

[HIGH COURT OF AUSTRALIA.]

HOUSE APPELLANT;
PLAINTIFF,

AND

WHITELOCK RESPONDENT,
DEFENDANT.

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

H. C. OF A. *Contract—Agency—Order to supply goods—Condition for cancellation—Authority of agent.*
1911.

MELBOURNE,
Oct. 9.

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

The plaintiff employed an agent to obtain signed orders on a printed form for certain machines. On the form was printed in special black type immediately above the place for the signature the following statement :—"No conditions, representations or promises are authorized, and shall not be binding, except such as are printed or written hereon." Another provision was that the order was not to be binding on the plaintiff until ratified by him. The defendant signed an order and at the same time the plaintiff's agent signed and handed to the defendant a document stating that the defendant might cancel the order before a certain date if he did not have a fair average crop to his satisfaction. The plaintiff, without knowing of the arrangement for cancellation, ratified the order. The Supreme Court of Victoria decided that the defendant might nevertheless cancel the order before the date named. The amount claimed was £23 10s. :

Held, that the case was not one for special leave.

Special leave to appeal from the decision of the Supreme Court of Victoria :
House v. Whitelock, refused.

APPLICATION for special leave to appeal.

An action was brought in the Supreme Court of Victoria by Herman House, merchant, of Melbourne, trading as Herman

House & Co. against James Whitelock, farmer, of Wangaroon, New South Wales, to recover £23 10s., the price of a "Perfection" grader alleged to have been ordered by the defendant from the plaintiff.

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The action was tried by *àBeckett J.*

It appeared that on 19th August 1910, one E. W. Bell, a traveller employed by the plaintiff, went to the defendant's farm and asked the defendant to sign an order for one of the plaintiff's machines. The defendant at first declined to give an order, but, on Bell representing that the defendant could give a conditional order, the defendant signed a printed order on a form supplied by the plaintiff to Bell, for one machine. This order contained a number of conditions one being as follows:—"This order is not binding on Herman House & Co. until received and ratified by our manager in Melbourne." Another provision, which was in special black type and was just above the place where the defendant signed, was as follows:—"No conditions, representations or promises are authorized, and shall not be binding, except such as are printed or written hereon." At the same time Bell wrote out, signed and handed to the defendant a document to the following effect:—"19th August 1910.—If I have a fair average crop to my satisfaction send this grader along. If not I have the option of cancelling same between this and 1st March 1911. (Signed) E. W. Bell, inspector, Herman House & Co., Melbourne."

Bell's only authority from the plaintiff was to get orders on the printed forms supplied. On 2nd February 1911 the plaintiff wrote a letter to the defendant ratifying the order, and on 6th February 1911 the defendant replied repudiating the order, and claiming the right to cancel in accordance with his arrangement with Bell. Until the receipt by the plaintiff of this letter he was unaware of the agreement made between Bell and the defendant for cancellation. The machine was subsequently forwarded to the defendant, who refused to accept delivery of it or to carry out the order.

àBeckett J. having given judgment for the plaintiff for the amount claimed with costs, the defendant appealed to the Full Court and the appeal was allowed, the Full Court holding that

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the defendant had a right under his agreement with Bell to cancel the order before 1st March 1911.
The plaintiff now applied for special leave to appeal to the High Court.

Sanderson, for the appellant. The plaintiff is not bound by Bell's unauthorized act. The defendant had notice on the order form he signed that Bell's authority was limited and, the plaintiff having ratified the contract, the defendant is estopped from denying that he entered into it.

GRIFFITH C.J. This is not a case for special leave.

Leave refused.

Solicitors, for the appellant, *Snowball & Kaufmann*.

B. L.

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DAHMS PLAINTIFF ;

AND

BRANDSCH DEFENDANT.

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PERTH,
Oct. 20.
Griffith C.J.

Original jurisdiction of High Court—The Constitution (63 & 64 Vict. c. 12) sec. 75
—Matters between residents of different States.
On a motion for judgment in an action in the High Court for foreclosure of an equitable mortgage by deposit of title deeds of land in Western Australia, the mortgagee being a resident of South Australia and the mortgagor's place of residence being unknown,

Held, that the High Court had no jurisdiction, it not having been established that the parties at the time of the bringing of the action were residents of different States.