

[HIGH COURT OF AUSTRALIA.]

BAYNE AND ANOTHER . . . . . APPELLANTS;  
PLAINTIFFS,  
  
AND  
  
BLAKE AND ANOTHER . . . . . RESPONDENTS.  
DEFENDANTS,

H. C. OF A. *Practice—Appeal to Privy Council from judgment of High Court—Stay of proceedings.*  
1907.

SYDNEY,  
1906, Dec. 14.  
  
MELBOURNE,  
1907, March  
6, 15.

The Privy Council having granted special leave to appeal from a judgment of the High Court in its appellate jurisdiction by which the cause was remitted to the Supreme Court of a State for inquiries, proceedings under such judgment pending the appeal were stayed, on payment into Court of the taxed costs of the appeal to the High Court. The Court, in the absence of special circumstances, refused to remove the stay.

Griffith C.J. SUMMONS.

In Chambers.

In an action upon an administration bond brought in the Supreme Court of Victoria by the plaintiffs, Lila Elizabeth Bayne and Mary Bayne against Arthur Palmer Blake and William Riggall, judgment was given for the defendants. Against that judgment the plaintiffs appealed to the High Court which gave a judgment declaring that the plaintiffs were entitled to recover such a sum, not exceeding £5,000, as should represent the loss to the intestate's estate by reason of certain breaches of the bond, and remitting the cause to the Supreme Court for inquiry as to the amount of such loss: *Bayne v. Blake* (1).

From this judgment special leave to appeal was granted to the defendants by the Judicial Committee of the Privy Council, but no order was made by that Court staying proceedings under the judgment of the High Court.

(1) 4 C.L.R., 1.

The defendants now by summons sought a stay of the proceedings under the judgment of the High Court pending the hearing of the appeal to the Privy Council.

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*Knox* K.C. and *Clive Teece*, for the defendants, offered to pay into Court the taxed costs of the appeal if the stay should be granted.

*H. E. Manning*, for the plaintiffs, asked for the costs of the application, citing *Cooper v. Cooper* (1).

GRIFFITH C.J. made an order staying all proceedings under the judgment of the High Court until further order, on the defendants paying into Court the taxed costs of the appeal to the High Court, and directed that the costs of this application should abide the event of the appeal to the Privy Council.

The formal order of the Judicial Committee having arrived from England, the plaintiffs now applied on summons to have the stay removed.

March 6.

*Arthur* for the plaintiffs in support cited *Shaw v. Holland* (2).

*Weigall* K.C. for the defendants *contrâ*.

*Cur. adv. vult.*

GRIFFITH C.J. read the following judgment:—

According to the English practice a stay of inquiries pending an appeal to the House of Lords will not be granted except under very special circumstances: *Shaw v. Holland* (2). If there were danger of the necessary evidence being lost by delay, a stay would, no doubt, be refused. The institution of an appeal to this Court operates automatically as a stay of proceedings under the judgment appealed from, unless security is given by the party desiring to proceed. In the present case special leave has been given by the Judicial Committee to appeal from a decision of this Court directing inquiries to be made in the Supreme Court. The

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(1) 2 Ch. D., 492.

(2) (1900) 2 Ch., 305.

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appellants desire to proceed with the inquiries pending the appeal, and as proceedings under the judgment of this Court have been stayed until further order they apply for the suspension of the stay. I think that in such cases the analogy of appeals to the High Court should be followed rather than that of appeals to the House of Lords.

At first I was disposed to think that the removal of the stay would not prevent an independent application to the Supreme Court to stay proceedings. But on consideration I think that it would have that effect so far as the pending appeal to the King in Council was relied on as a ground for a stay, although it would not prevent a postponement of proceedings on special grounds.

At present I do not see any sufficient ground for removing the stay. The summons will be adjourned generally with leave to bring it on again if the parties are so advised.

*Application refused.*

Solicitor, for plaintiffs, *F. S. Stephen*, Melbourne.  
Solicitors, for defendants, *Blake & Riggall*, Melbourne.

B. L.

[HIGH COURT OF AUSTRALIA.]

McGEE . . . . . INFORMANT ;

AND

WOLFENDEN . . . . . DEFENDANTS.

EX PARTE McGEE,

SPECIAL LEAVE TO APPEAL.

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1907.  
MELBOURNE,  
March 12.  
Griffith C.J.,  
Barton,  
O'Connor, and  
Higgins JJ.

*Licensing Act 1906 (Vict.) (No. 2068), sec. 91—Sunday—Hours during which sale of liquor to public is prohibited—Person found on licensed premises—Special leave to appeal refused.*