[HIGH COURT OF AUSTRALIA.]

McLAUGHLIN . . . . . Appellant (No. 1);
Plaintiff,

AND

DAILY TELEGRAPH NEWSPAPER CO. LTD. . . . . } Respondents.
Defendants.

McLAUGHLIN . . . . . Appellant (No. 1);
Plaintiff,

AND

VALE OF CLWYDD COAL MINING CO. LTD. . . . . } Respondents.
Defendants.

High Court Procedure Act 1903, *secs.* 8, 35, 36—*Practice—Appeals to High Court—Security for Costs—Application for increase of amount—Time for making application—Costs of affidavits—Fees of Counsel.*

H. C. of A. 1904.

March 14.

Griffith, C.J.

In Chambers.

Applications for increase of amount of security under O. 36 of the *High Court Procedure Act* must (following the English practice) be made with expedition, whether there is a Justice of the High Court sitting in the State where the appeal is to be heard or not.

On 29th Dec., 1903, the plaintiff filed notice of intention to appeal to the High Court from decisions of the Supreme Court of New South Wales, and deposited £50 as security for the due prosecution of the appeal, in accordance with sec. 35, sub-secs. (1) and (3) of the *High Court Procedure Act*. On 4th Feb. the defendants in each case had notice of the plaintiff's appeal, and on 8th March took out a summons for increased security under sec. 36 of the Act. There was no Justice of the High Court sitting in Sydney until 14th March, but in the interval Justices of the High Court had been sitting in Hobart and Melbourne.

Held (per *Griffith*, C.J.) that the applications were made too late, and that the applicants should have proceeded under sec. 8 by taking out a summons in Sydney as early as possible and having the cause transferred, for the purpose of hearing the summons, to Hobart or Melbourne.

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SUMMONS for increase of security.

The plaintiff had brought separate suits in the Supreme Court of New South Wales, in Equity, against the Daily Telegraph Newspaper Company, Limited, and the Vale of Clwydd Coal Mining Company, Limited, for rectification of the share register of the company in each case, claiming to have his name replaced on the registers as the holder of a certain number of shares, on the ground that a certain power of attorney under the authority of which the companies had transferred the plaintiff's shares to other persons was void, having been executed by the plaintiff while he was insane. The suits were heard and argued before Simpson, C.J. in Equity, and were dismissed. On 29th December the plaintiff gave notice of his intention to appeal from the decisions of the Chief Judge in Equity, to the High Court, and in each case gave the usual security of £50 for the due prosecution of the appeals, as required by sec. 35, subsecs. (1) and (3) of the *High Court Procedure Act* 1903. Both defendants now applied under sec. 36 of that Act by summons to have the amount of security increased.

Lingen, for the Daily Telegraph Company, Limited, read affidavits on behalf of the applicants, and asked that the amount of security be increased from £50 to £200. The affidavits stated that the cases had lasted for a long time in the Supreme Court and had involved great expense, and that the appeal to the High Court would in all probability be very long and expensive, and the amount given as security would not cover the probable costs. It was also stated that the plaintiff was engaged in other expensive litigation and was contemplating more, and that he had been requested by applicants to increase the amount of security, otherwise application would be made to the Court to compel him to do so, on the ground that the £50 was insufficient to cover the costs of the appeal. In the Court below one case lasted eight days and the other six.

Sheppard, for the Vale of Clwydd Coal Mining Company, read affidavits filed on behalf of the applicants, and asked that the amount of security in that case be increased from £50 to £150.

Ralston and *Watt*, for the plaintiff in both cases, read affidavits of the plaintiff in answer, and contended that as notice of appeal had been served on December 29th, the summonses should be dismissed on the ground that they had not been taken out as promptly as they might have been.

Lingen. We have come at the earliest possible moment and as soon as the Court was sitting in Sydney. To have proceeded under sec. 8 before a Justice sitting in another State would have been much more expensive.

[GRIFFITH, C.J.—I intimated to the applicants through the Deputy Registrar in Melbourne that I was prepared to hear the applications in Melbourne, as a summons might, under sec. 8 of the *High Court Procedure Act*, have been taken out in Sydney and heard in Melbourne. There would be little or no expense in taking that step. If the applicants are unwilling to do so they must take the risk of being out of time.]

Sec. 8 is not compulsory. It is purely a matter of discretion, and in this case, where the expense of applying in another State would have been out of proportion to the importance of the application, the Court will not insist upon the applicants proceeding under the section. To so proceed would entail great inconvenience, and fresh counsel would have to be instructed in a very difficult case. This is not a case in which great expedition is required. We did not know until 16th Feb. that only £50 security had been deposited. Under the circumstances the applicants adopted the most reasonable course in waiting until a Justice of the High Court was sitting in Sydney.

GRIFFITH, C.J. Every application of this kind should be made with expedition. The defendants had notice of the plaintiff's intention to appeal on Feb. 4th, and must have known that he would not give more than the minimum amount of security, £50, unless compelled, but they have waited until now to make their applications. Sec. 8 of the *High Court Procedure Act* 1903, was framed to meet such cases as this. Under that a summons could have been taken out on 5th Feb., and dealt with almost immediately by a Justice sitting at Hobart or Melbourne. There would have

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been no difficulty in sending instructions to either place, as the point involved is not at all difficult. There is no more hardship in compelling the applicants to do this than there is in making country solicitors send instructions to their city agents to make an application in Chambers. As the defendants had an opportunity of making these applications in good time, and chose not to do so, I shall follow the practice as to such matters followed in appeals in England. I hold that the applications are too late. Both applications are therefore dismissed with costs, but no costs of affidavits will be allowed on either side. As in my opinion this matter was a simple one, the fees of one counsel only will be allowed.

Attorney for Vale of Clwydd Coal Mining Co., *Mark Mitchell.*

Attorneys for Daily Telegraph Newspaper Co., *Laurence and Laurence.*

Attorney for J. McLaughlin, *W. Morgan.*

[HIGH COURT OF AUSTRALIA.]

MOUNTNEY . . . . . APPELLANT;
PLAINTIFF,

AND

SMITH . . . . . RESPONDENT.
DEFENDANT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1904.

March 15, 16, 17.

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

Negligence—Dangerous state of premises—Injury to customer—Invitation by owner—Scope of servant's authority—Direction by servant—Evidence—Liquor Act (No. 18 *of* 1898) *sec.* 24.

It is the duty of an hotelkeeper to inform customers of the position of the lavatories which by sec. 24 of the *Liquor Act* (No. 18 of 1898) he is bound to provide.

A servant representing his employer in any department of the employer's business, has an implied authority to give customers who deal with the employer