

H. C. OF A.  
1911.  
HOUSE  
v.  
WHITELOCK.

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.

[HIGH COURT OF AUSTRALIA.]

DAHMS . . . . . PLAINTIFF ;

AND

BRANDSCH . . . . . DEFENDANT.

H. C. OF A.  
1911.  
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.

MOTION for judgment.

An action was brought in the High Court for foreclosure of an equitable mortgage by deposit of title deeds of land in Subiaco, Western Australia. The plaintiff at the time of the bringing of the action was resident in Adelaide, South Australia. The defendant when last heard of, in 1894, was living in Melbourne, Victoria.

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*J. M. Solomon* for the plaintiff. The application is made under Order XI. rule 9 and Order XXVI. rule 7 of the *Rules of the High Court* 1911.

[GRIFFITH C.J.—The Court cannot assume jurisdiction, under sec. 75 of the Constitution, on a matter of speculation. Where is the defendant resident now? The action should have been brought in the Supreme Court of Western Australia. Order XI. rule 1 of the Rules of that Court gives jurisdiction in plain terms.]

GRIFFITH C.J. The High Court has original jurisdiction in certain cases only, one of them being in matters “between residents of different States.” In this action it is sought to take advantage of this jurisdiction. The Court must therefore be satisfied that the plaintiff and defendant are residents of different States. The plaintiff is a resident of South Australia. All that we know about the defendant is that in the year 1894 he was a resident of Victoria, and upon the evidence he ceased to be a resident of that State soon after. Under these circumstances it is impossible to say affirmatively that this is an action between persons who were at the time of the bringing of the action residents of different States. So far as the evidence goes, it appears that the Court has no jurisdiction, and the only order that can be made is that the action be dismissed. It is satisfactory to know that the plaintiff has a complete remedy under the Rules of the Supreme Court of Western Australia.

*Action dismissed.*

Solicitor, for the plaintiff, *J. M. Solomon*.

J. H.