

PER CURIAM. The real question involved in this case is one of fact. It is not usual, except under special circumstances, where special leave to appeal is refused to express any opinion on questions of law, and it is not necessary to do so here.

H. C. OF A.
1916.
DORMAN
LONG & Co.
LTD.
v.
THOMSON.

Special leave to appeal refused.

Solicitors for the applicant, *Rigby & Fielding.*

B. L.

[HIGH COURT OF AUSTRALIA.]

HARRY MACHIN APPELLANT ;
PETITIONER,

AND

JOSEPHINE MACHIN RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

Practice—High Court—Appeal from Supreme Court of a State—Notice of appeal— H. C. OF A.
Service—Non-appearance of respondent in Supreme Court—Rules of the High 1916.
Court 1911, Part I., Order LV., rr. 2, 6 ; Part II., Sec. III., rr. 1, 4.

A petition to the Supreme Court of Victoria by a husband for dissolution of marriage which was undefended was dismissed. MELBOURNE,
March 10.

Held, that an appeal by the husband to the High Court could not be entertained in the absence of service, personal or substituted, of the notice of appeal upon the wife. Griffith C.J.,
Barton, Isaacs,
Gavan Duffy
and Rich JJ.

Appeal from the Supreme Court of Victoria (*Hood J.*) struck out.

APPEAL from the Supreme Court of Victoria.

Harry Machin, by petition to the Supreme Court, sought a dissolution of his marriage with his wife, Josephine Machin, on the ground of desertion for three years and upwards. The respondent did not

H. C. OF A. enter an appearance, and was not represented at the hearing. *Hood*
 1916. J., before whom the petition was heard, dismissed it, holding that the
 MACHIN desertion was not proved.

MACHIN
 v.
 MACHIN.

The petitioner filed a notice of appeal to the High Court from that decision, but did not serve the notice upon the respondent personally, nor did he apply for an order for substituted service. The appeal was in other respects properly instituted, and now came on for hearing.

Woolf, for the appellant.

[GRIFFITH C.J. Has notice of this appeal been served on the respondent?]

No. The suit being undefended, until the respondent takes some step for the purpose of appearing she need not be served.

[GRIFFITH C.J. She must be served in some way, either personally or in one of the other ways provided by Order LV. of Part I. of the *Rules of the High Court*. If Order LV. applies, it seems that an order for substituted service should be obtained.]

[ISAACS J. At least the notice should be filed and stuck up in the Registry under rule 6 of that Order.]

Assuming that the notice should be stuck up in the Registry, leave should be given to do it *nunc pro tunc*.

The judgment of the COURT, which was delivered by GRIFFITH C.J., was as follows:—

We cannot entertain this appeal until notice of appeal has been served upon the respondent. It would, therefore, in any view, be necessary to grant an adjournment in order to allow notice to be served. But we have looked at the facts in order to see whether any useful purpose would be served by an adjournment, and it appears that it is impossible to hold that the learned Judge was wrong in saying that he was not satisfied that the respondent had deserted the appellant. Under these circumstances it would be useless to adjourn the hearing of the appeal, and the only course is to strike it out.

Appeal struck out.

Solicitor for the appellant, *J. Woolf*.

B. L.