

H. C. OF A. draftsman thought that the repudiation of illegality was prudent  
1915. notwithstanding the suspension of the *Land and Income Tax*  
SOLOMON *Assessment Act of 1895*, or that he slavishly followed an existing  
v. precedent without inquiring whether any alteration in the law  
NEW SOUTH had rendered necessary or desirable a consequential alteration in  
WALES the covenant.  
SPORTS CLUB  
LTD.

*Appeal dismissed with costs.*

Solicitors, for the appellant, *Mark Mitchell & Forsyth.*  
Solicitors, for the respondents, *Rawlinson & Hamilton.*

B. L.

[HIGH COURT OF AUSTRALIA.]

CHIDLEY . . . . . APPELLANT;

AND

SMITHERS AND ANOTHER . . . . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

H. C. OF A. *Practice—High Court—Appeal from Supreme Court of State—Criminal matter—*  
1915. *Rescinding special leave to appeal—Judiciary Act 1903-1912 (No. 6 of 1903—*  
SYDNEY, *No. 31 of 1912), sec. 35 (1) (b)—Obscene and Indecent Publications Act 1901*  
*(N.S.W.) (No. 12 of 1901), secs. 6, 9, 15.*

*April 15,*  
*16, 19.*  
Griffith C.J.,  
Isaacs,  
Gavan Duffy  
and Rich JJ.  
Under sec. 9 of the *Obscene and Indecent Publications Act 1901* (N.S.W.)  
an order was made for the destruction of copies of an obscene publication  
found in the possession of the appellant, and he was also convicted under sec.  
15 of being the owner of the publication and sentenced to imprisonment. On  
orders *nisi* for prohibition, the Supreme Court held that the publication was  
obscene, and affirmed the conviction and the order. The appellant, by special  
leave, appealed to the High Court.

*Held*, by Isaacs, Gavan Duffy and Rich JJ. (Griffith C.J. dissenting), that  
in accordance with the rule laid down in *Eather v. The King*, 19 C.L.R., 409,  
the special leave to appeal should be rescinded.

Special leave to appeal from the Supreme Court of New South Wales: *Ex*  
*parte Chidley*, 14 S.R. (N.S.W.), 97, rescinded.



APPEAL from the Supreme Court of New South Wales.

H. C. OF A.

1915.

CHIDLEY

v.

SMITHERS.

On 13th February 1914, at the Central Police Court, Sydney, before George Henry Smithers, a stipendiary magistrate, on a complaint made by Thomas Robertson under sec. 6 of the *Obscene and Indecent Publications Act* 1901, an order was made under sec. 9 against William James Chidley that certain books (*inter alia*) seized while in the possession of Chidley should be destroyed as being obscene publications, and Chidley was also convicted under sec. 15 of being the owner of the books, and sentenced to imprisonment for two months.

Rules *nisi* for prohibition were obtained by Chidley in respect of the order and the conviction.

The Full Court by a majority (*Pring* and *Sly* JJ., *Cullen* C.J. dissenting) held that the books were obscene publications, and they discharged both rules *nisi*: *Ex parte Chidley* (1).

From that decision Chidley, by special leave, appealed to the High Court.

On the hearing of the appeal the question was raised whether, in accordance with the practice as stated in *Eather v. The King* (2), the special leave to appeal should not be rescinded.

*Cowan*, for the appellant.

*Alec Thomson*, for the respondents.

*Cur. adv. vult.*

The judgment of the Court was delivered by

GRIFFITH C.J. In this case my brethren are of opinion that the special leave to appeal should be rescinded. Personally, I am unable to come to that conclusion.

April 19.

*Special leave to appeal rescinded.*

Solicitor, for the appellant, *T. M. Kemmis*.

Solicitor, for the respondents, *J. V. Tillett*, Crown Solicitor for New South Wales.

B. L.

(1) 14 S.R. (N.S.W.), 97.

(2) 19 C.L.R., 409.