[HIGH COURT OF AUSTRALIA.]

DUDGEON . . . . . APPELLANT;
DEFENDANT,

AND

CHIE . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1955.

SYDNEY, *Aug.* 9.

Dixon C.J., McTiernan, Williams, Webb and Taylor JJ.

Agriculture—Dairy-farm—Share-farming agreement—Written or oral—Notice to quit—Ejectment action by owner—Defence—Equitable—Agricultural Holdings Act 1941 (*N.S.W.*).

High Court—Interlocutory judgments—Appeal—Competency.

The *Agricultural Holdings Act* 1941 (N.S.W.) was not designed to affect the status of a share-farmer, as such, or to confer upon him an estate in possession as against the owner, unless such a right could be spelled out of the agreement itself. Substantially, the Act was designed to ensure the payment of compensation to share-farmers for improvements made by them to the farm or for any increase in the value of the holding.

A share-farming agreement, written or oral, does not give the grantee a right to the exclusive possession of the land as against the owner of the legal estate and therefore does not afford an answer to an action of ejectment brought in the Supreme Court of New South Wales by the owner.

The existence of a share-farming agreement is not, under the *Agricultural Holdings Act* 1941 (N.S.W.), a defence in an action of ejectment brought in the Supreme Court of New South Wales by the owner, nor does it afford a right to an unconditional, absolute and perpetual injunction in equity.

Moxey v. *Lawrence* (1952) 69 W.N. (N.S.W.) 378, referred to.

An order by a judge in chambers of the Supreme Court of New South Wales, that the appearance of the defendant in an action of ejectment and particulars of defence filed be struck out, and leave given to the claimant to enter judgment for the recovery of the premises claimed, is an interlocutory order and not final and a judgment of the Full Court of the Supreme Court affirming the judge's decision also is interlocutory; therefore an appeal from such judgment to the High Court does not lie as of right and leave to appeal is necessary.

Decision of the Supreme Court of New South Wales (Full Court): *Dudgeon* v. *Chie* (1954) 55 S.R. (N.S.W.) 450; 72 W.N. 389, affirmed.

APPEAL from the Supreme Court of New South Wales.

An application by summons to a judge in chambers in the Supreme Court of New South Wales was made by Ethel Maud Chie to strike out the appearance and particulars of defence and for leave to enter judgment in an ejectment action brought by the applicant against Claude Simon Dudgeon. The applicant was life-tenant of the subject premises, a dairy-farm property containing two hundred acres, and in October 1954 she entered into a written agreement with the defendant and one Thomas Edwin Dudgeon jointly whereby the Dudgeons were to provide their own labour and to have the use of all implements on the farm. The applicant, described in the agreement as " owner ", was to supply dairy-cattle, and provisions were made for purchases and sales of cattle. The pigs, which at the time of the agreement were on the farm, were stated to be the property of the Dudgeons, and it was agreed that they should sell to the applicant a one-half interest in them, that the cost of raising them should be borne equally and that the proceeds of sale should be borne equally between the applicant and the Dudgeons. At the conclusion of the agreement the applicant was to purchase the Dudgeons' remaining one-half share in the pigs (cl. 4). Provision was made for the proper conduct of the dairying business by the Dudgeons and for the control and eradication of lantana on the property. The Dudgeons were required to maintain fences. The proceeds of sale of dairy-products were to be received by the applicant, who was to pay one-half of the moneys so received to the Dudgeons. By cl. 14 of the agreement it was provided that the Dudgeons attorned and became tenant of the applicant from the date of the agreement of the three dwellings and other buildings on the farm at a rental of one shilling per week, if demanded, and that such dwellings and buildings should not otherwise be deemed to be the subject of the agreement. Crops raised on the farm in excess of requirements were to be sold and the applicant was to pay one-half of the proceeds to the Dudgeons, and, by cl. 22, on the termination of the agreement the Dudgeons were to be entitled to a one-half interest in standing crops. The Dudgeons were not permitted to allow any person to enter the property other than those in their employ without the consent of the applicant (cl. 19), and by cl. 23 it was further provided that nothing in the agreement should prevent the applicant or her agents or guests from having free and full access to the dairy-farm and premises. Clause 21 provided that subject to the provisions of the *Agricultural Holdings Act* 1941, the agreement could be terminated at any time by either party giving the other party twenty-eight days' notice in writing of his or her intention to do so.

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It was not disputed that the agreement was a share-farming agreement within the meaning of the *Agricultural Holdings Act* 1941, and that therefore twelve months' notice was necessary to terminate the agreement, subject only to s. 24 (2) of that Act.

About the end of March 1950, Thomas Edwin Dudgeon withdrew from the working of the farm. Claude Simon Dudgeon thereafter worked the farm solely on his own account with the applicant's approval and consent upon the same terms as those of the written agreement. No fresh agreement in writing was ever entered into. On 24th June 1953, the applicant served on Dudgeon one month's notice to quit in respect of the subject premises, alleging that they were the subject of the agreement of 1945, and further alleging failure to cultivate in accordance with the rules of good husbandry. Dudgeon did not comply with that notice and the present writ of ejectment was subsequently issued.

The particulars of defence filed on behalf of Dudgeon were : (i) that Dudgeon was in possession and relied upon his possession ; (ii) that the subject land was a holding within the meaning of the *Agricultural Holdings Act* 1941 ; (iii) that Dudgeon was in possession under a share-farming agreement made with the applicant on or about 12th October 1945, in respect of which agreement no notice had been given pursuant to s. 23 or s. 24 of the *Agricultural Holdings Act* 1941 ; (iv) that Dudgeon further said that that agreement had never been terminated lawfully ; and (v) that Dudgeon was in possession of the subject land as tenant of the applicant.

The applicant alleged that the 1945 agreement was rescinded in 1950, by mutual consent, or, as the result of the principle in *Morris* v. *Baron & Co.* (1), that there was a new oral agreement in the same terms and that as it was not in writing Dudgeon could not rely on it, and denied any tenancy.

Brereton J. made an order under O. XXI, r. 27, striking out the appearance and the particulars of defence in the ejectment action, and granted leave to the applicant to enter judgment in ejectment for the recovery of the dairy-farm.

An appeal by Dudgeon to the Full Court was dismissed by *Street* C.J. and *Herron* J., *Roper* C.J. in Eq. dissenting without expressing an opinion in the substance of the matter dealt with below : *Dudgeon* v. *Chie* (2).

In the course of their joint judgment (as appearing at (3) and referred to in the judgment of the Court hereunder) *Street* C.J. and *Herron* J. said : " We feel it proper, in view of the importance of

(1) (1918) A.C. 1.
(2) (1954) 55 S.R. (N.S.W.) 450 ; 72 W.N. 389.
(3) (1954) 55 S.R. (N.S.W.), at pp. 470-472 ; 72 W.N., at pp. 403-405.

the subject matter raised on this appeal and despite the absence of argument to the contrary by the respondent's counsel, to make some observations on the position of a defendant in an action at law of ejectment who sets up by way of defence that he is in possession under a share-farming agreement of a holding within the meaning of the *Agricultural Holdings Act* 1941. In *Carter* v. *Smith* (1), this Court held that no estate in possession was conferred upon the share-farmer but that the true position was that a licence was created which constituted no defence to an action of ejectment, the defendant's remedies, if he has any, being available to him only in a separate action or suit. We see no reason to differ from the clear decision in this case. We were referred to the decision in *Hardy* v. *Battaglene* (2) which upheld in an action of ejectment a defence based on a written share-farming agreement to which the *Agricultural Holdings Act* 1941 applied. In that case the Full Court upheld a decision by a judge at *nisi prius* that the agreement could only be terminated by giving the notice required by s. 24 of the Act. We have examined the judge's reasons at *nisi prius* (*Herron* J.) and these disclose that the point was not raised or dealt with. The report of the argument before the Full Court and the judgments likewise contain no reference to it. We do not think that this can be regarded as a decision to the contrary. There are, on the other hand, many judicial pronouncements on the subject which support the view taken in *Carter* v. *Smith* (1). Prior to the Act of 1941 two decisions of the High Court settle with certainty the position in law of a share-farmer *vis-à-vis* the owner of the farm. *Hindmarsh* v. *Quinn* (3) clearly decided that a share-farming agreement does not give the grantee a right to the exclusive possession of the land as against the owner of the legal estate and therefore does not afford an answer to an action of ejectment brought in the Supreme Court of New South Wales by the owner. *Barton* A.C.J. said, with respect to an action of ejectment: 'The action is possessory only; that is, it is based on the right of actual possession in the admitted owner (cl. 1) which has passed to the respondent as his administratrix. The defence disputes this right of possession. It is plain that the respondent and the appellant cannot both have possession at the same time, not being joint tenants, or tenants in common, or co-parceners. The possession is *prima facie* in the respondent as administratrix of Quinn, and she is entitled as plaintiff to a verdict unless some

(1) (1952) 52 S.R. (N.S.W.) 290; 69 W.N. 326.

(2) (1945) 46 S.R. (N.S.W.) 134; 63 W.N. 8.

(3) (1914) 17 C.L.R. 622.

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defence be established. It is contended that a defence is afforded by the agreement under seal. The appellant, therefore, must be taken to assert a right to exclude the respondent. To have this effect, the agreement must operate as a grant of some right which either carries *per se* a right to possession, or has such a right as a necessary incident to its exercise. It was contended for the respondent that the agreement operated as a grant, and that the thing granted was a *profit à prendre*. Assuming these two contentions, for present purposes, to be correct, *prima facie* a grant of a *profit à prendre* does not *per se* give a possession exclusive of the owner' (1). Later the Acting Chief Justice dealt with the suggested right of exclusive possession in the grantee and, referring to a decision of this Court in *Bellinger* v. *Hughes* (2), observed that that decision, which related to a share-farming agreement, was authority for the proposition that such an agreement constituted a licence coupled with such an interest as rendered it irrevocable. But in the absence of evidence of tenancy *Barton* A.C.J. said of this position: 'A mere irrevocable licence not conferring exclusive possession would not be a defence to an action of ejectment by the grantor of the licence' (3). The other decision is that of *Hill* v. *O'Brien* (4) where the position of a share-farmer was closely examined and it was held that the right of a share-farmer to use and occupy the land for the purpose of the agreement amounts to a licence, the grant of which right gave him a remedy *in personam* based on the agreement but no such right of property as would entitle him to the enjoyment of riparian rights. See also *Perpetual Trustee Co. Ltd.* v. *Tindal* (5) and *Dever* v. *Lawson* (6) which dealt expressly with the effect of s. 24 of the *Agricultural Holdings Act* 1941. The following *dictum* by three members of the High Court appears: 'Section 24 does not apply in terms to the case of a share-farming agreement which is so framed as not to confer upon the share-farmer a right to exclusive possession of the land. Such an agreement confers only an irrevocable licence and does not create a tenancy: *Bellinger* v. *Hughes* (2); see also *Hindmarsh* v. *Quinn* (7)' (8).

In *Clarke* v. *Tyler* (9), *Williams* J. held that under a share-farming agreement the farmer did not acquire the exclusive possession of the owner's land and that their relationship remained purely contractual and that s. 24 of the Act merely altered the agreement of the parties

(1) (1914) 17 C.L.R., at p. 630.
(2) (1911) 11 S.R. (N.S.W.) 419; 28 W.N. 88.
(3) (1914) 17 C.L.R., at p. 633.
(4) (1938) 61 C.L.R. 96.
(5) (1933) 34 S.R. (N.S.W.) 8; 50 W.N. 247.
(6) (1950) 81 C.L.R. 631.
(7) (1914) 17 C.L.R. 622.
(8) (1950) 81 C.L.R., at p. 636.
(9) (1949) 78 C.L.R. 646, at p. 658.

in certain respects. *Starke* J., in *Cowell* v. *Rosehill Racecourse Co. Ltd.* (1), speaks of the right of taking natural produce or profits from the lands of others as in *profits à prendre* as being well-known instances of licences coupled with an interest. An examination of these cases in light of the terms of the agreement of 12th October 1945—especially cll. 19 and 23—which both parties rely upon here, confirms the view that no estate in possession was created in the defendant and that his defence based upon possession cannot be sustained; nor do we think that by expressing the matter as a defence upon equitable grounds the matter is carried any further, for the reasons appearing in his Honour's judgment with which we agree and to which we find it unnecessary to add.

The *Agricultural Holdings Act* 1941 was not designed to affect the status of a share-farmer, as such, or to confer upon him an estate in possession as against the owner, unless such a right could be spelled out of the agreement itself. Substantially the Act was designed to ensure the payment of compensation to share-farmers for improvements made by them to the farm or for any increase in the value of the holding. Section 5 which applies the tenancy provisions of the Act to share-farming agreements defines a share-farming agreement as one whereby the owner grants a licence to the share-farmer to use and occupy land for agricultural or pastoral purposes. The Act does not, however, convert a share-farming agreement into a tenancy. Section 24 ensures that a share-farmer is entitled to twelve months' notice—from the end of the then current year of the agreement or at least to twelve months from the date of the notice. A breach of this section by an owner confers upon the share-farmer a right to recover damages for breach of the personal licence, provided that it is one to which the Act applies" (2).

From the decision of the Full Court of the Supreme Court, Dudgeon appealed, as of right, to the High Court.

The passage in *Moxey* v. *Lawrence* (3) referred to by the High Court in its joint judgment, is as follows:—"The second submission is that the defendant has available a good equitable defence. Although not expressly alleged in the particulars of defence counsel agreed I should deal with this submission as if the defence were duly embodied in the particulars. The equitable defence is that the oral agreement is enforceable by reason of certain unequivocal acts by the defendant amounting to a part performance of the share-farming agreement sufficient to take the case out of the Statute.

(1) (1937) 56 C.L.R. 605, at p. 626.
(2) (1954) 55 S.R. (N.S.W.), at pp. 470-472; 72 W.N., at pp. 403-405.
(3) (1952) 69 W.N. (N.S.W.) 378.

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In *Salmon* v. *Enares* (1) certain limited submissions by counsel as to the nature of the interest taken by a share-farmer were made. In deciding the points raised I there expressed considerable doubt whether at the trial an equitable defence based on the doctrine of part performance could be made out. On the present summons this question arises directly and must be decided. An equitable defence is available in an action in ejectment (*Common Law Procedure Act* 1899, ss. 95-98; *Strachan* v. *Raines* (2); *Aaron* v. *Burke* (3)). I shall assume that the plaintiff could prove acts which, apart from the matter next mentioned, would suffice for such a defence. Nevertheless the defendant cannot succeed in the present case.

A pleading upon equitable grounds can be allowed at common law only where it is such that a court of equity would grant an absolute unconditional and perpetual injunction against the enforcement of the judgment at law (*Rance* v. *Kensett* (4); *Cowell* v. *Rosehill Racecourse Co. Ltd.* (5)). Such an injunction would not be granted to a defendant in an action at law unless he established that he, having no legal defence, had a good defence on equitable grounds.

I turn to the proposed equitable defence based upon the doctrine of part performance. Certain circumstances must co-exist before this equitable doctrine of part performance can be successfully invoked (*Hanbury, Modern Equity*, 5th ed., (1949), p. 107). In particular the doctrine cannot be called in aid in cases in which equity would not decree specific performance (*Britain* v. *Rossiter* (6); *Lavery* v. *Pursell* (7); *Williamson* v. *Lukey*, per *Evatt* J. (8); *Hanbury, Modern Equity*, 5th ed., (1949), p. 108; *Williams, The Statute of Frauds*, s. 4 (1932), p. 241).

Specific performance will not be decreed if the contract be one which would require continued and effective superintendence of acts and services. Nor where the contract requires a continual co-operation between the parties, nor where the court would be unable to secure to one party the performance by the other party of the contractual conditions upon which the obligations of the former depended (*Williamson* v. *Lukey* (9)).

Applying these tests to a share-farming agreement such as is found in this case it is at once apparent that such an agreement is in its nature one requiring continual co-operation between the owner

(1) (1951) 69 W.N. (N.S.W.) 202.
(2) (1933) 50 W.N. (N.S.W.) 125.
(3) (1939) 56 W.N. (N.S.W.) 51.
(4) (1916) 16 S.R. (N.S.W.) 285, at p. 294; 33 W.N. 119.
(5) (1937) 56 C.L.R. 605, at pp. 619, 644.
(6) (1879) 11 Q.B.D. 123.
(7) (1888) 39 Ch. D. 508, at p. 518.
(8) (1931) 45 C.L.R. 282, at p. 308.
(9) (1931) 45 C.L.R., at pp. 293, 297.

and the share-farmer. The essentials of such an agreement are stated in s. 5 (2). It may be an agreement for agricultural or pastoral purposes, or both. Ploughing, fertilization, cropping, harvesting, fallowing, stocking, shearing, culling, marketing and the like are instances of numerous matters requiring close co-operation between the owner and the share-farmer " (1).

G. Wallace Q.C. (with him *A. R. Moffitt*), for the appellant. In this case there are issues which should be left for trial. This case exemplifies the tendency towards dealing in chambers with ejectment actions in a manner which goes beyond the intendment of the rules and beyond the *Common Law Procedure Act* 1899 (N.S.W.). That matter is fundamental to the whole appeal. Questions of law were wrongly decided. The main point, that the *Agricultural Holdings Act* 1941 (N.S.W.) does not provide a defence in an ejectment action was not really taken on behalf of the respondent at any stage. The issue argued in chambers was whether the agreement was in writing or oral. If oral, it was contended on the authority of *Carter* v. *Smith* (2) and *Perpetual Executors & Trustees Association of Australia Ltd.* v. *Russell* (3), that it could not be used as a defence under the *Agricultural Holdings Act* 1941. If in writing, it was not argued that it would not be a good defence, because it had never been suggested before. This case seems to decide that whether the agreement is in writing or not, the *Agricultural Holdings Act* 1941 cannot be used in connection with a share-farmer as a defence in an ejectment action—e.g. as to notice to quit having to be of twelve months, etc. That was not argued or set up on behalf of the respondent. *Carter* v. *Smith* (2) is distinguishable from this case. This judgment is not interlocutory because it was ordered to be entered : see O. XXI, r. 31.

[DIXON C.J. referred to *Cox Bros. (Australia) Ltd.* v. *Cox* (4).]

If an appeal as of right does not lie the Court is asked to grant special leave to appeal. The matter is one of importance. The matters dealt with involve questions as to how a contract can be varied. [He referred to *Morris* v. *Baron & Co.* (5).] It is not disputed that it was a holding within the meaning of the *Agricultural Holdings Act* 1941. Armed with that admission the appellant should be at liberty to argue the effect of that Act. It is implicit in *Dever* v. *Lawson* (6) and *Hardy* v. *Battaglene* (7) that the *Agricultural*

(1) (1952) 69 W.N. (N.S.W.) 378, at pp. 379, 380.
(2) (1952) 52 S.R. (N.S.W.) 290 ; 69 W.N. 326.
(3) (1931) 45 C.L.R. 146.
(4) (1934) 50 C.L.R. 314.
(5) (1918) A.C. 1, at pp. 18, 19.
(6) (1950) 81 C.L.R. 631.
(7) (1945) 46 S.R. (N.S.W.) 134, at pp. 136-138 ; 63 W.N. 8, at pp. 9, 10.

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Holdings Act 1941 is a defence to an ejectment action. *Hindmarsh* v. *Quinn* (1) is not applicable. It is immaterial whether the agreement is in writing or not as an appropriate defence. The *Agricultural Holdings Act* 1941 makes a share-farmer a notional tenant for the purposes of an ejectment action. The whole scheme of the Act is to place the share-farmer on the same footing as a tenant, including the defences to an ejectment action. The subject agreement is arguable as a tenancy. If that be not so then it relates to a *profit à prendre*, or it is a licence for the right to occupy the whole, possibly exclusively.

[DIXON C.J. Mr. *Badham*, why should not Mr. *Wallace* have leave to appeal? Do you mind whether he has or not?]

L. C. Badham Q.C. (with him *J. S. Ferrari*), for the respondent. The question that arises in this case is primarily whether or not the respondent was correct in the attitude that was taken before the Full Court in contending that the oral agreement or whatever agreement was made in 1950 amounted to a rescission of the old agreement of 1945, and that it was an agreement which, by reason of s. 54A of the *Conveyancing Act* 1919, as amended, was not enforceable. Apparently that, with some subsidiary matters that were related to it, such as the question of whether or not there was a written note or memorandum to be spelled out with the document, was the only point that was decided. There was not any question ever raised about the operation on the transaction of the *Agricultural Holdings Act* 1941. The only question is whether or not the somewhat peculiar transactions of these two people resulted in one or other of them being, under the law, prevented from contending that a certain agreement had an effect and applying it. That was the only question decided. It was purely a domestic disagreement between the owner and the share-farmer. Nothing emerges from it which is a matter of substance. The court below expressed the opinion that *Hindmarsh* v. *Quinn* (1) decided that the interest of the share-farmer was a purely personal contractual interest in the nature of a licence and that, whatever may have happened, his only remedy would be in an action for damages. The decision of this case had no reference whatever to any general principles of law which were in doubt. Those remarks about *Hindmarsh* v. *Quinn* (1) whether correct or otherwise, were made only for the benefit of anybody interested. The proceedings in this case were based upon rr. 25 and 26 of O. XXI of the *Supreme Court Rules*. A share-farming agreement, whether in writing or not, is not a

(1) (1914) 17 C.L.R. 622.

defence to an action of ejectment. It clearly cannot be a defence if it is not in writing. The *Statute of Frauds* was raised in the court below and there is a reference to it in the judgment of that court. The *Statute of Frauds*, and, presumably, the corresponding section of the *Conveyancing Act* 1919-1943, is only, and was only ever, necessary, to be pleaded because of the provision of certain rules up to the time of the *Judicature Act*. That statute need not be specially pleaded. This case is not a case other than one which depends for its decision on the view taken of certain rather involved actions between the owner of certain land and a share-farmer that have no reference whatever to any important point of general application, general importance or interest. It is not a case in which special leave should be granted.

G. Wallace Q.C., in reply.

The judgment of the Court was delivered by :—

DIXON C.J. In this case an appeal was brought as of right from a judgment of the Full Court of the Supreme Court of New South Wales. The judgment of the Full Court affirmed an order made by *Brereton* J. The order made by *Brereton* J. authorized the entry of judgment for the claimant in an action of ejectment. The operative parts of the order were : " It is ordered that the appearance and particulars of defence filed on behalf of the above-named defendant be struck out and it is further ordered that the claimant be at liberty to enter judgment in ejectment for the recovery of the premises claimed in these proceedings."

That order of *Brereton* J. is an interlocutory order, as is shown by *Cox Bros. (Australia) Ltd.* v. *Cox* (1). The judgment of the Full Court affirming the judgment was no less interlocutory. An appeal therefore does not lie as of right. Upon this being pointed out the intending appellant, the defendant, applied for leave to appeal. It appears from the facts of the case that the defendant is using agricultural land as a share-farmer holding under an agreement not in writing with the owner, who is the claimant in the action for ejectment. Notice to quit has been given by the claimant and it gives a ground which, if established in fact, would make the notice to quit one which conforms with the *Agricultural Holdings Act* 1941.

The defendant, in seeking leave to appeal, put forward the contention that he is entitled to succeed in the action on the ground that the share-farming agreement affords a defence unless it has

(1) (1934) 50 C.L.R. 314.

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been duly terminated by the notice to quit, which means proof of the facts on which the notice is based.

The reasons given in the Full Court included grounds depending on the fact that the agreement was not in writing. But the majority of the Full Court, consisting of the Chief Justice and *Herron* J., added in their joint judgment that if the agreement had been in writing the result must have been the same. That part of their judgment begins (1) and ends (2). The correctness in substance of that part of the judgment has been discussed before us. Mr. *Wallace* has attacked it on the ground that under the *Agricultural Holdings Act* 1941 the existence of a share-farming agreement must be a defence and, if that is not so, at least it should afford a right to an unconditional absolute and perpetual injunction in equity which would therefore provide a plea to the action on equitable grounds. It is sufficient to say as to the first of these propositions that we agree with the opinion expressed in that part of the judgment given in the Full Court to which we have referred.

As to the second proposition, it is sufficient to say that, having read the judgment of *Dwyer* J. in *Moxey* v. *Lawrence* (3), we agree with so much of it as begins on p. 379, first column, and deals with the contention that an equitable defence is disclosed. The passage ends on p. 380 at the top of the first column. We say nothing as to the rest of the judgment.

Those two judgments cover the ground and make it impossible for the defendant to succeed in the defence of the action of ejectment.

We therefore think the application for leave should be refused.

Appeal struck out as incompetent. Leave to appeal refused. The appellant to pay the respondent's costs of the proceedings taxed on the footing of the costs of opposing an application for leave.

Solicitor for the appellant, *D. M. R. Page*, Lismore, by *Robison, Maxwell & Allen.*

Solicitors for the respondent, *Thomas E. Rummery & Liddy*, Lismore, by *Hill, Thomson & Sullivan.*

J. B.

(1) (1954) 55 S.R. (N.S.W.), at p. 470; 72 W.N., at p. 403.

(2) (1954) 55 S.R. (N.S.W.), at p. 472; 72 W.N., at p. 405.

(3) (1952) 69 W.N. (N.S.W.) 378.