

H. C. OF A.
1913.

DICKASON
v.
DICKASON.

W. W. Rogers, for the respondent, was not called on.

THE COURT dismissed the appeal.

Appeal dismissed.

Solicitors, for the appellant, *Hedderwick, Fookes & Alston.*

Solicitors, for the respondent, *Rogers & Rogers.*

B. L.

[HIGH COURT OF AUSTRALIA.]

IN RE BYRNE.

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

H. C. OF A. *Barrister and solicitor--Admission to practise--Managing clerk--Supreme Court*
1913. *Act 1912 (Vict.) (No. 2437), sec. 3.*

MELBOURNE,
May 15.

Barton A.C.J.,
Gavan Duffy
and Rich JJ.

Sec. 3 of the *Supreme Court Act 1912* provides that "Notwithstanding anything contained in any Act of the Parliament of Victoria or any Rules made in pursuance of any such Act the Supreme Court consisting of three Judges of whom the Chief Justice shall be one 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," &c.

The Supreme Court having decided that a person who had the control and management of the costs department of the office of a barrister and solicitor was not a "managing clerk" within the meaning of that section,

Held, that special leave to appeal to the High Court should not be granted. H. C. OF A.

1913.

Special leave to appeal from the decision of the Supreme Court of Victoria :
In re Byrne, (1913) V.L.R., 159 ; 34 A.L.T., 174, refused.

IN RE
 BYRNE.

APPLICATION for special leave to appeal.

An application was made by William James Byrne to the Supreme Court of Victoria for an order under sec. 3 of the *Supreme Court Act* 1912 that he be entitled, upon compliance by him with the provisions of the section, to admission to practise as a barrister and solicitor.

The applicant was for a period of 5 years and 2 months, beginning in June 1892, a managing clerk to Mr. O'Hea, and for a period of 4 years and 8 months, from 8th April 1908 to 31st December 1912, a managing clerk to Messrs. Whiting & Aitken. During the interval between those two periods he had the control and management of the costs department of the offices, first of Messrs. Malleison, England & Stewart, for 5 years and 9 months, and next of Messrs. Whiting & Aitken, for 4 years and 11 months. All of his employers were barristers and solicitors of the Supreme Court of Victoria.

The Supreme Court held that the applicant was not during that interval a "managing clerk" within the meaning of sec. 3, and they refused the application: *In re Byrne* (1).

The applicant now applied to the High Court for special leave to appeal from that decision.

McArthur K.C. (with him *Schutt*), for the applicant. This is not an application for leave to appeal from the exercise of its discretion by the Supreme Court. Under sec. 3 of the *Supreme Court Act* 1912 the Supreme Court has not to exercise its discretion unless the applicant shows that he has been a managing clerk for 10 years before 31st December 1912. The Supreme Court thought that that had not been shown, and so did not exercise its discretion. The duties of the applicant while he had the control and management of the costs department were such that, during that period, he was as a matter of law a managing clerk engaged in the transaction and management of such matters

(1) (1913) V.L.R., 159 ; 34 A.L.T., 174.

H. C. OF A. of business as are usually transacted by barristers and solicitors
1913. within the meaning of sec. 3.

IN RE
BYRNE.

The judgment of the Court was delivered by

BARTON A.C.J. We entirely agree with the view of the learned Judges of the Supreme Court that this is a case of very great hardship. It is a case in which the qualifications of the gentleman can scarcely be doubted, but the application which he made is to be determined under the terms of the Act of Parliament. That Act, so far as it is necessary to construe it, has been construed by the Supreme Court. This Court is always reluctant to interfere with a decision of the Supreme Court of a State with regard to the conditions on which the legal profession may be practised under its supervision, although that reluctance is in some degree qualified by the fact that gentlemen entitled to practise in the Supreme Court can by simple registration acquire the same rights in this Court. Taking everything that has been urged into consideration, we think that this is not a case in which special leave to appeal should be granted, much as our own feelings would incline us to take that course. We are of opinion that there has not been established on the part of the applicant a *prima facie* case of error in law on the part of the Supreme Court.

Special leave to appeal refused.

Solicitors, *Whiting & Aitken.*

B. L.