

Ex parte MEAGHER.

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Attorney—Misconduct—Application for re-admission—Con-
siderations which guide the Court—Fit and proper person.

Nov. 7, 10,
 11; Dec. 12.

The C.J.
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 Ferguson, J.

In 1896, the applicant, Richard Denis Meagher, was struck off the Roll of Solicitors for misconduct (see 17 N.S.W. L.R. 157; 12 W.N. 148). After several unsuccessful applications for readmission the Supreme Court reinstated him in 1909 (9 S.R. 504; 26 W.N. 99), but this decision was reversed on appeal by the High Court (9 C.L.R. 655). In May, 1917, the applicant again applied for readmission, the application was refused (17 S.R. 305; 34 W.N. 137). The applicant now again applied for reinstatement upon an affidavit which stated that from 1909 to 1916 he had been a member of the Legislative Assembly, of which body he had been successively Chairman of Committees, Deputy Speaker and Speaker. He had been an alderman of the Sydney Municipal Council for 19 years, during which period he had held the chairmanship of various Standing Committees connected with the council, was Lord Mayor of Sydney for two years, 1916 and 1917, and had been granted the title of "Honourable" for life. He was in 1917 appointed a member of the Legislative Council of N.S.W., and had been a member of the War Council and associated with various patriotic committees for the relief of soldiers. Annexed to the affidavit were lists of public men whose names were filed in the Supreme Court as either making affidavits on behalf of the applicant or signing a petition for his restoration. Also a list of solicitors prepared to engage in professional relations with the applicant and a list of prominent representative citizens expressing confidence in the applicant's integrity and their willingness to entrust him with business professionally. The Court refused the application.

MOTION.

This was an application by Richard Denis Meagher, formerly a solicitor of the Court, to have his name restored to the roll.

The applicant was struck off the roll on the 1st June, 1896 (reported 17, N.S.W.L.R. 157; 12 W.N. 148). In this report particulars of the offences charged against Meagher, and for which he was struck off the rolls, are sufficiently set out.

In May, 1900, August, 1902, and November, 1904, Meagher applied to be re-admitted. The application in each case was refused, but in the latter case, 1904, leave was given to apply at a later date. These applications were reported in 16 W.N. 237, 19 W.N. 234 and 4 S.R. 647; 21 W.N. 229, respectively.

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In August, 1906, the Full Court refused to hear a further application until the conclusion of a Royal Commission then sitting, to inquire into the administration of the Lands Department, and in July, 1909, Meagher again applied to the Court for re-admission, when his application was granted by a majority judgment of the Court (*Pring, J.*, dissenting) (reported 9 S.R. 504 ; 26 W.N. 99).

The Incorporated Law Institute appealed to the High Court and on that appeal (reported 9 C.L.R. 655) the decision of the Full Court was reversed and the application to be restored to the roll was refused.

In May, 1917, Meagher again applied to be re-admitted, but the application was refused : 17 S.R. 305 ; 34 W.N. 137.

On the present application, the applicant filed an affidavit stating : " On the 6th November, 1909, I was a member of the Legislative Assembly of New South Wales for Phillip Electorate. In the year 1910, at a General Election for the Parliament of New South Wales I was re-elected as member of the Legislative Assembly of New South Wales for the said Phillip Electorate. After taking my seat as a member of the Parliament of New South Wales I was elected Chairman of Committees and Deputy Speaker. At the 1913 Parliamentary Elections I was the candidate nominated by the Phillip Labor Electoral Council and was supported by Labour in that election, being returned by a majority of upwards of 4000 votes. On the 22nd December, 1913, I was elected Speaker of the Legislative Assembly of New South Wales and continued to hold that office until the month of April, 1917, when a new Parliament was elected. In the year 1917 I was a candidate for election as a member of the Legislative Assembly of New South Wales for the said electorate, but owing to my advocacy of conscription, both on the public platform and elsewhere, the said Labor Electoral Council refused to nominate me as a labor candidate and approved of my expulsion with others from the Political Labor Executive of New South Wales, with the result that I was defeated at the polls. In the month of May, 1917, I was appointed a member of the Legislative Council of this State, which position I still occupy. I have been an alderman of the Municipal Council of Sydney for upwards of 19 years, and

during that period have held the chairmanship of various standing committees connected with such municipal council, and have been Lord Mayor of the City of Sydney for two years—1916 and 1917. I have been a member of the War Council in New South Wales and associated with various patriotic committees for the relief of the soldiers of the Empire and for the relief of the Allies. The War Chest Committee attended at the Town Hall, Sydney, in 1917, during my term of office as Lord Mayor of this State, and made a presentation to my wife as Lady Mayoress, and to myself for active identification with their collection of funds, and highly eulogistic speeches were made in respect of my public acts by the president, the Hon. H. Y. Braddon, M.L.C., Mr. G. Mason Allard, Mr. Le M. Walker, Mr. Allan Uther, and other well-known gentlemen. In the month of July, 1916, I was appointed by the Government of this State as public trustee of the Free Public Library of New South Wales, and still occupy that position. On the conclusion of my two years term of office as Lord Mayor of Sydney, a large and representative committee of citizens met at the Town Hall, Sydney, and presented me with a testimonial of £1505 and a diamond bracelet for my wife as a token of appreciation of my public services. A verbatim account of the remarks made by the Hon. Wm. Brooks, M.L.C., president of the Employers' Federation of New South Wales, Mr. W. T. Willington, president of the Chamber of Manufactures, and Mr. T. J. Hitchman, president of the Warehousemen's Association, are attached hereto. In recognition of the services I had rendered this State I received an intimation in 1917 from His Excellency the Governor that His Majesty the King has approved of my retaining the prefix "Honorable" before my name for the rest of my life. At the triennial general elections of the Sydney Municipal Council, 1918, I declined an influential request to stand as a candidate for Phillip Ward, which is a part of Phillip Parliamentary electorate, and stood for Flinders Ward, Surry Hills, Sydney, and although there were six candidates in the field I was returned by a large majority at the top of the poll with 1600 votes. During the last 24 years I have engaged legal assistance in connection with my applications for reinstatement involving eight distinct applications, and have expended over

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£1600 in respect thereto. I have since my removal from the rolls in 1896 appeared as an advocate before the Land Boards the State and Federal Public Service Appeal Boards, and the Railway Appeal Boards and come into touch with the members of the legal profession. I have on several occasions during the last 24 years, in view of the promises and prospects held out to me in these various applications, refused to accept lucrative positions, or enter into business which, while yielding large remuneration would, I felt, have cut away a cherished hope for the restoration of a profession which represented to me as a youth much abnegation and self sacrifice. Having been continually before the public for 25 years, either as a member of Parliament or alderman, I have lived in the one suburb, and have, I feel assured, the esteem and confidence of the best elements of the community and append a list of esteemed public men whose names are filed in the Supreme Court as either making affidavits in my behalf or signing a petition for my restoration."

Attached to this affidavit was a list of solicitors who signed a memorial to the effect that they were fully cognisant of the facts relating to the removal of the applicant's name from the roll, of the subsequent applications for re-admission, and stating that they were prepared to engage in professional relations with the applicant should the Court see fit to re-admit him.

A further annexure was a list of prominent citizens who "have every confidence in the integrity of Richard Denis Meagher and would be willing to entrust him with business professionally as an attorney. We further consider his discharge of the high offices of Speaker of the Legislative Assembly and Lord Mayor of Sydney were creditable to his character and capacity." Signed: R. W. Richards, Lord Mayor; William Brooks, M.L.C., W. T. Macpherson, President of the Chamber of Commerce; Arthur D. Walker, Samuel Hordern and Arthur F. Pritchard.

The applicant appeared in person, and after referring at length to the facts, cited the following cases: *Re H. L. James* (16 W.N. 90;) *In re H. C. G. Moss* (1 S.R. 295; 18 W.N. 191); *In re Herbert Salwey* (15 N.S.W. L.R. 147 at 153; 10 W.N. 209); *Ex parte Card* (10 N.S.W. L.R. 43; 5 W.N. 107); *Ex*

parte Coleman (2 C.L.R. 834); *In re Daley* (5 C.L.R. 193); *In re Stewart* (L.R. 2. P.C. 88).

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Broomfield, K.C., and *G. M. Edwards*, for the Incorporated Law Institute, referred to the reports of the applicant's previous applications to the Supreme Court and the appeal to the High Court, and *In re Thomas Roje* (6 S.R. 669); *In re Garbutt* (18 C.B. 403 at 412); and *In re Hawden* (9 Dowl. P.C. 970).

C.A.V.

December 12.

THE CHIEF JUSTICE. The nature of the arguments presented to us in support of this application, and of the material on which they were based, makes it necessary once more to state the question to be decided by the Court in such a proceeding. If in doing so it is found necessary to recall painful events long past, that necessity has been forced upon us by the applicant himself, who has dwelt on every detail of those events for the purpose of founding a complaint that he has been harshly and unjustly treated by this Court and the High Court—firstly in removing his name from the roll, and afterwards in refusing his repeated applications for restoration.

The nature of the function to be exercised by the Court in the present instance was most clearly defined by the judgment of the High Court in the case of the *Incorporated Law Institute of N.S.W. v. Meagher* (9 C.L.R. 655). The substance of that judgment and the legal authorities on which it is based are sufficiently set out in the passages quoted by *Gordon, J.*, in the judgment which he proposes to deliver, and it is not necessary for me to repeat them. As stated in those judgments, what we are called upon to do is to decide whether upon the evidence we would be justified upon solid and substantial grounds in holding out to the public that the applicant is a fit and proper person "to stand in the ranks of an honourable profession to whose members ignorant people are frequently obliged to resort for assistance in the conduct of their affairs, and in whom they are in the habit of reposing unbounded confidence." The same authorities have made it clear that this question has nothing whatever to do with the one which was so strongly pressed in argument before us, and about which many prominent persons who have from time to time presented memorials

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in the applicant's favour seem to entertain so mischievous a misconception, viz., whether or not the applicant has been sufficiently punished for those offences for which he was originally removed from the rolls and afterwards refused re-admission. On this application we are in no way concerned with the question of punishment. As was pointed out in the authorities I have referred to, the striking of the name of a solicitor off the rolls for a crime committed by him is not a punishment for that crime. It seems to be necessary once more to point out for the benefit of the public that a solicitor is answerable for a crime to the ordinary tribunals of the country, precisely as any other individual is. It would be a scandal to the administration of justice if it were otherwise. In the special jurisdiction exercisable by this Court over offending solicitors, it has to deal with cases in which offences of greater or less gravity are proved against them, amounting in some cases to criminal misconduct, and in others to malpractices which are not criminally punishable. Where the gravity of the offence is seen to be sufficiently met by a temporary suspension from practice, or by a fine, the exercise of these forms of discipline may be regarded as a punishment for that breach of duty by a solicitor which has been proved against him. But the subjection of the offender to orders in that form has never been regarded as an expiation for criminal conduct, if that is the nature of the offence, nor are they so intended. For every wrong done of a criminal nature, whatever may have been the extent of the order made in this jurisdiction, whether suspension, fine, or removal from the rolls, the solicitor remains amenable to the ordinary criminal tribunals precisely as if no order of the kind had been made.

The one and only fact we have to pronounce upon on this application is his fitness for the position aspired to by the applicant, and of this fact the same authorities show that the burden of proof lies upon him.

The material on which we are now asked to decide this question consists in the first place of memorials of a similar kind to those which were before us on the last occasion, when restoration to the rolls was applied for and refused. On that occasion, which was in the year 1917, the application was sup-

ported by affidavits sworn by a number of prominent citizens, that the applicant had carried out his political and public duties in an honourable and satisfactory manner. On this occasion, testimonials to the same purport are presented in the form of memorials signed by prominent citizens. These are accompanied by similar memorials, signed by a large number of solicitors, expressing confidence in the applicant, and expressing their readiness to engage in professional relations with him in every respect, should the Court see fit to re-admit him to practise as a solicitor. While prepared to pay every respect to such representations it again seems necessary to point out as was done by *Griffith*, C.J., in 9 C.L.R. at page 677, that the opinion expressed by these gentlemen "cannot in any view be substituted for that of the Court." It is upon the Court that the responsibility rests of deciding the question of fitness, and the Court can only regard these expressions of opinion as part of the material which it is their duty to take into consideration in arriving at that decision. The references in these memorials and in the affidavit by the applicant himself, to success in his political and public life are open to the same remarks that I felt it my duty to make on the occasion of his last application. The remainder of the material now before us consists of the original affidavit, sworn by the applicant in 1896, in answer to the charge of criminal conduct for which he was in that year struck off the rolls. This sets out the applicant's own version of the facts on which that charge was founded, together with an attempted justification of the conduct attributed to him. To the contents of that affidavit, the applicant informed us on this application, that he adhered in every particular. He also dwelt upon the matter of his subsequent conduct in connection with what has been referred to as the Willis land scandals, and set up the same attempted justification in connection with that matter as he had previously urged before this Court and before the High Court, in connection with this application for restoration in the year 1909.

The charge against him in 1896 was that of a criminal conspiracy to defeat the ends of justice, whereby Dean, a man under sentence of death for the attempted murder of his wife, obtained a reprieve and pardon, and the stigma of perjury and

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conspiracy was cast upon the man's wife and her mother, who were the principal witnesses against him at his trial.

The offence charged in 1909 as a reason why the applicant should be refused re-admission to the rolls was complicity with Willis, whereby the latter was enabled to make large profits through corrupt malpractices in connection with the obtaining of leases from the Crown.

Both charges were held to be fully proved, the first by the Supreme Court in 1896, and the second by the High Court in 1909. In each of those cases, the Court for the purpose of deciding the fitness of the applicant to have his name on the rolls, had full jurisdiction to pronounce upon the questions of fact involved in the charge before it. In each case the adverse decision of the Court upon the truth of the charge was final, and it is not open to us to review it on the same material as we were invited to do on this application. The fact that the applicant has seen fit on this occasion to attempt to excuse, or even to palliate the conduct which was so strongly condemned by the Courts on those occasions, and even to charge the Courts with harshness and injustice in their dealing with it, shows that the previous exercises of the disciplinary powers of the Court leave him unchanged in his conceptions of that standard of conduct which the Courts are bound to exact from those practitioners whom it takes the responsibility of accrediting to the public. They show a complete retrogression from those professions of contrition put forward in his previous applications for restoration to the rolls on which were based the strong appeals made in his favour by counsel appearing for him. As one instance of this, when in the year 1904 a similar application was made, counsel for the applicant, as stated in 21 Weekly Notes 230, said: "I am instructed to say that if there is any other reparation which the Court think Mr. Meagher could make by way of public apology he would willingly do it." The *Chief Justice* upon this pointed out that there was something he could do, and went on to say: "We think a public apology should be made to Sir Julian Salomons. Also, that Mr. Meagher should express his deep regret for the course he pursued in the Dean case with regard to the late Mr. Justice Windeyer. I am aware that the wrong and unjust impression then created was not

confined to New South Wales, but an impression prevailed in England that His Honour had treated the prisoner unfairly, whereas we know that he conducted the trial as properly and as ably as any judge could have done. I therefore think it is due to the family of the late Judge that there should be a public expression of regret by Mr. Meagher that anything should have been done by him, or through his influence that might have in any way reflected upon the way in which the trial was conducted. These are matters that I think Mr. Meagher might well do, and I think he will find pleasure in doing them." Such an apology was thereupon published by the applicant. Notwithstanding this, the same attack upon the late Mr. Justice Windeyer's conduct at Dean's trial was repeated in his argument on this application, in which he declared that he receded in no particular from the ground taken by him on the original proceeding in which he was struck off the rolls in 1896.

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The Incorporated Law Institute, in opposing this application, could have supplied no stronger argument in opposition to it than that which has been furnished by the applicant himself, in his argument in support of it. If he supposes that the conduct found by this Court in 1896, and that found by the High Court in 1909 to have been proved against him, admits of any palliation or excuse, this establishes his present unfitness to be entrusted with the position of a solicitor. To say this does not amount in any sense to the holding of the applicant to be still answerable in this jurisdiction for charges then dealt with, much less any disposition to continue what has been described to us as a punishment. It amounts to this—which is quite sufficient to show that the burden of proof now resting upon him has not been discharged—that he still appears to have no conception of the gravity of those charges.

The application must in my opinion be refused.

GORDON, J. The applicant was at one time a solicitor of this Court, but in June, 1896, he was struck off the roll of solicitors for misconduct, and is now applying to be restored to that roll, that is, to be re-admitted to practise as a solicitor of this Court.

Before dealing with the application on its merits it is advisable to state what are the considerations which guide the Court

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in granting or refusing an application by a solicitor for re-admission after he has been struck off the roll for misconduct. I feel confident that a serious misapprehension as to those considerations exists in the mind of the public, perhaps also in the mind of some of the members of the profession, and certainly in the mind of the applicant himself. The relations between a solicitor and his clients are so intimate, and so confidential, and so open to abuse, that before any person can practice as a solicitor he must be authorised by the Court so to practice. In this respect a solicitor stands in a different position to a person desirous of earning his living in almost every other profession or walk of life. By s. 10 of the Charter of Justice, this Court is only entitled to admit to practice as solicitors men who are "fit and proper persons." By the words "fit and proper persons" is meant persons who have been proved to the satisfaction of the Court not only to be possessed of the requisite knowledge of law, but above all to be possessed of a moral integrity and rectitude of character, so that they may safely be accredited by the Court to the public as fit, without further inquiry to be entrusted by that public with their most intimate and confidential affairs without fear that that trust will be abused.

If a solicitor, after having been admitted to practice, is alleged to have been guilty of misconduct, or dereliction of duty as such solicitor, he may be called before the Court to answer that charge, and he may be dealt with by the Court in various ways, according to the nature of that misconduct or dereliction of duty, if proved. He may be merely admonished, he may be fined, he may be suspended from practice for some specified period of time, or in cases of grave misconduct, or serious dereliction of duty he may be struck off the roll of solicitors. In all such cases the Court requires clear proof of the alleged misconduct or dereliction of duty before it deals adversely with the solicitor cited before it. Striking off the roll is not, strictly speaking, a punishment, although it entails consequences no doubt highly detrimental to the pecuniary interests of the solicitor thereby debarred from the practice of his profession. It is in effect a declaration by the Court that a person formerly shown to be "fit and proper" to practice as

solicitor is no longer "fit and proper" so to practice. In *In re Brounsall* (Cowper 829), which was an application to strike a solicitor off the roll for a criminal offence, Lord *Mansfield* L.C.J., referring to an argument that the solicitor then cited before the Court had been sufficiently punished by imprisonment and otherwise, said: "Striking off the roll proceeds on this principle, that he (the attorney) is an unfit person to practice as an attorney. 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." That view, expressed by Lord *Mansfield*, was concurred in by Lord *Denman*, C.J., in *Re King* (8 Q.B. 129 at 133), and by many other judges in various cases in England, and was expressly approved of by the High Court of Australia in *Re Meagher* (9 C.L.R. 655). After a solicitor has been struck off the roll, he may, however, apply to the Court to be restored to the roll and to be once more declared by the Court a "fit and proper person" to practice as a solicitor. As was said by Lord *Esher*, M.R., in *Re Weare* ([1893] 2 Q.B. 439, at 447), when striking a solicitor off the roll: "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." In dealing with an application for restoration to the roll of solicitors, the Court again is not inflicting or abstaining from inflicting punishment for the offence for which the solicitor was struck off the roll. The position of a person seeking re-admission is for that purpose as if he had never been admitted. This was stated to be the position of such an applicant by Sir *Alexander Cockburn*, C.J., and by *Blackburn*, J., in England, by Sir *Frederick Darley*, C.J., in this Court, and expressly so stated by *Isaacs*, J., and the other Judges of the High Court of Australia in *Re Meagher*, above referred to. The true principles guiding the Court in granting or refusing such an application are stated in *Re Meagher* (9 C.L.R. 655), by

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Isaacs, J. After referring to what was said as above stated by Lord *Esher* in *Re Weare, Isaacs, J.*, at 681, says: "It may be that the error thought 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 honourably 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 on him and it is no light one. 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." That view, expressed by *Isaacs, J.*, as to the considerations which ought to guide the Court in granting or refusing an admission for restoration to the roll by a solicitor struck off that roll, was concurred in by *Griffith, C.J.*, and *Higgins, J.*, of the High Court, in the same case, and is binding on me even if I did not, as I most respectfully do, thoroughly concur in that view.

In my opinion, on such an application the Court is not concerned with any question of further punishment of the applicant for re-admission, but is concerned only with deciding whether it can with safety to the interests of the public once again accredit to that public the applicant as a fit and proper person to practice as a solicitor and to be entrusted with their affairs. The question of punishment for the original misconduct has, in the case of a solicitor applying for restoration to the roll, no more to do with that application than it would have if a bank official had been found guilty and sentenced to a term of imprisonment for embezzlement of the funds of the bank entrusted to his care, and after serving his imposed sentence, were to apply to the bank by whom he had been employed or to the Institute of Bankers for a certificate that he was a fit and proper person to be employed by any banking institution requiring his services as such official without further inquiry into his character and antecedent history. Or to take another

example : a physician or surgeon is found guilty in a Criminal Court of malpractice with regard to a patient ; he is sentenced to a term of imprisonment ; after serving that sentence he applies (say to the Medical Board) for a certificate that he is a " fit and proper person " to practice as a physician or surgeon. That certificate he applies for to put before the public as a voucher to them that they may trust him in his professional capacity without fear and without any inquiry into his antecedent history or character. In either of these cases could it be said that any question of punishment for the original offence ought to influence the granting or the withholding of the certificate asked for by the applicant. The Court on such an application as the present, approaches the determination of that application influenced only by the responsibility of performing the duty imposed upon it as mentioned in the judgment of *Isaacs, J.*, to which I have already referred.

I have dealt with this question fully in view of the appeal which was so continually and forcibly addressed to us by the applicant that we should grant his application because he had been already sufficiently punished, or because it would be unmerciful on our part not to grant that application. Were the question merely one of punishment, I might be disposed to say to the applicant : " You have been sufficiently punished." So also might say the Institute of Bankers, or the Medical Board, in the supposed case of a similar application by a delinquent physician or surgeon. If any feeling of pity for the applicant in the present case were to interfere with the exercise of our duty to the public in granting or refusing this application, this Court would not be rightly performing that duty.

Having dealt with the principles and considerations guiding the Court in the granting or refusal to grant such applications as the present, I will deal shortly with the merits of the present application. By merits I mean how far has the present applicant satisfied the conditions to which I have referred as necessary to be fulfilled by him so as to entitle him once again to be accredited by the Court as a " fit and proper person " to practice as a solicitor.

The present applicant was, as I have mentioned, struck off

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the roll of solicitors by this Court in June, 1896 (17 N.S.W. L.R. 157). He had been prior to that decision convicted by a jury of the criminal offence of conspiracy to defeat the ends of justice. His conviction on that charge was set aside on grounds which in no way affected his real guilt, although he thereby escaped punishment at the hands of the law for that offence. He was struck off the roll of solicitors by this Court on the ground that he, being a solicitor of this Court, had been guilty of a conspiracy to defeat the ends of justice attended by circumstances of great aggravation. From that decision he lodged no appeal and thereby admitted its correctness as far as this Court is concerned. That decision was also declared to be correct by the High Court in 1909, *vide per Griffith, C.J.*, in *Re Meagher* (9 C.L.R. p. 662), and again from that decision the present applicant lodged no appeal, as undoubtedly he had the right to do, to His Majesty in his Privy Council. In addition to those findings by this Court and by the High Court, we have the applicant's own admission in 1896 that he had been guilty of that offence. I quote his own words, contained in his own sworn declaration, as reported in *Re Meagher* (17 N.S.W.L.R. 165): "Although I have committed a great error of judgment which in its terrible consequences has almost unhinged my intellect and brought dire tribulation on those dear to me, I still have a sense of justice and only wish I could put back the universe again to the day I made my first error. . . . This awful lesson of my life I will endeavour to atone for in another clime. My resignation of my seat in Parliament accompanies this declaration, and I am deeply sensible of the injury I have done to the indulgence and hospitality shown to me in public and private life in my native land. I trust that my young life—under 30 years of age—I may in some other portion of the globe lead the life of truth and use my humble faculties in the small sphere I shall move in for the promotion of the happiness and winning the esteem of those I come in contact with in a strange country and that in the land I love my acts may in days to come be forgiven and forgotten." Instead of retiring to some foreign land as he stated in 1896 his intention was to do, the applicant remained in New South Wales, and being debarred from practising as a solicitor he

became a land agent, *i.e.*, a person who, although not a solicitor, occupied a very similar position in respect to persons seeking his advice and assistance professionally in matters connected with the administration of the land laws of this State. In May, 1900, the applicant applied to this Court to be restored to the roll of solicitors (16 W.N. 237). That application was refused on the ground that it was premature. In August, 1902 (19 W.N. 224) a similar application was made by him and was again refused on the ground that it was premature. In November, 1904, another application to be restored to the roll was made by the present applicant (4 S.R. 647), which was refused, but on that occasion a conditional promise was given by the Court (to the terms of which it was unnecessary to refer) that in or after June, 1906, the applicant might again apply and in all probability successfully apply for re-admission. That promise made by the Court cannot, as the High Court decided in *Re Meagher*, bind the Court on any subsequent application. Even if it could bind the Court, beyond question to my mind that promise would have no force or validity unless made with full knowledge of all relevant facts. That promise must have been made on the assumption as was then sworn to by the applicant, that he had since 1896 been guilty of no misconduct, or impropriety of conduct which would have rendered him subject to censure by the Court. The applicant made a strong appeal to us to grant his application, because as he said, he had been lured on by that promise in 1904, into hoping that his application would ultimately be granted. In my opinion he fails to see that he has no just cause of complaint in respect of that promise not being fulfilled seeing that he himself induced that promise by concealing from the Court who gave it the true nature of his conduct subsequent to being struck off the roll in 1896. He does not see that if the Court had known of his dishonourable conduct in 1903 in connection with Willis, that promise would never have been given. In August, 1906, the present applicant renewed his application to be restored to the roll. That application was directed to stand over, in view of certain findings by the late Sir *William Owen*, J., made during the course of his enquiry under a Royal Commission into the administration of the land laws of this State.

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In April, 1909, that application was again renewed and was granted by the majority of the Court (*Pring, J.*, dissenting), and the applicant was re-admitted to practice (9 S.R. 504).

On appeal to the High Court (reported in 9 C.L.R. 655), that decision of this Court was reversed, and the application by the present applicant to be restored to the roll was refused. The High Court found as a fact that the applicant had in 1896 been guilty of a conspiracy to defeat the ends of justice, attended by circumstances of great aggravation, and had for that misconduct been struck off the roll of solicitors. The High Court further found that in or about 1903 the present applicant had been guilty of conspiring with, or assisting one W.N. Willis to defeat the ends of justice, *viz.*, to defeat the proper administration of the land laws of this State, and that the applicant had not satisfied the Court that he was a "fit and proper person" to practise as a solicitor. By all findings of fact and law of the High Court on that appeal, this Court is bound and cannot question their correctness as the applicant now asked us to do.

The High Court had before them all the facts and documents and materials upon which the applicant now relies in support of his contention that the finding of the High Court was erroneous and not warranted by the facts. If the applicant was dissatisfied with that decision, he had undoubtedly the right of appeal to the Privy Council. He did not so appeal, and this Court cannot entertain any question as to the propriety of that decision by the High Court.

In regard to the relations existing between the applicant and Willis, and the applicant's explanation of those relations, Sir *Samuel Griffith*, C.J., says, at p. 673 of the report to which I have referred: "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, I think, especially in view of those words of *Griffith*,

C.J., necessary to consider carefully what is the mental attitude in which the present applicant approaches the question of his misconduct in 1896 and his subsequent misconduct in 1903. I say advisedly, his attitude towards both those acts of misconduct. Speaking for myself, I do not agree with the contention that the original misconduct for which he was struck off the roll in 1896 was of such a nature that it, standing alone, for ever debarred the applicant from applying for restoration to the roll. I think that contention was distinctly over-ruled by this Court on the hearing of his application in 1904 and again in 1909, and also was disapproved of (inferentially, if not expressly) by the High Court of Australia on the appeal to that Court in 1909.

Had the present applicant on this application frankly and honestly admitted his error and misconduct in 1896, and also his error and misconduct in 1903, and expressed his contrition therefor; had he claimed that his reformation was proved by his conduct since 1909, during which time he had lived an honorable and upright life in the strong light of public observation, and by the fact that there was no suggestion of any lapse from strict integrity during that period, and had he in support of that contention as to his reformation relied on his various actions for the advancement of the welfare of this city, of the community of Australia, and of the Empire at large, and had he relied in support of that contention on the respect and esteem in which he is held by members of the legal profession, and by the well-known and respected citizens of this city whose names were attached to the testimonials put before us, I personally should have felt that the applicant had made a strong case for the favourable consideration by the Court of his application.

That however, is not the attitude of the applicant towards either of the acts of misconduct, in 1896 or in 1903. He stated that he declined to approach the Court in any spirit of contrition. He said he came not cringing, but "as a man." I cannot agree for one moment that it is unmanly or cringing for any delinquent to confess frankly his past delinquency and express sorrow for the same, and his intention to live a better life in the future. As far as the alleged misconduct in 1896 is concerned, the applicant now contends that he was guilty of nothing wrong

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in connection with what is known as the Dean case. Apparently the lapse of time has altered the opinion which he himself expressed in 1896 of that conduct. As far as his connection with Willis in 1903 is concerned, he persists in the contention he put before this Court and the High Court in 1909, that he was guilty of no misconduct or impropriety of conduct in that connection. He, therefore, on this application renders himself again subject to the comment contained in the judgment of *Griffith*, C.J., to which I have referred. I have given every weight and consideration to the ability and energy of the applicant; I have given full weight and consideration to the various public-spirited and patriotic actions of the applicant; I have given every weight and consideration to the fact that for the past ten years (*i.e.*, since 1909) he has lived not in the seclusion of private life, but in the full glare of public life, and that during that time no act in the slightest degree dishonourable or discreditable is proved or even suggested against him, but that on the contrary he is shown to have received honours and distinctions, to have been elected to and held high offices, and to have earned the esteem of well-known and highly esteemed citizens of this city, and of many members of the legal profession. These matters would have been, as I have said, entitled to grave consideration had the applicant shown a recognition of his former errors and of sorrow for the same and expressed a determination to live a better life and never again to fall into the same or similar errors and derelictions of duty. Taking everything into consideration, I can only say, adopting the words of the judgment of *Isaacs, J.*, in *Re Meagher*, that: "With every desire to view the facts more favourably for the applicant, I am unable to give any reason satisfactory to my own mind for" granting this application, which I think should be refused. I am unable to say that I am satisfied that the applicant, who is so deficient in his perception of the difference between what is right and what is wrong, between what is honourable and what is dishonourable, that he fails to see that he has been guilty of any wrongful or dishonourable conduct in the past, can be trusted to have any keener perception of that difference in determining his conduct in the future.

FERGUSON, J. The applicant was struck off the rolls in 1896 because of his conduct in connection with the Dean case, and it is now contended on behalf of the Incorporated Law Institute that that conduct standing alone disentitled him ever again to be treated as a fit person to be restored to the rolls. If that contention were upheld, it would mean that not only this application, but all his previous applications, were foredoomed to failure. Now, in view of the attitude taken by the Court on every other occasion, I think it would be unjust to the applicant to tell him at this late hour, that from the very beginning the door was irrevocably closed to him. Neither this Court nor the High Court has taken that view. There can be little doubt that but for what have been spoken of as the Land Scandals, he would have been re-admitted to practice many years ago.

The greater part of the applicant's address to us on the present motion has been directed to showing that the conclusion arrived at by the High Court as to his connection with the Land Scandals was not justified by the facts. Any argument of that kind is, of course, futile, as addressed to this Court. Speaking for myself, I have formed no independent opinion—I have deliberately abstained from endeavouring to form an opinion—on the question. So far as this Court is concerned, the judgment of the High Court is final, and establishes conclusively that the applicant was guilty of misconduct which, at the time when that judgment was pronounced in 1909, made him an unfit person to be on the roll of solicitors of this Court. Obviously, the only question which it is competent for us to consider is whether the circumstances existing now, justify us in coming to a different conclusion to-day. Has he satisfied us, to use the words of *Isaacs, J.* (9 C.L.R. at 681) "that his purgation is complete, his repentance real, his determination to act uprightly and honourably so secure that he may fairly be re-entrusted with the high duties and grave responsibilities of a minister of justice?" Has he "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

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Court that henceforth he might be trusted to act honourably even when, as must often be the case in the legal profession, he is not moving in the light of actual observation ? ” (*Ibid.* 682). That is the test which the High Court applied in 1909, and it is the test which we must apply now.

One very important matter for inquiry is the conduct of the applicant during the ten years that have elapsed since the High Court gave its decision. “ I do not think,” said *Cockburn*, C.J., in a passage cited by *Isaacs*, J., in the judgment from which I have quoted, “ 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.” Has the applicant’s conduct been such as “ to insure confidence in his character ? ” On that point the Court has had placed before it a large body of evidence of a very satisfactory kind, in the form of testimonials from people who cannot be ignorant of the serious misconduct which led the Court many years ago to strike the applicant’s name from the rolls, and many of whom have had ample opportunity since to judge of his behaviour and reputation. I need hardly say that the Court could not possibly have entertained any criticism or discussion of the matters upon which it has been called upon to pronounce judgment, but these testimonials are not open to objection on that ground. They are directed, and properly directed, to matters upon which it was right that the Court should be informed, they stand absolutely uncontradicted, and they make out a very strong case in the applicant’s favour. He has held the high and responsible offices of Speaker of the Legislative Assembly and Lord Mayor of Sydney, and has discharged the duties of those offices, and has conducted himself in other public positions, in such a way as to win the respect and confidence of people whose own position and character entitle their testimony in his favour to be received with respectful consideration.

But in considering whether the applicant’s character now is such as to justify confidence that he will not be guilty again of the grave errors of the past, it is necessary to look not only

to his conduct, but to his state of mind in relation to those errors. If he still regards them with complacency, what reasonable assurance can the Court have that if the occasion arises, he will not repeat them? The decision of the High Court was based not only upon its own view of the applicant's past conduct, but largely, and perhaps chiefly, on the view which they found he himself took of it. "On the whole facts disclosed before us," said *Griffith*, C.J., "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 to be 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." Mr. Justice *Higgins* says: "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?"

With these observations in my mind, I listened attentively throughout the applicant's presentation of his case for some sign that he had come to the frame of mind which the High Court regarded as an indispensable condition of his reinstatement, but I cannot recall one word which would indicate that the lapse of years has produced any change in his appreciation of the conduct which brought upon him the censure of the Court and the deprivation of his right to act as its officer. I was sorry to find that even his references to the Dean case were in the nature of self-justification. As to the Land Scandals, he sees nothing in his connection with that matter to which ex-

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ception should have been taken. He attacks the findings of fact of the High Court, and claims that the Court was wrong in adjudging him guilty. He has no regret for what he was charged with doing, because he insists that he did not do it. His address to us throughout was that of an innocent and injured man appealing for justice and reparation. It is manifest that such an appeal, challenging the grounds upon which the High Court based its judgment, must be addressed either to that Court or to some tribunal which is competent to review its decisions. This Court has no such jurisdiction. I see no escape from the conclusion that the application must be dismissed.

Application dismissed.

Attorney for the Incorporated Law Institute : *T. Michell.*

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GAWTHORPE v. GAWTHORPE.

Husband and wife—Separation deed—Covenant to pay annuity—Covenant not to molest—Independent covenants—Molestation by wife causing inability of husband to pay annuity.

A covenant by a wife in a deed of separation not to molest her husband is, in the absence of express terms to the contrary, independent of a covenant by the husband to pay her an annuity, notwithstanding a recital in the deed that it is made "subject to the provisos and conditions hereinafter contained." The breach by the wife of an independent covenant not to molest the husband does not entitle the husband, in an action by the wife to recover the annuity, to set up that it was owing to his wife's conduct that he was prevented from paying, and that she could not complain of a non-performance which she had by her own action prevented.

DEMURRER.

The plaintiff sued her husband for failure to pay her an annuity of £180 per annum for her maintenance under the terms of a deed of separation made between the parties. The defendant pleaded (1) that it was a condition of the said deed