

Foll Mesenberg v Cord Industrial Recruiters (1996) 39 NSWLR 128	Appl Ruralcorp Consulting Pty Ltd v Pymery Pty Ltd (1996) 21 ACSR 161	Cons Mesenberg v Cord Industrial Recruiters (1996) 130 FLR 180	Cons Mesenberg v Cord Industrial Recruiters (1996) 130 FLR 180	Cons Ruralcorp Consulting Pty Ltd v Pymery Ltd (1996) 134 FLR 188	Cons Carre v Owners Strata Plan 53020 (2003) 58 NSWLR 302
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[HIGH COURT OF AUSTRALIA.]

CAMPBELL . . . . . APPELLANT ;

AND

KITCHEN & SONS LTD. AND }  
BRISBANE SOAP CO. LTD. } . . . . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF  
QUEENSLAND.

*Practice—Appeal from Supreme Court of a State—Company—Refusal of company to appeal—Leave to shareholder to appeal.* H. C. OF A.  
1910.

The A. company, which, by itself or its nominees, owned half of the shares in the B. company, brought an action against the B. company and judgment was given in favour of the A. company. The directors of the B. company being equally divided in opinion on the question of bringing an appeal to the High Court from this judgment,

Leave was given to C., who, by himself or his nominees, held the other half of the shares in the B. company, to appeal on behalf of himself and all other members of the B. company.

MELBOURNE,  
May 31.  
Griffith C.J.  
O'Connor,  
Isaacs and  
Higgins JJ.

Leave granted to appeal from the decision of the Supreme Court of Queensland : *Kitchen & Sons Ltd. v. Brisbane Soap Co.*, 1910 St. R. Qd., 301.

APPLICATION for leave to institute and carry on an appeal to the High Court.

An action was brought in the Supreme Court of Queensland by J. Kitchen & Sons Ltd. against the Brisbane Soap Co. Ltd., the nature of which is not material to this report. Judgment in the action was given for the plaintiffs. (*Kitchen & Sons Ltd. v. Brisbane Soap Co. Ltd.* (1) ). It appeared that the plaintiff company were by themselves, or their nominees, holders of one-

(1) 1910 St. R. Qd., 301.

H. C. OF A. half of the shares in the defendant company, and the other half  
 1910. was held by Peter Morrison Campbell by himself or his  
 CAMPBELL nominees. There were two directors of the defendant company,  
 v. viz., P. M. Campbell and one John Clark Donaldson, who repre-  
 KITCHEN & sented the plaintiff company. Campbell wished that the defen-  
 SONS LTD. dant company should appeal from the judgment to the High  
 AND Court, but Donaldson was opposed to that course being taken.  
 BRISBANE SOAP CO.  
 LTD.

— An application was now made by Campbell for leave to institute and carry on an appeal to the High Court in the name of the Brisbane Soap Co.

*Hart*, for the applicant.

[The following authorities were referred to during argument:—*Foss v. Harbottle* (1); *Connolly v. Macartney* (2); *Mason v. Harris* (3); *Buckley on Companies*, 8th ed., p. 548; *Burland v. Earle* (4); *Gray v. Lewis* (5); *Wallworth v. Holt* (6); *Menier v. Hooper's Telegraph Works* (7); *Fraser v. Cooper, Hall & Co.* (8).

GRIFFITH C.J. This is a case in which judgment was given in the Supreme Court of Queensland in an action between parties involving an amount over £300. This Court has jurisdiction to entertain an appeal from that judgment, but, owing to the curious circumstances of the case, it cannot be instituted because those who would be respondents have an equal voice in the company which would be appellants. Under these circumstances there must be some remedy, and I think we ought to apply the analogy of the practice of the Court of Chancery, which is now adopted by the Supreme Court of Judicature, and give leave to some person who is substantially interested to come in and institute the appeal. I therefore think that leave should be given to the applicant to appeal from the judgment on behalf of himself and all other members of the defendant company. Of course the defendant company must be made a respondent. If the judgment is to be regarded as being interlocutory, the leave we now give will cover that also.

(1) 2 Ha., 461.

(2) 7 C.L.R., 48.

(3) 11 Ch. D., 97.

(4) (1902) A.C., 83.

(5) L.R. 8 Ch., 1035.

(6) 4 My. & C., 619.

(7) L.R. 9 Ch., 350.

(8) 21 Ch. D., 718.

O'CONNOR J. concurred.

H. C. OF A.  
1910.

ISAACS J. concurred.

CAMPBELL  
v.  
KITCHEN &  
SONS LTD.  
AND  
BRISBANE  
SOAP CO.  
LTD.

HIGGINS J. I cordially concur in giving leave to the applicant to appeal, but I think the form of the order, giving leave to appeal on behalf of all other members of the company, even those who oppose him, may lead to complications and expense.

*Leave given accordingly.*

Solicitors, *Flower & Hart.*

B. L.

[HIGH COURT OF AUSTRALIA.]

CAMPBELL . . . . . APPELLANT;

AND

KITCHEN & SONS LIMITED AND BRIS- }  
BANE SOAP COMPANY LIMITED } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF  
QUEENSLAND.

*Agreement—Del credere Agent—Indemnity—Trade Usage—Discount—Mistake of Fact—Mistake of Law—Settled Account—Leave to Appeal.* H. C. OF A.  
1910.

An action was brought by Kitchen & Sons Limited against The Brisbane Soap Company Limited for a declaration of rights, for the return of moneys alleged to have been paid under a mistake of fact and for accounts to ascertain the amount recoverable. The plaintiff company was formed in 1901 to acquire the business of a company called J. Kitchen & Sons and Apollo Candle Company. By an agreement made on 30th of June 1891 between J.

BRISBANE,  
Sept. 26, 27;  
Oct. 1.  
Griffith C.J.,  
Barton and  
O'Connor JJ.