

[HIGH COURT OF AUSTRALIA.]

COX BROTHERS (AUSTRALIA) LIMITED }
AND ANOTHER } APPLICANTS;
PLAINTIFFS,

AND

COX RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

H. C. OF A. *High Court—Appeal—Practice—Order giving leave to sign final judgment—Whether*
1934. *final or interlocutory—Leave to appeal to High Court—Whether necessary—*
} *Judiciary Act 1903-1932 (No. 6 of 1903—No. 60 of 1932), sec. 35—Rules of the*
MELBOURNE. *Supreme Court 1916 (Vict.), Order XIV., r. 1—High Court Rules 1928, Sec. III.,*
May 31. *r. 20.*

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

An order giving leave to enter final judgment pursuant to Order XIV., rule 1, of the *Rules of the Supreme Court 1916* (Vict.) upon a specially endorsed writ of summons is, for the purposes of appeal under sec. 35 of the *Judiciary Act 1903-1932*, interlocutory and not final, and leave to appeal to the High Court therefrom is, therefore, necessary.

Quære, whether an appeal from a judgment entered in pursuance of such interlocutory order can be maintained without appealing directly from the interlocutory order.

MOTION.

Cox Brothers (Australia) Ltd. and Cox Investments Ltd. (in liquidation) issued a writ specially endorsed pursuant to the provisions of Order III., rule 6, of the *Rules of the Supreme Court 1916* (Vict.) against Benjamin John Cox claiming payment of a debt amounting to £14,204 13s. 4d. alleged to be due to the plaintiffs by the defendant.

The defendant entered an appearance to the writ and the plaintiffs took out a summons pursuant to Order XIV., rule 1, of the *Rules of the Supreme Court* for leave to sign final judgment for the amount claimed on the writ. The defendant opposed the application, but *Mann A.C.J.* made an order giving the plaintiffs leave to sign final judgment for the amount claimed on the writ. The defendant gave notice of appeal to the High Court against the order giving leave to enter judgment. The plaintiffs thereupon gave notice of motion to have the appeal lodged by the defendant in the High Court struck out on the ground that such appeal was irregular inasmuch as the defendant appellant had no right of appeal and had not obtained leave of the High Court granting him liberty to appeal. On the hearing of this application the defendant applied for leave to amend the notice of appeal by appealing against the judgment entered pursuant to the order of *Mann A.C.J.* The defendant had previously, but after giving the notice of appeal, applied to the High Court for leave to appeal against the order of *Mann A.C.J.*, which was refused on the merits, the Court expressing no opinion at that stage whether he had a right of appeal or not.

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Tait, for the plaintiffs, in support of the motion. The order giving leave to enter final judgment is not effective until judgment is entered in pursuance of it. It is accordingly an interlocutory and not a final order (*Standard Discount Co. v. La Grange* (1); *In re a Debtor* (2)). Leave to appeal from such an order is, therefore, necessary, and the Court has already refused leave to appeal.

[DIXON J. referred to *Attorney-General v. Great Eastern Railway Co.* (3); *Tata Iron and Steel Co. v. Chief Revenue-Authority, Bombay* (4).]

Had the defendant appealed as of right against the final order, it might have been open to him to attack the interlocutory order (*Crowley v. Glissan* (5)). But he has not done this and leave to amend the notice of appeal should not now be granted.

[DIXON J. If there was an appeal instituted from the judgment entered pursuant to the order giving leave to sign judgment, would

(1) (1877) 3 C.P.D. 67. (3) (1879) 27 W.R. 759.
(2) (1903) 19 T.L.R. 152. (4) (1923) L.R. 50 I.A. 212, at p. 224.
(5) (1905) 2 C.L.R. 402.

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rule 20 of Sec. III. of the *High Court Rules* enable the Court to consider that order, if interlocutory, and disregard it if wrongly made? Or is it confined to interlocutory orders dealing with incidental matters or orders which might produce an estoppel? (*White v. Witt* (1); *Sugden v. Lord St. Leonards* (2)).]

If there were an appeal against the final order, the defendant would be attacking a judgment entered ministerially and correctly in pursuance of the interlocutory order.

Hogan, for the defendant, to oppose. The order of *Mann* A.C.J. is final in so far as it finally disposes of the plaintiffs' rights and concludes the defendant from further contesting the plaintiffs' claim (*Bozson v. Altrincham Urban Council* (3); *Isaacs & Sons v. Salbstein* (4); *In re Riddell*; *Ex parte Earl of Strathmore* (5)). The order is not necessarily interlocutory merely because some other step is to follow in the proceedings, such as a direction for accounts and inquiries (*In re Herbert Reeves & Co.* (6)), or for delivery of a bill of costs, and for taxation and payment (*In re Jerome* (7); *Halsbury, Laws of England*, vol. XVIII., p. 178). Alternatively, leave is sought to amend the notice of appeal, so as to include an appeal against the judgment entered against the defendant pursuant to the order of *Mann* A.C.J.

THE COURT delivered the following judgment :—

In view of the authorities which have been cited we think the order giving the respondents leave to enter judgment is interlocutory. The application of the appellant to amend his notice of appeal should, we think, be refused and the application of the respondent to dismiss the appeal as incompetent should be granted with costs.

Appeal struck out.

Solicitors for the applicants, *Henderson & Ball*.

Solicitor for the respondent, *J. Woolf*.

H. D. W.

(1) (1877) 5 Ch. D. 589.

(2) (1876) 1 P.D. 154.

(3) (1903) 1 K.B. 547.

(4) (1916) 2 K.B. 139.

(5) (1888) 20 Q.B.D. 512.

(6) (1902) 1 Ch. 29.

(7) (1907) 2 Ch. 145.