advertisement of the land for tender on the stipulated terms.

Meagher's explanation (par 11 of his affidavit), is that Wallace was his client, and that as he was going out of town he asked Willis to conduct the matter in his absence, and that this is how the correspondence came to be dated from 21 Bligh Street. He says that he did not know the substance of the letter of 15th August signed by Hoskins until he saw it before the Commission, and that the statement made in the first two lines of it is untrue. It is obvious, however, that the reference in the letter of 21st August signed by Meagher is to the letter of 15th August, so that respondent is in a dilemma. He is either not to be credited when he says that he never saw that letter, or the letter of 21st August is one of the letters which, as he says in paragraph 16 of his affidavit, he used to sign without reading them. He said before the Commission that the fee of £100 was in fact paid to

Willis, who gave him half of it. It is noteworthy that the conditions on which the earning of the fee was to depend related entirely to matters in the absolute discretion of the Minister. What was the nature of the "difficulty" referred to in respondent's letter of 31st July, what was the delicate handling required, and why to procure the desired result a "pretty substantial fee" would be required, are matters left to conjecture.

In another case, spoken of as the Bathurst improvement leases, Meagher made application as agent for several leases of that kind on behalf of persons desiring to obtain them. Willis was in fact the agent for the applicants. Meagher's explanation is that Willis informed him that he was going to have in his hands a series of applications from the Bathurst district, and that he wished Meagher to appear before the Land Board at Bathurst, and that, that being so, he would get Meagher to sign the applications, which he accordingly did by a letter of 27th July 1903, dated from 21 Bligh Street. At that time, as already shown, the local Land Board had nothing to do with improvement leases, but some months afterwards the question of the upset rent to be charged was in fact referred to the Bathurst Board, when the applicants were represented by a barrister instructed by a solicitor, Meagher being also present. He says that he received a fee of £30 for his services. The land was offered to public tender. The applicants were not the highest tenderers, but were allowed to increase their tender and the lease was granted to them. Several of the applicants had in fact been sent to Willis by Meagher. The fee for agency charges, £120, was paid to Willis, but the receipt was signed in the name of Meagher, who, however, says he did not sign it.

I have referred to these cases as showing the nature of the association between Willis and Meagher in connection with land office transactions. Possibly the association may have been so far innocent in all these cases that Meagher may have merely lent his name without suspicion of anything wrong.

I now pass to two other cases which require more careful scrutiny, and to which particular reference is made by the learned Judges of the Supreme Court.

One is a case spoken of as the Bogamildi Case. The facts are

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Griffith C.J.

thus shortly stated in the Commissioner's report:—"The action with reference to these leases was initiated by Mr. R. D. Meagher, writing from 21 Bligh Street on behalf of 'his clients' that the land comprised in two forfeited leases (Nos. 1,047 and 1,048 which had previously been granted to R. J. and F. Williams respectively), and also some land shown on an accompanying plan, be submitted as improvement leases. Mr. J. H. Davies, on behalf of the lessees, stated that the 'clients' referred to by Mr. Meagher, were his company (p. 646, Q. 18,145), but he employed Mr. Willis as agent in the matter. He also stated that the reason he went to Mr. Willis was that he had failed to carry through the Department 'on his own' what he had been trying to get (Q. 18,147). Although Mr. Willis was paid a fee of £1,000 in connection with these leases (Q. 18,158), his name only appears in the departmental papers after the leases were granted in reference to the bonds required by a condition of the leases. Willis's office was at 21 Bligh Street, while Meagher's was at Temple Court, King Street.'" Meagher's explanation of this transaction, contained in the second paragraph of his affidavit, is as follows:—"In regard to the item Bogamildi, above referred to, Mr. Willis asked me to sign applications for certain lands to be made available for improvement lease in the interest of John Henry Davies who was unknown to me. The greater part of the said land consisted of improvement leases which had been forfeited, and I was told by Mr. Willis that his reason for asking me to sign the applications was that other people in the district might not know the land was thrown open upon his application, as they might think that future applications on their account might conflict with the interests of the present applicant and therefore might seek the assistance of some other land agent than himself."

I agree with *Pring* J. that "his explanation amounts to this, that Willis was anxious to deceive future possible clients by making it appear that he (Willis) was not acting for Davies, and that applicant abetted Willis in this attempt to deceive" (1).

Argument was addressed to us to the effect that a conflict between the then applicants and other possible clients of Willis's

(1) 9 S.R. (N.S.W.), 504, at p. 529.

was improbable, and that the language of the affidavit is capable of an innocent interpretation. I confess my inability to follow the argument. I understand the "future applications" mentioned to be applications which, if allowed, would prevent or endanger the issue of the improvement leases to Willis's two clients, and no other interpretation was suggested to the Supreme Court. *Simpson* Acting C.J., with whom *Cohen* J. agreed, said on this point (1):—"The effect of the applicant's action in this matter might have been to put money in the pocket of Willis which would never otherwise have came to him, and it placed Willis in a position of being able probably to deceive other persons by concealing from them the fact that he was in respect of certain land acting for Davies, when he was in reality doing so by means of Meagher. Such conduct was as I have said reprehensible, but I do not think it was so reprehensible that it should prevent the Court restoring the name of the applicant to the roll."

In my opinion the word "reprehensible" is not adequate to describe the conduct of a man who deliberately lends his name for the purpose of putting the man to whom it is lent in a position to deceive intending clients. According to Meagher's version of the facts, Willis, who had received a fee of £1,000 for services of some extraordinary and unexplained nature to be rendered desired to be in a position to obtain further fees from other persons who would employ him to take action in conflict with the interests of his client, and Meagher assented. This explanation is cynically offered to the Court, not as accounting for an error into which he fell many years ago, and of which he has now repented, but as a vindication of his action as he now regards it. This, to my mind, is the worst feature of the matter, for it shows the respondent's notion of the moral obligations of a practitioner of the class to which Willis and he belonged in 1903, and which he obviously regards as equally applicable to the honourable obligations of a solicitor. It is quite immaterial whether the intended fraud was successful or not.

The other case is one spoken of as Rea's leases. The actual facts of this case, apart from Meagher's connection with it, are that about April 1903 one Traquair desired to obtain certain land

(1) 9 S.R. (N.S.W.), 504, at p. 517.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Griffith C.J.

under improvement lease, and paid Willis a fee of £1,000 to advocate his interests. Willis, however, desired to obtain the land for himself or his wife, and for that purpose used the name of one Patrick Rea, a jockey, who left Australia immediately after the applications were made. Three leases, comprising an area of nearly 50,000 acres, were granted to Rea in 1903, and on 13th February 1904 he, being then at Durban, executed a mortgage of the leases for £15,000, purporting to have been advanced to him by one Hayes, who was Willis's brother-in-law and was a letter-carrier in the employment of the Post Office. In December 1904 Hayes transferred the mortgage to Mrs. Willis, alleging that the £15,000 had been advanced by him as trustee for her. Proceedings for foreclosure were then taken so that she became the lessee. Willis was good enough to repay to Traquair £990 of his fee of £1,000, and offered him the benefit of the leases at a price of £21,000.

Now as to Meagher's connection with this transaction. The application to have the land thrown open for improvement lease was made by him by letter, undated, but apparently written about 14th April 1903, purporting to be made on behalf of "some would be selectors," in which he stated in detail the expenditure which they would be prepared to make. Subsequently, on 12th May, a letter was addressed to the Minister by "Rea Brothers (Patrick Rea and Edward Rea)," giving further details of their intentions, and stating that they had applied through their agent Meagher and were prepared to expend £10,000 on two 20,000 acre blocks spread over 6 years. The land was offered to tender, and Patrick Rea tendered for all three leases at the upset price, Traquair tendering for two of them at the same price. Rea's tenders were approved by the Minister, but he was required to find security to the extent of £2,050 for duly making the stipulated improvements. Meagher says that he never saw his client Patrick Rea, but was employed by his father, who was a friend of Willis. On 25th July 1903 a letter signed by Meagher, and dated from 21 Bligh Street, was sent to the Minister, submitting the names of two persons as sureties and giving their addresses. They and Meagher were asked to call at the Lands Department, and the acceptance of the proposed sureties was

afterwards approved. On 24th July Meagher again wrote, no place of writing being mentioned, asking to substitute for the name of one of the accepted sureties a Mr. Richard Scott, as to whom he said "Mr. Scott owns treasury bills of the face value of £3,000 besides having other properties, and is in every way financially strong enough to meet the bonds should Mr. Rea fail to carry out the conditions of improvement." On the 27th the Minister approved of the substitution. No further information as to Scott was asked except as to his address, and on 31st July Meagher wrote, again from 21 Bligh Street, giving the address. Scott was in fact a messenger in the Department of Mines, and a man without means. Meagher says in explanation that he did not know him and that he must have got the information about him from Rea senior. The other surety was a tool of Willis's. Scott said that he was asked to sign the bonds by a clerk of Willis in Willis's office.

Without the bonds this transaction could not have been carried through. It is plain that the letter of 24th July was written that it might be acted upon as a personal assurance by Meagher, a member of the legislature, that Scott was a proper person to be accepted as surety. It is equally manifest that he did not know whether what he said about him was true or false, and in my opinion it is equally clear that he did not care whether it was true or not. Meagher swears that he cannot recollect any instance in which he actually wrote a letter from Bligh Street. His own office was in another part of the city. It may be that the letters signed by him as from 21 Bligh Street were not read by him, but if so, his statement that he obtained the information as to Scott from Rea senior becomes very doubtful. In any view of the facts the frequent dating of his letters from that office leads to only one conclusion—that he was in these transactions a tool of Willis, to whom he lent his name, and his signature when desired, to carry out Willis's projects, of whatever nature. The explanation that he was a simple innocent person who unwittingly allowed himself to be made use of as an instrument of fraud cannot be accepted. His counsel represent him as an astute person who would not have allowed himself to make such mistakes if there had been anything to conceal.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Griffith C.J.

One other case should be referred to, spoken of as Hayes' leases. The application to throw open the land in question was made in July 1903 by a Mr. Richards. Two leases, each of about 14,000 acres, having been thrown open to tender, there were four tenderers for each, the lowest tenderer being Michael F. Hayes, the letter-carrier already mentioned, brother-in-law of Willis, who tendered the upset rent. He was, however, allowed to raise the amount of his tenders to that of the highest tenderers, and the leases were awarded to him. In January 1904 he submitted as his sureties the same persons, O'Connor and Scott, who had been approved in the case of Rea's leases, and it was pointed out to the Minister by an officer in the Department that they had been accepted as sureties to the extent of £2,050 in Rea's case. The land adjoined Rea's leases. Hayes shortly afterwards mortgaged the leases for an alleged advance of £5,000 to Mrs. Willis. He disappeared and she acquired a title to them by foreclosure. There can be no doubt that Hayes was a mere dummy for Willis in the transaction.

The only direct evidence offered of respondent's connection with this transaction is a minute by the Minister, W. P. Crick, appearing in departmental records. On 12th August 1903 he had, by minute, approved of the land being offered to tender, and on the 18th he wrote a minute as follows:—"What is delay in proceeding on above minute? Mr. Meagher, M.L.A., called in reference hereto." Respondent says that he did no work in connection with Hayes's leases, and did not interview the Minister thereon, and did not know who the sureties were. He does not say that he did not know of the transaction in fact.

If this matter stood alone, I do not think that it would be fair to attach much weight to it. Crick's minute is of course not evidence, strictly speaking, against Meagher. But the transaction was clearly connected with the scheme to acquire Rea's leases for Willis or his wife by very similar means, and by means of the same tools as those with whom respondent was connected, and I cannot wholly disregard it.

On the whole facts disclosed before us I am compelled to the conclusion that Meagher regards his conduct to which I have adverted as quite consistent with the obligations of honour, and

that if he is restored to the roll he will regard it as consistent with the honourable obligations of a solicitor to act in a similar manner when opportunity offers. Under these circumstances I cannot answer in the affirmative the question whether the Court is justified on solid and substantial grounds in sanctioning the conclusion that he is a fit and proper person to stand in the ranks of an honourable profession, and in whom the public may repose unbounded confidence.

With regard to the numerous certificates of character, some on oath, by which the application is supported, apart from any question of the weight of such testimonials in general, I cannot suppose that the gentlemen who gave them were aware of the facts now disclosed. If they were, and thought that such conduct is right and proper, their opinion is of no value. It could not in any view be substituted for that of the Court. If they were not, the foundation for their opinion is gone.

In my judgment, therefore, the appeal must be allowed.

ISAACS J. With every desire to view the facts more favourably for the respondent, I am unable to give any reason satisfactory to my own mind for not concurring in the judgment. It is due to the respondent himself, as well as to those learned Judges of the Supreme Court from whose opinion I am differing, to state the grounds upon which I arrive at my conclusion.

The only power possessed by the Supreme Court to admit him is defined in the *Charter of Justice* as an authority to admit "fit and proper persons to appear and act as . . . . , proctors, attorneys and solicitors."

Doubtless considerable latitude must be conceded to the Court in determining what constitutes a fit and proper person to act for suitors, because so much depends on individual opinion of fitness. Still, if the facts admitted, uncontroverted or overwhelmingly established are such as lead all reasonable minds to but one conclusion, namely, that a given applicant is not a fit and proper person, according to all recognized standards of right and wrong, the Court in accepting him, while purporting to act within its powers, has really stepped beyond them, and has done something unauthorized by law.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Isaacs J.

It was urged *in limine* that this Court has no jurisdiction to entertain such an appeal because the Supreme Court in admitting a solicitor acts ministerially and not judicially. But whatever be the nature of the mere formal act of admission and enrolment, once fitness and propriety are established, the determination by the Court of the question whether an applicant is a fit and proper person—which is a legal condition of the exercise of the power to admit—is undoubtedly one of its judicial functions, and open to review by any tribunal possessing appellate jurisdiction with respect to that Court. So the Court of Appeal thought in *In re A Solicitor* (1). If that were not so, the legislative requirement, expressly inserted as a limitation of authority, would be wholly ineffective, except so far as the Court chose to observe it. The order appealed from is in the ordinary form of a judicial order, presents all the *indicia* of such an order, and I see no reason for holding it to be anything else. It is admitted that had the decision been adverse to the applicant, he could have appealed (see *In re Stewart* (2)), and the only *differentia* suggested appeared to be that in that case rights were affected, and in this case none were interfered with. For reasons to be presently stated, this view cannot be sustained. As an authority against it there is the case *In re A Solicitor* (1), already cited ; and I cannot understand how the nature of the proceeding can depend upon whether the answer is in the affirmative or the negative. The Constitution, sec. 73, gives this Court jurisdiction to hear appeals from all judgments, decrees, orders, and sentences of the Supreme Court, and I have no doubt an appeal lies in the present case at the instance of the party unsuccessful below. That the appellant was and remains a competent party to invoke the jurisdiction is clear. See *per* Lord *Coleridge* C.J. in *In re A Solicitor* (3).

Then it is urged that the question at issue was one of fact, and consequently, according to the practice laid down by this Court in several cases, we ought not to entertain it upon appeal by way of special leave. But that contention is founded upon a misconception of the reasons underlying the practice. Ordinarily an error of the primary Court as to the facts of a particular case does not

(1) 5 T.L.R., 486.
(2) L.R. 2 P.C., 88.
(3) 25 Q.B.D., 17, at p. 21.

extend in its effects beyond the case itself and the parties immediately concerned. A judgment, unimpeachable for no other reason than misapprehension of particular facts, is not a fallacious guide in other instances, and works no ulterior mischief. There are, of course, well understood exceptions even to the ordinary rule. But the present case does not respond to the test of the reasoning on which that rule is founded. The effect for good or evil of the order admitting Mr. Meagher is incalculable. Its consequences are indefinite, they concern an infinite number of persons and circumstances, they affect the future administration of justice in the Supreme Court and also in the other Courts of the State, inferior to that tribunal, and which are themselves powerless in the matter, and further under the *Judiciary Act* the order may affect the administration of justice even in this Court. The latter circumstance is one which, whatever may be said on other points, undoubtedly evidences the extensive consequences of the order, and is therefore a proper factor in the discretion of the Court as to entertaining the appeal. The analogy to the ordinary case failing, the practice invoked is inapplicable.

Two other questions of law were urged which form really but one argument. It was contended, under a double aspect, that the Supreme Court at all events had a discretion to regulate the amount of punishment which should be awarded, and that this Court should no more interfere with that discretion than with the number of years to which a prisoner was sentenced. In rejecting that contention I am brought to state the true principle upon which a Court is bound to deal with an application such as that made by the respondent to the Supreme Court.

The position of a person seeking re-admission in these circumstances is for this purpose as if he had never been admitted before, *per Cockburn* C.J. in *In re Pyke* (1); *per Cockburn* C.J. and *Blackburn* J. in *In re Hill* (2); and *per Darley* C.J. in *In re Rofe* (3), quoted by the present Acting Chief Justice of New South Wales in the case now under appeal.

Then, as already observed, the *Charter of Justice* requires the person admitted to be "a fit and proper person." That legislative

(1) 34 L.J. Q.B., 121, at p. 123. (2) L.R. 3 Q.B., 543, at p. 547.
(3) 6 S.R. (N.S.W.), 669.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

ISAACS J.

requirement is precisely the same test as the Courts in England have consistently applied.

In *Re Brounsall* (1), Lord *Mansfield* L.C.J. laid down the line that has ever since been followed. A solicitor had been convicted of stealing a guinea, and had suffered imprisonment for nine months and also branding in the hand. On an application to strike him off the roll, two arguments were advanced for him: first, that the conviction was already four or five years old, and next, that he had already received sufficient punishment. But the learned Lord Chief Justice refused to yield to either plea. He pointed out that it was not a question of whether the solicitor had been sufficiently punished for his crime, but that striking off the roll went on "this principle that he is an unfit person to practise as an attorney," He added:—"It is not by way of punishment; but the Court in such cases exercise their discretion, whether a man whom they have formerly admitted, is a proper person to be continued on the roll, or not." So, that learned Judge states the question. Again, Lord *Denman* C.J., in *Re King* (2), reiterates the view that a proceeding to strike off is not a punishment for a legal crime, and cites the concluding part of Lord *Mansfield's* words above quoted.

The whole position was reviewed at large by the Court of Appeal in *In re Weare* (3), where Lord *Esher*, adopting *Re Brounsall* (4), and *In re Hill* (5), states the same principle upon which the Court proceeds in striking off the roll. Lord *Lindley* (then Lord Justice) says (6):—"The question is, whether a man is a fit and proper person to remain on the roll of solicitors and practise as such."

And so by *Lopes* L.J. To the same effect is *Re Hopper* (7).

So that the decisions in England resting on the self-same words "fit and proper" are exactly in point in the present case. Lord *Esher* M.R., in *Weare's Case* (6), goes on to make some observations very pertinent to Meagher's application for re-admission. After saying that the Court below, in view of the nature of the offence, was bound to strike the solicitor off the

(1) Cowp., 829, at p. 830.
(2) 8 Q.B., 129, at p. 133.
(3) (1893) 2 Q.B., 439.
(4) Cowp., 829.
(5) L.R. 3 Q.B., 543.
(6) (1893) 2 Q.B., 439, at p. 447.
(7) 34 Sol. J., 568.

roll, he said:—"I know how terrible that is. It may prevent him from acting as a solicitor for the rest of his life; but it does not necessarily do so. He is struck off the roll; but *if he continues a career of honourable life for so long a time as to convince the Court that there has been a complete repentance, and a determination to persevere in honourable conduct*, the Court will have the right and the power to restore him to the profession. His case, therefore, is not hopeless; but for the time he must be struck off the roll, and this appeal must be dismissed."

That indicates the conditions under which the Court will have, as the Master of Rolls expresses it, "the right and the power" to restore the applicant who has once erred.

It may be that the error, though flagrant, has proved to be a solitary lapse. It may be that after sufficient time has passed the applicant can satisfy the tribunal that his purgation is complete, his repentance real, his determination to act uprightly and honorably so secure that he may be fairly re-entrusted with the high duties and grave responsibilities of a minister of justice. But that obligation lies upon him, and it is no light one. The errors to which human tribunals are inevitably exposed, even when aided by all the ability, all the candour, and all the loyalty of those who assist them, whether as advocates, solicitors, or witnesses, are proverbially great. But, if added to the imperfections inherent in our nature, there be deliberate misleading, or reckless laxity of attention to necessary principles of honesty on the part of those the Courts trust to prepare the essential materials for doing justice, these tribunals are likely to become mere instruments of oppression, and the creator of greater evils than those they are appointed to cure. There is therefore a serious responsibility on the Court—a duty to itself, to the rest of the profession, to its suitors, and to the whole of the community to be careful not to accredit any person as worthy of public confidence who cannot satisfactorily establish his right to that credential. It is not a question of what he has suffered in the past, it is a question of his worthiness and reliability for the future. In dealing with a solicitor who, for a breach of professional conduct, had been excluded for twenty years, the Court of

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Isaacs J.

Queen's Bench, in 1865, in the case of *In re Pyke* (1), already quoted, laid down in clear terms what a Court will require to satisfy it as to the fitness and propriety of an applicant for re-admission. *Cockburn* C.J. said :—" If we were perfectly satisfied that that sentence, however right it was when it was pronounced, had had the salutary effect of awakening him to a higher sense of honour and of principle, and that *he could show us* that, having suffered the humiliation, and all the serious consequences as affecting his interests in life, which such a sentence must necessarily carry with it, *he had been awakened to a higher sense of honour and principle*, I do not think we should have been inexorable to an application of this kind." And, again, " I do not think the rule should be so inexorable as that after a man has undergone a long period of exclusion and punishment and suffering that that carries with it, *if we are satisfied that his conduct has been such in the meantime as to insure confidence in his character*, we might not either admit in the first instance or re-admit him." *Blackburn* J. and *Mellor* J. agreed with the Lord Chief Justice.

How far then has the respondent satisfied those requirements of the law ? I lay emphasis upon the expression " requirements of the law," because when the Charter of Justice was framed there was, as it appears to me, a legal obligation laid upon the Court to admit none but fit and proper persons ; and the question we have on this appeal to determine is whether, after allowing for all reasonable differences of opinion as to fitness and propriety, that legal obligation has been discharged. Fitness includes honesty as well as knowledge and ability. So said Lord *Coke* in a passage quoted by *Dwarris on Statutes*, 2nd ed., at p. 685, and that is only common sense.

Has Meagher, in his application in 1909, done that which ought reasonably to satisfy the Court that the unfortunate incident of 1895 was a solitary deflection from the path ; or else that he had sincerely and absolutely formed better resolutions and acted upon a higher standard of conduct, so as to satisfy the Court that henceforth he might be trusted to act honourably even when, as

(1) 34 L.J.Q.B., 121, at p. 123.

must often be the case in the legal profession, he is not moving in the light of actual observation?

It is with great personal regret I am utterly unable to answer that question in the affirmative.

The learned counsel who appeared for him made the most powerful presentation of his case that the facts permitted, leaving untouched no single phase that could be made to appear in his favour. But the facts are too strong to be overcome by eloquence, and the law is too clear to leave any doubt in my mind as to the result of those facts, to which I shall now refer.

In 1896 Meagher was struck off the rolls absolutely. In 1900 he applied for admission and was refused because the application was premature. In 1902 he again applied, and unsuccessfully, apparently because he was still premature. In 1904 a third application was made and he was once more refused because premature. The Court (consisting of *Darley* C.J. and *Owen* and *Pring* JJ.) then made what has been, and I think rightly, regarded as a conditional promise that if he applied not earlier than June 1906 he would probably be admitted. The condition was expressed in these terms, "Of course, he must then come provided with affidavits showing that from the present up to the time to be fixed (that is, 1st June 1906) he has maintained the high character which he appears to have held since he was struck off the roll" (1).

In August 1906 he again applied for admission, but the Court, in view of the pending Land Commission, would not entertain the application.

The matters which now stand in the way of the respondent certainly occurred before 1904, but they were not disclosed to the Court, and if the promise is to be relied upon at all, it must be subject to the effect of those recently discovered circumstances, appearing to the Court for the first time in the present application.

There are certain general facts which are necessary to a proper understanding of Bogamildi and Rea lease applications.

Meagher was a close personal friend of Willis, and when the latter left New South Wales in 1901 for a little over twelve

(1) 4 S.R. (N.S.W.), 647, at p. 650.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Isaacs J.

months (see Q. 23058), thinking his business would go to pieces, as McNair said, if he had not somebody in there who was rather more before the public than was McNair, got Meagher to put his name on a little plate affixed to a door of a room in Willis's office and adjoining Willis's own room. During Willis's absence Meagher came there at times according to Hoskins (p. 268 of the evidence) to attend to Willis's business; Hoskins saw him there frequently, and saw him going to interview McNair. Meagher himself says (Q. 20238) that he was never in the particular room that had the plate on the door, he never had a drawer or desk there and never wrote a letter there, but adds, "It was more in a sort of consultative capacity I acted. If Mr. McNair had a client and was unable to do the work he was to see me." The position Meagher held was therefore highly confidential. I cannot entertain any doubt that during that period Meagher was well acquainted with the main features of Willis's business. And as little doubt can be felt that if Meagher permitted his name to be openly displayed to the public on Willis's door, as, or representing that that was, Meagher's office, he also expressly or impliedly sanctioned the use of his name in other ways connected with the business.

So much would be a necessary corollary by implication to the announcement on the tin plate so far as concerned any member of the public who came there. When therefore in December 1902 (Exh. 194) Mr. Willcox, the director of Thos. Edols & Co. Ltd., under No. 10143, wrote asking that departmental communications should be addressed to R. D. Meagher, M.L.A., 21 Bligh Street—that is Willis's office—it was only natural. The name on the door was in itself a sufficient indication to the public that Meagher was in some way connected with the business, and as in the progress of the Burrawang transaction, Meagher walked in and was introduced by McNair to Willcox (Q. 10143), it is plain that no one—and least of all Meagher—could be surprised that his name was so employed. So, too, with Webb's receipt.

Meagher says he had called into Willis's office on countless occasions (p. 316 of evidence) and the Commissioner (p. 41 of the report) states that out of 35 cases of improvement lease applications, reported on adversely, but in which the report was

overruled by Mr. Crick, Meagher acted as agent in 5. In one of those cases he appears to have acted alone, in three he acted with Willis, in one with Willis and Close. At p. 316, Meagher states, "Mr. Willis employed me when it suited him, and Mr. Willis has acted in conjunction with me when I have had work or clients that I have been unable to attend to either through the circumstances of leaving town or some other circumstance."

The conclusion is irresistible that Meagher was so closely bound up with Willis, by at least ties of acquaintanceship and friendship and confidential assistance in the business carried on by Willis, that it would require the clearest evidence to satisfy a Court he was ignorant of the substantial nature of any transaction in which he actively participated.

With these broad and general facts—really admitted—let us consider the special facts of the two cases relied on by the appellant institute.

In the Bogamildi case Meagher purported to act as agent for Davies, who represented the Australasian Mortgage and Agency Co. Ltd. As the transaction was one in which a fee of £1,000 was paid to Willis, it would have been a fatal circumstance if Meagher had been actually co-agent with Willis. He, however, indisputably initiated the action in reference to the leases by writing from 21 Bligh Street on behalf of "his clients." Willis's name appeared in the departmental papers only after the leases were granted in reference to the bonds required by a condition of the leases (see report, p. 62). The fact, however, that Willis's name so appeared, and the additional fact that it only appeared after the leases were granted are, as will be presently seen, utterly destructive of the suggested explanation by learned counsel of Meagher's affidavit respecting the Bogamildi transaction.

Why then did Meagher put himself forward as the agent for Davies?

Paragraph 2 of his affidavit, apart from strained or artificial construction, bears on the face of it one plain meaning, namely, that Willis did not wish it to be known he was acting for Davies in endeavouring to obtain the land on improvement lease, because other people who might apply for the land when once it was thrown open, and knowing that Willis was agent for Davies,

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

ISAACS J.

would not employ him on their behalf; and the inevitable deduction is that Meagher, in order to enable him to commit what would have been a cruel and despicable fraud should the opportunity offer, lent his own name for the purpose of Davies's application. Learned counsel invited the Court to accept a milder construction, though admittedly requiring violence to Meagher's own chosen words, namely, a construction that after Davies had secured his leases other people desirous of obtaining improvement leases of other lands held by Davies might not be deterred from employing Willis through knowing he had previously acted for Davies. But that explanation is open to several objections.

(1) It is not the natural meaning of the paragraph, and it is very far-fetched and unpractical.

(2) Willis, as the report says, did in fact appear on the papers in connection with the leases.

(3) He did so appear, however, only after the leases were secured by Davies, that is, when there could be no further applications by other people for the same land, and when all that was needed to be done was to execute the bonds.

The second and third points are exactly in consonance with the *ex facie* meaning of the paragraph, while altogether inconsistent with the suggested explanation. Even if the attempted explanation were accepted, deception of the public would still be an admitted feature of the scheme, though conflict of interests and betrayal of some would not be present.

However, the probabilities are overwhelming to establish the worse aspect of the matter, and I agree with the view presented by *Pring* J., and I am inclined to think even by *Simpson* A.C.J., who certainly considers deception was intended.

Then as to the Rea case; I can see no fair excuse for Meagher's conduct.

The Reas were found by the learned Commissioner to be Willis's dummies (report p. 51), and the evidence in my opinion sustains this finding. The sureties O'Connor (p. 269 of the evidence and following), Roden (p. 481) and Richard Scott (pp. 238 and 576 of evidence, and exhibits p. 82 and 254) were persons who lent themselves to Willis. Meagher says Rea gave him the false information contained in his letter of 31st July 1903 (exh.

p. 57) concerning Scott's financial ability. This is most unlikely: first, because Meagher does not say so in his letter, next, because Scott swears he never told Rea so, again, because Rea had no apparent means of knowing anything about Scott's position. Even if Rea had so informed Meagher, the latter in the ordinary course would obviously have inquired for and stated his address, (as in the letter of 20th July, respecting O'Connor and Roden), and probably also his occupation. The address of Scott was clearly necessary even to give the Department the smallest opportunity of judging of Scott's suitability. However, without any inquiry as to Scott's identity or whereabouts, Mr. Crick forthwith accepted him on the mere strength of Meagher's letter. When the occupation branch naturally asked Meagher for Scott's address—after ministerial acceptance—he replied, "45 Hopeton Street, Paddington." There is no mention that he is a messenger in the Mines Department, and the latter communication is sent from 21 Bligh Street. The explanation—not really sworn to as a fact but put forward by way of a guess in par. 10 of Meagher's affidavit—is altogether unsatisfactory.

Now, if those are the views I have formed upon the evidence, what is there which ought to prevent me from acting upon them? The Supreme Court had no better opportunity of judging of the facts than we have—there has been, for instance, no personal examination of witnesses, the whole testimony is contained in documents.

As to the Bogamildi case, two of the learned Judges below (*Simpson* A.C.J. and *Pring* J.) concurred in thinking it reprehensible. To some extent at least the good character of the respondent as it was supposed to exist in 1904 was in fact tarnished. With regard to the Rea leases, *Simpson* A.C.J. considered the onus lay upon the Institute of proving Meagher's complicity in the conspiracy beyond reasonable doubt, and that nothing more existed than suspicion, possibly strong suspicion. With the greatest deference to the learned Judge, it seems to me his Honor at this critical point lost sight momentarily of the true issue. The Institute was not bound to establish a criminal conspiracy. Something short of that might be a sufficient denial of Meagher's fitness. He had undertaken to establish

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Isaacs J.

that fitness to the satisfaction of the Court. That was the issue throughout:—Fitness or unfitness; not crime or no crime. If the facts left the issue of fitness in doubt, if they covered Meagher's conduct with suspicion, or as the learned Acting Chief Justice said, "possibly strong suspicion," how can it be maintained that the applicant had discharged the burden the law called upon him to bear. It was not as if the main facts were in controversy. There stood the admitted fact of the letter signed with his own hand, containing grossly untrue statements, sent to a public Department for the express purpose of inducing that Department to act upon it—an intention which was effectuated—and thus the letter itself became an efficient factor in what was actually an elaborate fraud. The letter was sent from the office of Willis, the arch-conspirator; it was written out, as Meagher suggests in his affidavit, by McNair, Willis's manager; and Meagher admits his personal neglect to make any personal inquiries of the proposed surety Scott, either respecting his identity, or financial position. These facts are in themselves sufficient to call for the most convincing explanation from Meagher before he could fairly ask a Court to be satisfied of what he set out to establish, viz., his honesty and propriety of conduct. He is found, so to speak, in bad company, an actor—and, as he asserts, an innocent actor—in a nefarious scheme. Has he successfully disengaged himself? If his story be true he was a mere dupe of Willis, through Rea's instrumentality, and was the only innocent person concerned in the transaction. If, however, his story were accepted, he would be much too simple and confiding to bear the heavy strain of responsibility required of him as a solicitor.

But how is the Court, in the face of the indisputable and really undisputed facts, able to solemnly declare that the respondent is a person who, so far as appears, can be safely trusted by the public to discharge with honour and fidelity the high and important functions required of a solicitor of the Supreme Court.

I do not wish to make my words one iota more harsh than the occasion requires, but I feel bound to say that the more closely I

have examined the evidence the more hopeless has the respondent's case appeared.

Regretfully, but without hesitation, I concur in the judgment proposed.

HIGGINS J. From my point of view it is unnecessary for me to refer in detail, after the judgments of my colleagues, to the much contested facts of the respondent's relations with Willis, or to express any final opinion as to the ingenious explanations of particular transactions offered by the respondent's counsel. For, in my opinion, the respondent has not shown any "solid and substantial grounds" for now altering the decision of the Supreme Court in 1896—the decision under which he was struck off the roll of solicitors (see *In re Poole*) (1). The order striking off is *prima facie* final, although the name may be restored if good cause be shown. But the burden clearly lies on the applicant to establish that the moral perversity which he exhibited in connexion with the *Dean Case* no longer exists; and, under the circumstances of the *Dean Case*, the burden is very heavy indeed. To get his client off deserved punishment, and with the knowledge that he was guilty, the respondent made repeated misrepresentations to his partner and to the public. He fastened on Dean's innocent wife and her mother a charge of conspiracy. He vilified those who fought for the truth. He perverted the course of justice—that justice which, as a solicitor, he was under a duty to assist. I do not presume to say that under no circumstances could a man be re-instated after such conduct, atrocious as it was. In that respect it seems to me that the appellant's contention goes too far. I can imagine a young man, eager to get professional reputation, yielding to temptation, and then through years of unimpeachable conduct, proving that there was no ingrained obliquity of character. But the evidence in this case falls short of any such proof. It is almost enough to say that he was for years on the closest intimacy with Willis. After being struck off the roll he practised as a land agent—an agent for persons seeking to get title to Crown lands. In this capacity, as he admits, he "called into Willis's

(1) L.R. 4 C.P., 350, at p. 353.

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Higgins J.

office on countless occasions." Willis was also a land agent, and, as is not contested, was engaged in corrupt and fraudulent transactions. In some of these very transactions the respondent took an active part, though the degree of his knowledge of the circumstances is disputed. The respondent allowed his name to be used whenever Willis wanted it; he had many letters addressed to him at Willis's office. He took no concern in the truth or falsity of Willis's statements, or in the propriety of Willis's actions in transactions in which Willis used him. He took no concern as to the truth or falsity of the statement which he himself made as to the financial position of the proposed surety, Scott—a messenger in the Mines Department. He contented himself with the alleged statement of the elder Rea, who was interested in pushing the application through. It does not appear what were the exact financial relations of Willis and the respondent. The respondent says (par. 25) that "*the fees paid*" him by Willis "*in connection with improvement lease applications* in which he *employed*" him did not exceed £250; but this denial —a "negative pregnant" as it used to be called—does not exhaust the possibilities. Willis, himself, in a letter of 15th August 1903 (Ex. 165), represents the respondent as working "in conjunction with him" and as doing "all the outside work," while he (Willis) attended to the office work. This representation *might* be read as referring only to the particular transaction, but it is capable of being read as referring to transactions generally; and the respondent signs a letter on 21st August which must have been written by one who knew the contents of the previous letter. I find it hard to believe that the respondent made only £250 out of all his association with Willis. The respondent says (affidavit, par. 16) that Willis, or McNair, his manager, frequently called in with letters for signature, and he signed them, and kept no record. "Mr. Willis," he says, "employed me or other agents just as it suited him. I have signed communications *re* improvement leases for Willis's clients (A) because the land applied to be made available for improvement lease was in the vicinity of the property of some other client of Willis's who might feel annoyed at him so acting; (B) or because it conflicted with the interests of some land holder and

pastoralist who was a supporter of Willis; (c) or because he desired me to conduct the inquiry before the local Land Board and thus have my name on the record from the initiation" (par. 19). In the Bogamildi Case, even if we take the view of the facts which is the most favourable to the respondent, he signed his name as agent for Davies, the manager of the company which occupied the land, although he was not the agent. He represented himself as the agent with the view, as he admits, of enabling Willis to represent himself—to people whose interests were or might be in conflict with Davies'—as not being the agent for Davies (par. 2). If it be said that the respondent's admissions are a sign of frankness, I must say they are to me a sign of moral atrophy. The respondent seems to be unconscious of anything wrong or dangerous in such transactions; and how then can it be said, in the words of the Charter of Justice, that he—this "dummy" of Willis—is a "fit and proper" person to be a solicitor, stamped by the Court with its approval, put by the Court into a position of privilege, held out as being worthy of the confidence of clients, and fitted to assist in the administration of justice? I need not go into the other matters.

For these reasons, amongst others, I am constrained to differ from the majority of the Full Court of New South Wales. It is clear that their Honors—even Mr. Justice *Pring*, who dissented—felt themselves under the pressure of a kind of promise made to the respondent at the time of his application for re-instatement in 1904—made before the revelations of the Royal Commission (1906). Their Honors recognized that the "promise" was not legally binding on them, but thought that they ought to carry it out, unless it were shown to their satisfaction that the respondent had been guilty of misconduct since 1896. This Court is certainly not bound by any such promise, and, indeed, has no right to act on it. Our duty is to be satisfied that the respondent has shown in 1909 that he is a "fit and proper" person to be put on the roll as a solicitor, notwithstanding the fact that in 1896 he was not fit or proper. In my opinion, the fact that the recollection of the case is not now, owing to the lapse of years, so vivid in the public mind, cannot reasonably be used in aid of the application. If the

H. C. OF A. 1909.

INCORPORATED LAW INSTITUTE OF NEW SOUTH WALES v. MEAGHER.

Higgins J.

applicant retains the same tendencies, and the public do not know it, he is all the more dangerous.

It is urged that we should not interfere with the finding of the Full Court on a question of fact, or with its exercise of a discretionary power, especially as regards its own officer. But we are under a duty to investigate the facts for ourselves, and to make such order as we think ought to have been made. I certainly agree with the practice of giving great weight to the views of previous Courts as to facts which depend on the testimony of witnesses whom they have seen and we have not seen. But in this case the evidence was all in print or in writing. There was no cross-examination before the Full Court; we have just the same materials, and the same means for forming a judgment, as the Full Court had; and we are bound to form our own conclusions. Moreover, I think that the wrong criterion was applied by the majority of the Full Court. The true question is not whether the respondent has been proved "almost conclusively" guilty of misfeasances since 1896, but whether he has proved that notwithstanding his misconduct before 1896 he is now a "fit and proper" person. The presumption in favour of innocence is not applicable. The respondent has been found guilty in 1896 of misconduct such as showed him to be unfit for the office of a solicitor. As he has shown himself to be capable of such misconduct, has he shown that he is now incapable of it, or, at the least, that he is no longer likely to err in the direction of deception? It is not his reputation that is in question, but his intrinsic character.

I concur in the view that the appeal should be allowed.

Appealed allowed.

Solicitor, for appellants, *T. Michell.*

Solicitors for respondent, *Sly & Russell.*

C. E. W.