[HIGH COURT OF AUSTRALIA.]

IN RE RAMAGE.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1913.

MELBOURNE, *Oct.* 2, 3.

Barton A.C.J., Gava and Powers JJ.

Barrister and solicitor—Admission to practise—Managing clerk—Service to practising barrister and solicitor—Supreme Court Act 1912 (*Vict.*) (*No.* 2437), *sec.* 3.

By sec. 3 of the *Supreme Court Act* 1912 (Vict.) it is provided that the Supreme Court "may where under special circumstances it shall in its absolute discretion see fit so to do with reference to any person who shall within one year after the passing of this Act . . . satisfy the said Court that he has before the commencement of this Act served for ten years in Victoria as a managing clerk to some practising barrister and solicitor or barristers and solicitors and has been for such period of ten years *bonâ fide* engaged under his or their direction and supervision in the transaction and management of such matters of business as are usually transacted by barristers and solicitors order that such person shall upon passing" a certain examination "be entitled to admission to practise as a barrister and solicitor for the Supreme Court without entering into or serving under articles of clerkship and without passing any examination or examinations other than such examination as aforesaid but subject nevertheless to the compliance in all other respects by such person with the Rules for the time being in force in relation to the admission of barristers and solicitors."

A firm of country solicitors had a branch in Melbourne which was managed by A., who was a barrister and solicitor, pursuant to an agreement under which A. received as remuneration a stipulated sum and a certain share of the profits. A. also practised as a solicitor in his own right, the proceeds of such practice being paid to the credit of the firm's account.

Held, that A. was in respect of the practice carried on by him in his own right a practising barrister and solicitor within the meaning of sec. 3 of the *Supreme Court Act* 1912, and, therefore, that a clerk in the Melbourne office who performed in respect of the business carried on there the work which a managing clerk would ordinarily perform might, in relation to the practice

H. C. OF A. 1913.

IN RE RAMAGE.

carried on by A. in his own right, be a managing clerk to A. within the meaning of that section.

Decision of the Supreme Court of Victoria: *In re the Supreme Court Act* 1912, (1913) V.L.R., 159; 34 A.L.T., 172, reversed on that point.

APPEAL from the Supreme Court of Victoria.

An application was made to the Supreme Court of Victoria on behalf of Benjamin Barton Ramage, for an order that he might be entitled to admission to practise as a barrister and solicitor of the Supreme Court without entering into or serving under articles of clerkship and without passing any examination other than such examination as is prescribed by the *Supreme Court Act* 1912 but subject nevertheless to the compliance in all other respects by him with the Rules for the time being in force in relation to the admission of barristers and solicitors.

The facts are sufficiently stated in the judgment hereunder.

The Supreme Court refused the application, holding that the applicant had not before the commencement of the *Supreme Court Act* 1912 (31st December 1912) served for ten years in Victoria as a managing clerk to a practising barrister and solicitor or barristers and solicitors, and had not for such period of ten years been *bonâ fide* engaged under his or their direction and supervision in the transaction and management of such matters of business as are usually transacted by barristers and solicitors: *In re the Supreme Court Act* 1912 (1).

From this decision the applicant, by special leave, appealed to the High Court.

Gregory, for the appellant. The Supreme Court was wrong in finding that the appellant had not been before the passing of the *Supreme Court Act* 1912 a managing clerk. The evidence shows that from July 1902 until the end of 1912 he was a managing clerk either to Messrs. Harwood & Pincott or to Mr. McConkey. From the date when Mr. McConkey began to act in Melbourne for Messrs. Harwood & Pincott he was a practising barrister and solicitor, as he held himself out to the public to be, and did the work of, a barrister and solicitor. The evidence also

(1) (1913) V.L.R., 159; 34 A.L.T., 172.

shows that the appellant was the servant of Mr. McConkey: *In re the Supreme Court Act* 1912 (1). The case should be sent back to the Supreme Court with a declaration to the effect that Mr. McConkey was a practising barrister and solicitor and that the appellant was his managing clerk.

Starke (with him *Dixon*), for the Law Institute of Victoria. The appellant has not discharged the onus which was upon him of proving that he was a managing clerk to a practising barrister and solicitor. He has not shown to whom he was a managing clerk, but merely that he was a clerk assisting Mr. McConkey in forwarding the interest of Messrs. Harwood & Pincott's business of which Mr. McConkey was the manager. *In re the Supreme Court Act* 1912 (1) was wrongly decided, for the word "serve" in sec. 3 of the *Supreme Court Act* 1912 imports a master, and there was no service of a master in that case. [As to the form of the order he referred to *Dixon* v. *Todd* (2).]

Cur. adv. vult.

Oct. 3.

BARTON A.C.J. This is a case under the Act of 1912, relating to the admission of managing clerks. The applicant was undoubtedly for three years a managing clerk, as the Supreme Court has found. The contention is that for the rest of the period under the Statute he was also a managing clerk. He was prior to July 1899 a clerk to Messrs. Harwood & Pincott. In July 1899 he came to Melbourne and acted as managing clerk to Mr. C. F. R. Pincott, who was agent in Melbourne for Messrs. Harwood & Pincott. That state of affairs lasted until July 1902, when Mr. C. F. R. Pincott became a partner in the firm of Messrs. Harwood & Pincott. Mr. C. F. R. Pincott conducted the Melbourne office of the firm until 1st December 1903, when he left the firm, and until then the applicant acted as his managing clerk. As the learned Chief Justice of Victoria has pointed out, there can be no doubt that from July 1899 until Mr. C. F. R. Pincott left the firm, the applicant was a managing clerk within the meaning of the Act. Then Messrs. Harwood & Pincott made arrangements

(1) (1913) V.L.R., 291; 34 A.L.T., 214. (2) 1 C.L.R., 320.

H. C. OF A. 1913.

IN RE RAMAGE.

Barton A.C.J.

with Mr. McConkey, who was a barrister and solicitor practising in Melbourne. Under this arrangement, he acted for Messrs. Harwood & Pincott, and received a stipulated sum by way of remuneration and a share of profits. But there was this additional feature—Mr. McConkey, being a barrister and solicitor, took practice as such, and in the course of that private practice he received fees. Now, that right of practice was bounded in this way—that it should be of such a kind as in his opinion should be to the advantage of the firm of Messrs. Harwood & Pincott. The applicant continued to act under Mr. McConkey in the same way that he had acted when the business was conducted by a member of the firm.

The Supreme Court was of opinion that, from the advent of Mr. McConkey, the applicant was no longer a managing clerk, and it is there that the real dispute takes place. The Law Institute contends that the decision of the Supreme Court was right, as it affects this latter period of the applicant's service, if I may use the term in this connection. It is said that Mr. McConkey, in practising as a barrister and solicitor for private practice, could only take such practice as, in his opinion, was to the advantage of Messrs. Harwood & Pincott, and that in fact there was a pooling, if I may use that term, of the proceeds of his private practice, which were placed to the credit of the firm's account, with the receipts from the firm's own business. That was a matter which, in my opinion, did not alter the fact that Mr. McConkey was engaged in private practice; and, in doing that, there could be no question that the duties which the applicant performed under Mr. McConkey as a barrister and solicitor in his own right were those which a managing clerk would ordinarily perform. It does not appear to me probable, because the matter was not fully and exhaustively put to the learned Judges of the Supreme Court from the bar, that they applied their minds to the question whether, in respect of his service in carrying out the private practice of Mr. McConkey, the applicant was or was not a managing clerk within the meaning of the Act. In respect of that matter, therefore, we think that the case should go back to their Honors for consideration upon that point.

It will be understood, of course, that this Court under any circumstances interferes with reluctance in a case of this kind. Equally of course is it to be understood that whatever decision may be come to on this question, which is a matter of pure law, it cannot in the remotest degree affect the right of the Supreme Court to exercise an absolute discretion with reference to the special circumstances of each case. It is sufficient to say that we think that on the grounds stated the matter should be remitted to the Supreme Court on that question for further consideration. There will be no costs.

GAVAN DUFFY J. I agree.

POWERS J. I agree.

Appeal allowed. Matter remitted to the Full Court of the Supreme Court of Victoria to determine whether it is satisfied that in respect of his service in carrying out the practice of John Beatty McConkey for the period from 1*st December* 1903 *to* 31*st December* 1912 *the applicant was serving as a managing clerk to a practising barrister and solicitor within the meaning of sec.* 3 *of the Supreme Court Act* 1912, *and thereupon to make such order as the said Court shall deem just.*

Solicitors, for the appellant, *Harwood & Pincott.*
Solicitor, for the Law Institute of Victoria, *Arthur Robinson.*

B. L.