

[HIGH COURT OF AUSTRALIA.]

COX . . . . . APPELLANT;  
PLAINTIFF,

AND

JOURNEAUX AND OTHERS . . . . . RESPONDENTS.  
DEFENDANTS,

ON APPEAL FROM DIXON J.

*Constitutional Law—High Court—Original jurisdiction—Matters between “ residents  
of different States ”—Action by or against corporation—The Constitution (63 &  
64 Vict. c. 12), sec. 75 (iv.).*

H. C. OF A.  
1934.

MELBOURNE,  
April 19;  
May 9.  
Dixon J.  
MELBOURNE,  
Oct. 15, 30.

Gavan Duffy  
C.J., Starke,  
Evatt and  
McTiernan JJ.

An action was commenced in the High Court by a resident of Queensland against (*inter alios*) two companies incorporated in and carrying on business in Victoria and managed and controlled there. On an application by the companies for an order dismissing them from the action, the plaintiff contended that the decision in *Australasian Temperance and General Mutual Life Assurance Society Ltd. v. Howe*, (1922) 31 C.L.R. 290, was wrong. The Court refused to reconsider that decision, and *held*, accordingly, that the companies were not “ residents ” of Victoria within the meaning of sec. 75 (iv.) of the Constitution and the action therefore could not be maintained against them in the High Court.

Decision of *Dixon J.* affirmed.

APPEAL from *Dixon J.*

Benjamin John Cox brought an action in the High Court against Herbert Fogelstrom Journeaux, Horace Frank Richardson, Thomas Allan McKay, Arthur Vesey Walker, Cox Brothers (Australia) Ltd. and Cox Investments Ltd. (in liquidation). The plaintiff, Benjamin John Cox, was a resident of Queensland. The individual defendants were residents of Victoria and the two companies which were joined



as defendants were incorporated under the *Companies Acts* of Victoria. The plaintiff delivered a statement of claim seeking damages, an injunction and certain declarations. A defence was delivered and the plaintiff replied. By notice of motion on behalf of the two companies application was made to *Dixon J.* to dismiss the action for want of jurisdiction, or alternatively to dismiss the two defendants which were corporations from the action on the principle of *Australasian Temperance and General Mutual Life Assurance Society Ltd. v. Howe* (1).

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*Tait*, for the applicants.

*Hogan*, for the plaintiff.

*Herring*, for the Commonwealth intervening.

*Cur. adv. vult.*

DIXON J. delivered the following written judgment:—

May 9.

On Thursday, 19th April 1934, an application was made to me to dismiss this action for want of jurisdiction, or, alternatively to dismiss two defendants, which are corporations, from the action.

The action is brought by a resident of Queensland against a number of natural persons, who are residents of Victoria, and two companies incorporated under the *Companies Acts* of that State. At the date of the issue of the writ one of these companies had passed resolutions for a voluntary winding up. The liquidators reside in Melbourne. Before this company went into liquidation, it had carried on business as a foreign company in South Australia, Western Australia, and Tasmania, as well as Victoria, and had a registered office in those States. But both companies were controlled from Melbourne. Their directors and shareholders met there, their principal places of business were situated there, and their affairs were governed and administered from Melbourne. I was prepared to apply the decision in *Australasian Temperance and General Mutual Life Assurance Society Ltd. v. Howe* (1), and put the plaintiff to his election between a dismissal of the action, or of the defendant companies from the action. But the plaintiff applied to

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me to refer the question to the Full Court so that he might attempt to obtain from it a reconsideration of that decision, which he did not deny governed the matter.

The Commonwealth intervened upon the application before me and supported the request that I should make such a reference. I asked counsel for the Commonwealth whether the Commonwealth was prepared to undertake to pay the costs of the reference incurred by the parties, or either of them, if the Full Court should think it ought to bear those costs. He was instructed that the Commonwealth would give such an undertaking.

It is undesirable that questions upon which the Court, after full consideration, has explicitly ruled should be reopened, and strong reasons should exist before such a course is permitted.

The present question, it is true, does not relate to substantive rights but to the jurisdiction in which they may be enforced, and there are fewer objections to disturbing the authority of cases deciding such questions. But I should not be justified in submitting to the Full Court the validity of the decision in *Howe's Case* (1), unless there appeared to be some probability of the plaintiff's succeeding in obtaining its reconsideration. I have no reason to think that the reopening of the question would be permitted, or that any useful result would be achieved by a reference to the Full Court. I therefore refuse the application that I should refer the matter. The plaintiffs should, I think, pay the costs which have been occasioned by the institution of the action in this Court.

The order will be : Suit dismissed with costs unless the plaintiff within fourteen days of this order by notice filed in the registry and served upon the solicitors for the defendants elects to proceed only against the defendants who are individuals ; thereupon, order that the defendant companies be dismissed from the suit and that the plaintiff do pay their taxed costs up to the service of such notice.

On 6th June 1934 the plaintiff gave notice of his intention to appeal from this decision to the Full Court.

On 15th October 1934 the Commonwealth applied for leave to intervene.

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*Ham* K.C. (with him *Herring*), for the Commonwealth.

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GAVAN DUFFY C.J. delivered the judgment of the Court as follows :—

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We think it unnecessary to consider your application because the Court as at present advised does not consider it advisable to reconsider the case of *Australasian Temperance and General Mutual Life Assurance Society Ltd. v. Howe* (1). If the Court does propose to consider the matter you will be notified.

On 30th October 1934 the appeal came on for hearing.

*Hogan*, for the appellant. This in substance is an appeal to overrule *Australasian Temperance and General Mutual Life Assurance Society Ltd. v. Howe* (1). If the Court will not overrule that case a certificate giving leave to appeal to the Privy Council should be granted.

*Latham* K.C. and *Tait*, for the respondents, were not called upon.

GAVAN DUFFY C.J. delivered the judgment of the Court as follows :—

The appeal will be dismissed with costs. We will not deal with the application for a certificate for leave to appeal to the Privy Council.

*Appeal dismissed.*

Solicitor for the appellant, *J. Woolf*.

Solicitors for the respondents, *Henderson & Ball*.

Solicitor for the Commonwealth, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

(1) (1922) 31 C.L.R. 290.

H. D. W.