

[HIGH COURT OF AUSTRALIA.]

HOWARD SMITH & CO. LIMITED . . . APPELLANTS ;  
 DEFENDANTS,

AND

VARAWA . . . . . RESPONDENT.  
 PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF  
 VICTORIA.

*Practice—Appeal from Supreme Court of a State—Special leave—Stay by Supreme Court of proceedings under judgment—Conditions—Rules of the Supreme Court of Victoria 1906, Order LVIII., r. 16.*

H. C. OF A.  
 1910.

MELBOURNE,

June 17.

Griffith C.J.,  
 O'Connor,  
 Isaacs and  
 Higgins JJ.

It is only in very exceptional circumstances that the High Court will grant special leave to appeal from an order made by a Judge of the Supreme Court of a State in the exercise of his discretion staying proceedings under a judgment of that Supreme Court subject to conditions.

APPLICATION for special leave to appeal from the Supreme Court of Victoria.

In an action brought in the Supreme Court of Victoria by Peter Fedorovitch Varawa against Howard Smith & Co. Ltd., for malicious arrest and false imprisonment, and tried before *àBeckett J.* and a jury of twelve, the jury found a verdict for the plaintiff for £5,000 damages and judgment was entered for the plaintiff for that sum with costs.

On 10th May 1910 the defendants gave notice of appeal to the Full Court.

On 13th June the defendants issued a summons for a stay of proceedings, alleging that the plaintiff was a Russian subject



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residing at St. Petersburg in Russia and that he came to Victoria specially for the hearing of the action.

HOWARD  
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On the hearing of the summons, on 15th June, *à Beckett J.* ordered judgment to be stayed for one week, and further ordered that, if the defendants should pay to the plaintiff within one week £500, being part of the £5,000 received by him, the action and all proceedings thereunder should be stayed until further order, but that otherwise the plaintiff should be at liberty to proceed with execution upon the judgment for £5,000. It was further ordered that the plaintiff should be at liberty to tax his costs and proceed with his judgment for costs, the plaintiff's solicitor personally undertaking to the Court to repay any costs so taxed and paid in the event of the appeal of the defendants being successful and the judgment directing costs to be paid by the defendants being set aside as to such direction.

The defendants now, on notice to the plaintiff, asked for special leave to appeal from this decision.

*Mitchell K.C.* (with him *Starke*), for the defendants. Although leave to appeal from an order of this kind will only be granted under special circumstances: *Hansard v. Lethbridge* (1), the circumstances of this case are very exceptional. Upon the undisputed facts, according to the principles established by this Court and by the House of Lords, this action is one which should be dismissed as frivolous.

Unless the stay is granted the defendants' position is irremediable. If the stay had been absolutely refused, the defendants could have appealed on the ground of injustice. The defendants do not object to the plaintiff getting some of the fruits of his judgment if there is some security given for their return in case of the appeal being successful.

*Duffy K.C.* and *L. Woolf*, for the plaintiff were not called upon.

*Per curiam.* Leave to appeal must be refused. The granting of a stay was a matter entirely within the discretion of the

(1) 8 T.L.R., 179.



learned Judge. It is only in very exceptional circumstances that leave to appeal will be granted in such a case.

*Special leave to appeal refused.*

Solicitors, for defendants, *Hedderwick, Fookes & Alston.*

Solicitor, for the plaintiff, *J. Woolf.*

B. L.

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HOWARD  
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v.  
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[HIGH COURT OF AUSTRALIA.]

THE SOUTHERN LAW SOCIETY . . . APPELLANTS;

AND

WESTBROOK . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF  
TASMANIA.

*Solicitor—Misconduct—Striking off roll.*

On an application to strike a solicitor off the roll for professional misconduct the question is, is the Court, having regard to the circumstances brought before it, any longer justified in holding him out as a fit and proper person to be entrusted with the duties and responsibilities which belong to a solicitor?

*In re Weare; In re The Solicitors Act 1888, (1893) 2 Q.B., 439, applied.*

A solicitor, who was entitled to certain benefits under the terms of a will, which had been prepared by himself, and the validity of which was impeached, concealed from his clients, who were also interested under the will, the fact that he took any benefit under the will, and by the concealment of that and other material facts induced those clients to employ him as their solicitor, to become parties to a probate action, to support the will, and to agree to a compromise by which an investigation of the facts upon which the solicitor's right depended was prevented. The Supreme Court of Tasmania having decided that the solicitor's misconduct would be sufficiently punished by a reprimand, on appeal to the High Court,

*Held*, that the solicitor should be struck off the roll.

Decision of the Supreme Court of Tasmania varied.

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18.

Griffith C.J.,  
O'Connor,  
Isaacs and  
Higgins JJ.