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watching to detect a wife in the commission of the offence, the adultery of which the appellant complains having, as pointed out by Lord *Chelmsford*, begun long before. What the appellant was doing was merely seeking evidence of an existing fact. How then can it be suggested that he connived at or willingly assented to the commencement of the adulterous intercourse? All the evidence is to the contrary. The facts in this case do not, in our opinion, afford any evidence of connivance on the part of the petitioner in the sense in which that word is used in the *Matrimonial Causes Act*.

The appellant was therefore entitled to succeed.

Appeal allowed, with costs against the co-respondent. Decree nisi for dissolution of the marriage, with costs, to be made absolute in three months. Costs of suit to be paid by co-respondent.

Proctors for appellant, *Shipway & Berne*.

C. A. W.

[HIGH COURT OF AUSTRALIA.]

JOHANSEN PLAINTIFF;
AND
CITY MUTUAL LIFE ASSURANCE }
SOCIETY, LIMITED DEFENDANT.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A.
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SYDNEY,
Dec. 13.

Practice—Special leave to appeal—Grounds for granting—Matter of public interest—Not granted on mere questions of fact—Judgment appealed from unattended with sufficient doubt.

Special leave to appeal to the High Court from a judgment of the Supreme Court of a State, in a case involving less than the appealable amount, will not be granted by the High Court where the questions involved are mere questions of fact, nor, even in a case involving an important question of law, if the judgment from which leave to appeal is sought appears to the Court to be unattended with sufficient doubt to justify the granting of leave.

Griffith C.J.,
Barton and
O'Connor JJ.

Daily Telegraph Newspaper Co. Ltd. v. McLaughlin (1 C.L.R., 479); H. C. OF A. 1904. (1904), A.C., 776), followed.

Application for special leave to appeal from the judgment of the Supreme Court of Queensland ([1904] St. R. Qd., 288), refused.

JOHANSEN
v.
CITY MUTUAL
LIFE ASSUR-
ANCE SOCIETY
LIMITED.

MOTION for special leave to appeal.

This was an action brought by the applicant as executrix of Lars Johansen, deceased, to recover £150 and bonuses under a policy of assurance effected by the deceased with the defendants on his own life. At the trial *Cooper C.J.*, who presided, submitted to the jury a great number of questions, all of which, with the exception of two, the jury found in favour of the plaintiff. His Honor, upon the findings of the jury, gave judgment for the plaintiff for £109 13s., the amount to which the jury found that she was entitled.

The defendants appealed to the Full Court to have the judgment set aside on the ground that the findings of the jury in the plaintiff's favour were against the evidence, or to have judgment entered for the defendants on the ground that the judgment was contrary to law.

The Full Court, after argument allowed the appeal with costs and ordered a new trial (1).

The facts sufficiently appear from the judgment.

Hart for the applicant. An important question of law is involved, affecting insurance companies in general, viz., the construction of an article of association: *Sun Fire Office v. Hart* (2). There is also a question of estoppel and of the authority of agents: *Ruben v. Great Fingall Consolidated and others* (3); *Biggerstaff v. Rowatt's Wharf Limited* (4). There is also a question arising on the construction of sec. 22 of the *Life Assurance Companies Act 1902 (Q.)*, as to the lapsing of life policies, and also the question how far a Court of Appeal is justified in interfering with the decision of a Court of first instance on questions of fact. The case has aroused considerable public interest and attention in the State.

The judgment of the Court was delivered by

GRIFFITH C.J. In this case a great number of questions of fact and

(1) (1904) St. R. Qd., 288.

(2) 14 App. Cas., 98.

(3) (1904), 2 K.B., 712.

(4) (1896), 2 Ch., 93.

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of law were raised before the Supreme Court of Queensland. The case is under the appealable amount, and the question is whether we ought or ought not to follow the practice we have already laid down for ourselves of not granting special leave to appeal unless we are of opinion that the case is one of gravity, or involving some important question of law, or affecting property of considerable value; or unless it is a case which is otherwise of public importance, or is of a very substantial character.

As was pointed out by the Privy Council in the recent application by the Daily Telegraph Newspaper Co., in the *Daily Telegraph Newspaper Co. v. McLaughlin* (1), they would not grant special leave to appeal, even though those conditions I have mentioned existed, if it appeared that the decision sought to be appealed from was plainly right or was unattended with sufficient doubt to justify His Majesty in granting special leave to appeal.

Now, in the present case, it is said that the matter is one of gravity and involves a matter of public interest, but only in the sense, we are told, that the public takes great interest in the case. That is not the meaning of the term as used in our judgment in the case of *Dalgarno v. Hannah* (2). It does not affect property of considerable value, and is not a case of public importance, except as between the plaintiff and the defendants, nor is it of a very substantial character.

The only point remaining is, can it be said to involve an important question of law. One question is whether there was any evidence to go to the jury that the assured had repaid a loan of £10. That is a dry question of fact, and the Supreme Court of Queensland was of opinion that there was no evidence of it. It is not the practice of the Privy Council, as was pointed out in *McLaughlin's Case*, to grant special leave to appeal on mere questions of fact. It is not necessary, therefore, for us to express any opinion on the point here. Another question was whether the defendant company's resident agent at Brisbane had authority to perform functions which by the articles of association of the company are conferred upon the Board; and that again was a question of fact, which the jury found in that instance against the applicant. The only thing that is really left that can be

(1) 1 C.L.R., 479; (1904), A.C. 776.

(2) 1 C.L.R., 1.

seriously considered, is the question of law that has arisen as to the construction of the defendant's articles of association.

By Article 58 it is provided that all premiums are payable on or before the day or days set forth in the policy, or within one calendar month thereafter, and that in the event of default in payment of any premium, the policy shall lapse and be void; provided that within twelve months after default the Board may renew such policy on such terms as they may deem equitable.

By Article 60 it is provided that a policy shall acquire a surrender value after three years payments have been made, and that the failure or omission to pay the premiums shall not render the policy void as long as the surrender value, as fixed by the Board, is in excess of any loan thereon, and is sufficient for the payment of the premium then due.

Reading these two articles together, the Supreme Court were of opinion that, as the surrender value was not sufficient to cover the amount of the loan and the premium due, Article 58 applied, and the policy lapsed and became void, subject to the proviso that within twelve months the Board might renew on such terms as it deemed equitable. In this case the twelve months had elapsed without the Board doing anything to renew the policy. The short question of law is whether the policy was then dead or void, and we are asked to say that it is important that it should be argued whether the words "within twelve months after default" govern the power of the Board. That does not seem to be a difficult question of law. It may be an important question of law, perhaps, within the rule apparently followed in the *Sun Fire Office v. Hart* (1), where, although it was a case only of the construction of a clause in a fire insurance policy, the Privy Council granted special leave to appeal on the ground that the same question applied to a great number of other policies. But, supposing that this is an important question of law in the present case, another condition must be found, in the opinion of the Privy Council. In their judgment they said they would not grant such an application "if the judgment from which leave to appeal was sought, was plainly right or unattended with sufficient doubt to justify their Lordships in advising His Majesty to grant special

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leave to appeal." Applying these words here, the application should not be granted, if the judgment was plainly right or unat- tended with sufficient doubt to justify us in granting special leave to appeal in a case below the appealable amount. The point of law decided is that the words "within twelve months after default" are to have their natural meaning, and that does not seem to us to be attended with serious doubt. That being the only question in the case of sufficient importance to justify special leave, leave must be refused.

Leave refused.

Solicitor for applicant, *E. Pugh*, by *R. P. Hickson*.

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Cited
Symes v
Bennett
 (1990) 35 IR
 171

[HIGH COURT OF AUSTRALIA.]

WILSON

APPELLANT;

AND

CARMICHAEL

RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Partnership—Suit for winding up—Stay of common law action—Appeal—Question of fact—Power of High Court to make such order as the Supreme Court could have made—Variation of decree by consent.*
 1904.

SYDNEY,
 Dec. 19, 20,
 21, 22.

Griffith C.J.,
 Barton and
 O'Connor, JJ.

In an appeal from the decision of a Judge of first instance on a question of fact, where the question turns on the credibility of witnesses, who have been subjected to cross-examination, and the Judge, having had the opportunity of seeing and hearing the witnesses, has deliberately come to a conclusion as to which side has given the correct version, the Court of Appeal will not disturb his finding unless it is clearly satisfied that the finding was wrong.

Where both parties to an appeal consent, the High Court may vary the decree appealed from so as to give the appellant part of the relief which he