

J.C.  
1862.

Feb. 11.

LORD  
KINGS-  
DOWN.  
SIR JAMES  
KNIGHT  
BRUCE.  
SIR GEORGE  
TURNER.

BUNNY - - - - - APPELLANT

AND

THE JUDGES OF THE  
SUPREME COURT OF  
NEW ZEALAND - - RESPONDENTS.

*Law Practitioners—Appeals to Privy Council—Suspension—Subsequent Order in Council authorizing direct Appeal from Supreme Court—Whether retrospective—Special Leave.*

An Order in Council on May 10, 1860, made provisions for a direct appeal from the Supreme Court in New Zealand to Her Majesty in Council.

The Supreme Court refused to give leave to appeal from an order of suspension of a legal practitioner made before that date, upon the ground that the Order in Council had not a retrospective operation. The appellant, having obtained from the Supreme Court leave to appeal direct to Her Majesty in Council from a judgment striking him off the rolls, was granted special leave by the Judicial Committee to appeal from the order of suspension, the appeal to be heard at the same time as the appeal against the order striking off the roll.

On the hearing of the appeals the orders were affirmed, their Lordships being of opinion that the appellant had not given a satisfactory answer to the charges brought against him.

APPEAL by special leave from two orders made by the Supreme Court, dated November 2, 1859, and November 20, 1860. By the first of these orders the appellant was suspended from practising as an attorney of the Supreme Court of New Zealand until he should, by prosecuting to conviction for perjury parties in England who, it was alleged, had sworn certain calumnious matters against him in a cause of *Lovelock v. Turner* (unreported), formerly depending in the Court of Chancery in England, or by other and sufficient means, make out to the satisfaction of the Supreme Court that the charges of fraud alleged against him were substantially false and unfounded; and, in the alternative, if the appellant should not have made the same out to the satisfaction of the Supreme Court within one year from the date thereof, he should, on motion by any member of the profession, be struck off the roll of solicitors,

and he was further ordered to pay the costs of the proceedings. By the second order the appellant was ordered to be struck off the roll of solicitors for not having done what the Court ordered and directed by the order of November 2, 1859.

The circumstances which led to the making of these orders were these :—

The appellant, formerly an attorney of the Queen's Bench, and a solicitor of the High Court of Chancery in England, left England with his family in the year 1853 for New Zealand.

After his departure from England a fiat of bankruptcy was issued against him in England, where he was declared a bankrupt ; and, under a warrant of the Court of Bankruptcy, his effects in New Zealand were seized, whereupon he instituted proceedings in the Supreme Court of New Zealand to recover damages, and disputing the bankruptcy. Judgment having been given against him by that Court he appealed to the Queen in Council.

For the purpose of prosecuting his appeal, he left New Zealand, and arrived in England in the month of April, 1857, when he surrendered himself to the Court of Bankruptcy. The appeal against the judgment of the Supreme Court of New Zealand was prosecuted by the appellant before the Judicial Committee of the Privy Council(1), when terms of arrangement were come to between the appellant and the assignees of his estate, and an order was subsequently made by the Court of Bankruptcy, upon the footing that the appeal should be withdrawn, and that the costs of the appellant both of the proceedings in New Zealand and of his petition should be paid out of the estate. The appellant obtained a second-class certificate.

Shortly afterwards and in the month of November, 1857, the appellant left England for New Zealand, where he arrived in the month of February, 1858, and after giving notice he applied to *Gresson, J.*, at Wellington, to be admitted an attorney of the Supreme Court of New Zealand. The appellant's application was opposed by Mr. Brandon, a solicitor of that Court, on the ground of his bankruptcy in England, and also upon allegation that the appellant had left England without the knowledge of his creditors. The

J.C.  
1862.  
BUNNY  
v.  
THE JUDGES  
OF THE  
SUPREME  
COURT  
OF NEW  
ZEALAND.

(1) *Ante*, p. 15.

J.C.  
1862.  
BUNNY  
v.  
THE JUDGES  
OF THE  
SUPREME  
COURT  
OF NEW  
ZEALAND.

appellant replied to these allegations by affidavit, setting forth the circumstances under which he left England, and denying that at that time, before or since, that he had ever been charged with any improper transaction professionally or otherwise, or had ever been guilty of any; nor during the time he was in England, disputing the adjudication of bankruptcy and settling his affairs, when everything was investigated, was there the slightest reflection upon him in his professional character or any charge of a fraudulent or improper nature made against him. The Reverend Arthur Baker also made an affidavit to the effect that the appellant was a proper person to be admitted as an attorney.

On June 17, 1858, *Gresson, J.*, made an order whereby the appellant was admitted conditionally to practise as an attorney of the Court of New Zealand, for the space of twelve months, subject to certain inquiries to be made in England.

In consequence of the inquiries directed, the Registrar of the Supreme Court wrote to the Incorporated Law Society in England, and also to the firm of Messrs. Lawrence and Co., the solicitors in the bankruptcy of the appellant, for information respecting the appellant's conduct in England.

The year for which the appellant was admitted by *Gresson, J.*, as an attorney of the Supreme Court having expired, and no information or answers having been received from England to the inquiries directed by the above order of June, 1858, the appellant gave notice of an application to be made by him to *Johnston, J.*, at Wellington, to be admitted an attorney of the Supreme Court. This application came on to be heard before *Johnston, J.*, when Mr. Brandon and Mr. Dudley Robert Ward, a barrister-at-law, practising in that Court, opposed the appellant's admission as an attorney. The appellant's application was, however, granted, and his name inserted on the roll of the Court.

Some time afterwards by a rule of the Supreme Court, made on the affidavit of Mr. Ward, it was ordered that the appellant should show cause why he should not be struck off the rolls of the Court for having by fraud obtained his admission to practise as an attorney of the Court, and also on account of the matters referred to in the affidavit of Ward, and the exhibits thereunto annexed. By this affidavit certain allegations of fraud and misconduct were

made against the appellant in respect of the cause of *Lovelock v. Turner* in the Court of Chancery in England. These allegations were positively denied by the appellant in his affidavit in answer to that of Ward. The documents produced before *Johnston, J.*, in addition to the affidavit of Ward, were attested copies of bill and answers, affidavits, and decree in the cause of *Lovelock v. Turner*. By this bill, it appeared, that the appellant was made a defendant while he was resident in New Zealand, and, in consequence, the bill as against him was taken *pro confesso*. It appeared that the object of that suit was to obtain a declaration of the Court of the right and interest of the plaintiff in respect of certain transactions in which the appellant had acted as solicitor, and in which he was also interested as mortgagee. Among the affidavits filed in that suit was one by a former clerk of the appellant, who deposed to certain entries in an account book kept by the appellant when practising in England, in respect to the mortgage transaction, in which it was alleged that a material entry had been altered by the appellant, by which the nature of the transaction was entirely changed.

On October 10, 1859, cause was shown by the appellant, before *Johnston, J.*, against the rule being made absolute, and, on November 2 following, that Judge delivered the judgment of the Court, in which he observed that, having regard to the denial upon oath by the appellant, of his knowledge of the charges against him, and to his representations upon oath as to the facts to which they refer, the ends of justice, in his opinion, would be attained, and no principle infringed, by suspending him from practising as an attorney of the Court upon certain conditions.

Accordingly, by an order of the Supreme Court, of the same day, it was ordered that the appellant be suspended from practising as a "solicitor of that Court, and from all "the rights and privileges granted to the solicitors of the "Supreme Court by virtue of any Act or Ordinance of New "Zealand, until he shall by prosecuting to conviction for "perjury, the or some of the persons in England who have "sworn the calumnious matter against him set forth in "the exhibits thereinbefore mentioned, or by other "sufficient means have made out to the satisfaction of this "Court that the charges of fraud made against him, as set

J.C.  
1862.  
BUNNY  
v.  
THE JUDGES  
OF THE  
SUPREME  
COURT  
OF NEW  
ZEALAND.

J.C.  
1862.  
BUNNY  
v.  
THE JUDGES  
OF THE  
SUPREME  
COURT  
OF NEW  
ZEALAND.

“forth in the said exhibits, are substantially false and unfounded: Provided that if the appellant shall not have made the same out to the satisfaction of this Court within one year from the date hereof, he shall, on motion by any member of the profession, be struck off the roll of solicitors; and it is further ordered that the costs of the present proceedings be paid by the appellant.”

The appellant applied to the Supreme Court of New Zealand, for leave to appeal to Her Majesty in Council from the order of November 2, 1859, when *Johnston, J.*, refused the same with costs.

Upon this refusal, the appellant presented a petition to Her Majesty in Council, praying for special leave to appeal from that order. The petition which was heard on February 20, 1860, by a Board consisting of the Right Hon. Lord Chelmsford, the Right Hon. Lord *Kingsdown*, the Right Hon. Sir *Edward Ryan*, and Sir *John Taylor Coleridge*, when their Lordships declined to make an order upon the petition, as *Johnston, J.*, had sent information to the Council Office that there was an intermediate appeal to the Governor and Council in New Zealand.

On May 10, 1860, an Order in Council was passed, making provisions for a direct appeal from the Supreme Court in New Zealand to Her Majesty in Council.

Mr. Ward, on November 3 following, filed an affidavit setting out the order of the Supreme Court of November 3, 1859, stating to the effect that he believed that the appellant had not made out to the satisfaction of the Court that the charges of fraud made against him as appeared by the proceedings in the Court of Chancery in the suit of *Lovelock v. Turner* were substantially false and unfounded; that the term of one year had elapsed since the date of that order; and, at the same time, he gave notice of motion, that the Court would be moved on November 8 next that the appellant be struck off the roll of attorneys pursuant to the order of the Court made on November 2, 1859, or such order as the Court might think fit to make.

The appellant filed a petition in answer to this application, stating the fact of his application to Her Majesty in Council, for leave to appeal direct from the order dated November 2, 1859, as the reason for not complying with the conditions imposed by such order, and praying under

the provisions of the Order in Council for leave to appeal direct from that order of the Court. This petition was heard before *Johnston, J.*, on November 8, 1860, when the application for leave to appeal was refused, and the petition dismissed, on the ground that the Order in Council had not a retrospective operation, and was not applicable to a judgment pronounced before the Order in Council was made.

Cause was shown by the appellant before *Johnston, J.*, on November 7, 1860, upon the notice by Mr. Ward to show cause why he should not be struck off the roll of attorneys, when judgment was deferred; and on November 20, 1860, *Johnston, J.*, gave judgment, ordering the appellant to be forthwith struck off the roll of attorneys of the Supreme Court.

The appellant applied to the Supreme Court of New Zealand for leave to appeal direct to Her Majesty in Council from this judgment, which was granted.

The appellant then presented a petition to Her Majesty in Council praying for special leave to appeal from the second order of suspension of November 2, 1859.

On June 14, 1861, the Judicial Committee heard argument on the petitioner's behalf, the Board consisting of the Right Hon. Lord *Kingsdown*, the Right Hon. the Lord Justice *Knight Bruce*, the Right Hon. Sir *Edward Ryan*, and the Right Hon. the Lord Justice *Turner*.

Their Lordships made an order recommending to Her Majesty that leave ought to be granted to the appellant to enter and prosecute his appeal from such order; and that the appeal should be heard at the same time, and upon the same case and printed papers, as the appeal from the order of November 20, 1860.

In his printed case the appellant submitted that the orders of the Supreme Court of November 2, 1859, and November 20, 1860, were wholly irregular, oppressive, and unjustifiable, and prayed that such orders might be reversed and rescinded, so far as related to Ward, with costs, by reasons: First, that Ward had no *locus standi* to apply to the Court at New Zealand in the matter, as such application could only be made by a party injured or previously interested in the matter, and, therefore, that all proceedings, and the two orders in question, made by the Supreme Court consequently were null and void; secondly, that as the

J.C.  
1862.  
BUNNY  
v.  
THE JUDGES  
OF THE  
SUPREME  
COURT  
OF NEW  
ZEALAND.

J.C.  
1862.  
BUNNY  
v.  
THE JUDGES  
OF THE  
SUPREME  
COURT  
OF NEW  
ZEALAND.

rule *nisi* granted on Ward's application was to show cause why the applicant should not be struck off the roll of the Supreme Court at New Zealand, that Court had no power upon such rule to make an order suspending the appellant and calling upon him to proceed to England to prosecute parties for perjury ; thirdly, that as the charges made against the appellant, if true, amounted in law to an indictable offence, the Court should have refused to interfere until after conviction ; fourthly, that the evidence received by *Johnston, J.*, upon the application of Ward, was improperly received ; fifthly, that as the appellant's affidavit positively and unequivocally denied the truth of the charges alleged against him, or that he had any knowledge of such charges while he was in England in 1857, the rule ought to have been dismissed with costs ; sixthly, that, if there was any foundation for the charges made against the appellant in reference to the suit of *Lovelock v. Turner*, the proper parties to make such charges had every opportunity of bringing such charges against him while he was in England in 1857 prosecuting his appeal from New Zealand, and arranging and settling his affairs in bankruptcy, when he could have met and satisfactorily explained them ; and, seventhly, that the proceedings in the cause of *Lovelock v. Turner* were improperly received as evidence by *Johnston, J.*, as substantiating the charges brought against the appellant ; and, lastly, that the order of the Supreme Court of November 20, 1860, striking the appellant off the roll of attorneys of that Court, being also made upon the application of Ward, was in the circumstances irregular, unjust, and contrary to law.

The Judges were served with the petition, but did not appear.

Mr. Ward put in an appearance, but lodged no case.

Sir *R. Palmer*, His Majesty's Solicitor-General, and *Edmund F. Moore*, for the appellant.

*Ward*, in person, in support of the orders appealed from, but he did not address the Court.

The judgment of their Lordships was delivered by  
LORD KINGSDOWN. It is with regret that their Lordships feel themselves compelled to advise Her Majesty to

affirm the orders, which have been pronounced in the Court below.

The charges brought against this gentleman are of the gravest description. They are stated in great detail in the affidavits of many witnesses, and they relate to facts in the personal knowledge of Mr. Bunny. He has given, in their Lordships' opinion, anything but a satisfactory answer to those charges. As to the most material of them, a charge equivalent to that of forgery, he says that to the best of his recollection and belief he was not guilty. Mr. Bunny is referred to an entry in his own books sworn to by a witness who was one of his own clerks, which entry, it is admitted, if it is true, substantiates to a great degree the case against him, and with respect to that evidence he confines himself to saying that he has no recollection of any such entry, and he does not believe it could be in his handwriting.

It appears to their Lordships that *Johnston, J.*, has examined this case with the greatest care and attention, and has delivered a judgment marked with fairness and good sense, and a knowledge of the principles by which his decision ought to be guided, and their Lordships think it due to him, and they think it due also to Mr. Ward, to say that both these parties, about whom some observations have been made, appear to their Lordships to have done no more than their duty, and to have done that duty in a most satisfactory manner, and they must advise Her Majesty to affirm the judgment of the Court below.

*Appeal dismissed.*

CASE ANNOTATION.

See current Supplement to *17 E. and E. Digest*, title *Dependencies*, Case No. 661.

J.C.  
1862.  
BUNNY  
v.  
THE JUDGES  
OF THE  
SUPREME  
COURT  
OF NEW  
ZEALAND.