

[HIGH COURT OF AUSTRALIA.]

HUGALL . . . . . APPELLANT;  
DEFENDANT,

AND

RAINE . . . . . RESPONDENT.  
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF  
QUEENSLAND.

*Special leave to appeal—Contract for sale of goods—Warranty of quality—Sale of Goods Act 1896 (Qd.), (60 Vict. No. 6), sec. 17.* H. C. OF A.  
1908.

Special leave to appeal from the decision of the Supreme Court of Queens- MELBOURNE,  
land : (*Raine v. Hugall*, 1908 St. R., Qd., 120), refused. June 10.

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

APPLICATION for special leave to appeal.

An action was brought in a District Court in Queensland in which the plaintiff sought to recover from the defendant a sum of money, less than £100, alleged to be owing as the balance of purchase money in respect of a sale by the plaintiff to the defendant of eighteen tons of flour. The contract was negotiated for the plaintiff by a broker who on the instructions of the defendant drew up a sale note which stated that the flour was in good order and condition, and which purported on its face to embody all the terms of the contract. The defendant, however, sought to rely on a verbal representation by the agent that the flour was of first class quality. There was uncontradicted evi-



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dence that the flour was "in good order and condition." The learned Judge found (*inter alia*) that in the course of effecting the sale the plaintiff's agent verbally warranted the quality of the flour to be first class; that the flour was not first class, but, on the contrary, was of such inferior quality that it would not produce bread such as any reputable baker would distribute among his customers or keep for sale on his premises; and that there was not sufficient evidence of any usage of trade such as would make the provisions of sec. 17 (3) of the *Sale of Goods Act* 1896 applicable. He also held that the proviso to sec. 17 (1) of that Act did not apply to the contract, and he gave judgment for the defendant.

From this judgment the plaintiff appealed to the Full Court which held that the contract had been reduced to writing, which was contained in the sale note, and that the defendant ought not to be allowed to add to the written contract a verbal warranty made in the course of the negotiations, and that nothing in sec. 17 of the *Sale of Goods Act* 1896 afforded a defence to the action. The Court thereupon allowed the appeal and gave judgment for the plaintiff for the amount claimed: (*Raine v. Hugall* (1) ).

From this decision the defendant now sought special leave to appeal to the High Court.

*Bryant*, in support of the application. The verbal representation made in the course of the negotiations that the flour was of first class quality is a condition on the performance of which the existence of the contract depended: *Gillespie Bros. & Co. v. Cheney, Eggar & Co.* (2). Whether that is so or not is an important question of law, and special leave to appeal should be granted. The District Court Judge construed the contract as subject to that condition, and, there being evidence to support his findings, they cannot be reviewed: *Pilmer v. No. 1 South Oriental and Glanmire Gold Mining Co. Ltd.* (3). On his findings of fact sec. 17 (1) of the *Sale of Goods Act* 1896 applies.

GRIFFITH C.J. There is no general question of law involved in

(1) 1908 St. R., Qd., 120.

(2) (1896) 2 Q.B., 59, at p. 62.

(3) 10 Q.L.J., 87.



the case, which turned upon the particular documents and facts, and the amount in dispute is below £300. Special leave will therefore be refused.

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*Special leave refused.*

Solicitor, for appellant, *A. J. Mollison* for *J. B. Price*,  
Brisbane.

B. L.

Not Foll  
*Smith Kline &  
French Labs  
(Aust) Ltd v  
Common-  
wealth (1991)*  
103 ALR 117

Not Foll  
*Smith Kline &  
French Labs  
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66 ALJR 1

Disap  
*Smith Kline &  
French Labs  
(Aust) Ltd v  
Common-  
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KAMAROOKA GOLD MINING COMPANY, NO LIABILITY.

AND

KERR AND OTHERS.

*Practice—Appeals to High Court—Special leave—Decision of inferior Court of a State—Right of appeal to Supreme Court—Judiciary Act 1903 (No. 6 of 1903), sec. 35—The Constitution (63 & 64 Vict. c. 12), sec. 73.*

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SYDNEY,  
*Aug. 6.*

Special leave to appeal to the High Court from a decision of an inferior Court of Victoria refused on the ground that there was a right of appeal to the Supreme Court. The question whether the High Court has jurisdiction under sec. 73 of the Constitution to entertain an appeal direct from such a decision should not be raised in a case in which there is an appeal to another Court.

Griffith C.J.,  
Barton,  
Isaacs and  
Higgins JJ.

APPLICATION for special leave to appeal from a decision of Judge *Box* in the Court of Mines, Victoria, rescinding a previous order made by himself for the winding up of the applicant company.

The applicants were the company and the directors.