IN THE COURT OF APPEAL OF NEW ZEALAND

CA257/04

	BETWEEN	DOUGLAS GILBERT SHAW SIMES Appellant
	AND	MARGARET TENNANT Respondent

Hearing: 14 March 2005

Court: McGrath, Hammond and O'Regan JJ

Counsel: C Y Simes for Appellant
H N McIntosh for Respondent

Judgment: 28 April 2005

JUDGMENT OF THE COURT

A. The application to strike out or dismiss the appeal is dismissed.

B. The appellant is entitled to costs of $2,500 together with disbursements (including travel and accommodation costs of counsel, if any) to be agreed by counsel or, in the absence of agreement, to be fixed by the Registrar.

REASONS

(Given by O'Regan J)

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Introduction

[1] This is an application by the respondent, Professor Tennant, for an order to strike out or dismiss the appeal filed by the appellant, Mr Simes, against a decision of Potter J in the High Court. In that decision, Potter J granted leave to Professor Tennant under r 704(3) of the High Court Rules extending the time prescribed for appealing against a costs judgment in the District Court. That costs judgment was to the effect that costs should lie where they fell. It followed the discontinuance of proceedings which had been brought in the District Court by Mr Simes against Professor Tennant and the University of Waikato claiming defamation and breach of confidence.

High Court decision

[2] Potter J set out the circumstances in which the appeal to the High Court came to be filed out of time. She said it was clearly the result of a mistake or oversight by the solicitors for Professor Tennant, and there was no evidence that Professor Tennant herself was at fault. The mistake was partly attributable to the fact that the District Court decision was undated, so the date by which the right of appeal had to be exercised was not readily apparent. Potter J said that if Professor Tennant were

denied the opportunity to pursue her appeal, she would be prejudiced by solicitor error and that, in such circumstances, Courts have been influenced towards exercising their discretion in favour of granting leave, especially in the absence of significant prejudice to the other party. She cited in support of that proposition *State Insurance Limited v Brooker* [2003] 15 PRNZ 493 and *Grey v Elders Pastoral Holdings Limited* (1999) 13 PRNZ 353.

[3] In the present case, the Judge determined that, as Mr Simes had not demonstrated that he had suffered or would suffer any prejudice if leave to appeal out of time were granted, it was appropriate to grant leave. Accordingly, she did so.

Appeal

[4] Mr Simes then appealed to this Court against the decision of Potter J. We are thus faced with the unusual situation of an appeal to this Court against a High Court decision *granting* leave extending the time prescribed for appealing to the High Court. The granting of such leave means, by definition, that the appeal will proceed and both sides will have the opportunity to have the merits of the costs appeal heard by a High Court Judge. The more common situation is an appeal to this Court against a High Court decision *refusing* leave extending the time prescribed for appealing to the High Court. Such a decision has greater significance because it has the effect of bringing the proposed appeal to the High Court to an end. However, we do not think there is any basis for finding that the right to appeal against a decision to grant leave is any different from the right to appeal against a decision to refuse leave.

[5] Professor Tennant now applies to have Mr Simes' appeal to this Court dismissed or struck out, on the basis that the grant of leave extending time to appeal was made by Potter J under r 704(3) of the High Court Rules, and was a decision from which there could be no appeal under s 66 of the Judicature Act 1908. The application is strongly opposed by Mr Simes.

Relevant provisions

[6] Rule 704(3) of the High Court Rules says:

> By special leave, the [High] Court may extend the time prescribed for appealing if the enactment that confers the right of appeal-
>
> (a) permits the extension; or
>
> (b) does not limit the time prescribed for bringing the appeal.

[7] Section 66 of the Judicature Act 1908 provides:

> The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment, decree, or order save as hereinafter mentioned, of the High Court subject to the provisions of this Act and to such rules and orders for regulating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Act.

Submissions for Professor Tennant

[8] The essence of the case for Professor Tennant is that r 704(3) confers a discretion to grant leave on the High Court and excludes any right of appeal from the exercise of that discretion. In addition, it is submitted that s 66, which confers appellate jurisdiction on this Court, does not encompass a decision of the kind sought to be appealed in the present case.

Rule 704(3)

[9] Counsel for Professor Tennant, Mr McIntosh, said that this case fell within the rule established in *Lane v Esdaile* [1891] AC 210 and in *Re Housing of the Working Classes Act 1890 ex parte Stevenson* [1892] 1 QB 609 at 611 that there is no right of appeal against a refusal (or, presumably, the granting) of leave to appeal. In *Lane v Esdaile*, the House of Lords held that the it could not entertain an appeal from a refusal by the English Court of Appeal of leave to appeal to the Court of Appeal. The relevant legislation said that there was a right of appeal from any

"order or judgment" of the Court of Appeal to the House of Lords, but the House of Lords determined that the power to grant or refuse leave to appeal was a power entrusted to the Court of Appeal and that that Court's exercise of discretion was not an order or judgment from which there could be an appeal. The decision *in Ex parte Stevenson* was to the same effect. The English Court of Appeal followed *Ex parte Stevenson* in *Bland v Chief Supplementary Benefit Officer* [1983] 1 WLR 262 at 267.

[10] Mr McIntosh said that *Lane v Esdaile* and *Ex parte Stevenson* had been applied in New Zealand in *Collier v Elders Pastoral Limited (No 2)* (1991) 3 PRNZ 478 (which concerned an attempt to appeal to the Privy Council against a refusal to grant leave to appeal to this Court). He also referred us to the following:

(a) *Meates v Taylor* [1992] 2 NZLR 36, where this Court held that there is no right of appeal from the decision to grant or refuse an extension of time to seek leave to appeal against an interlocutory decision in relation to commercial list proceedings;

(b) *Seamar Holdings Limited v Kupe Group Limited* [1995] 2 NZLR 274, in which this Court held that there was no right to appeal against a decision to refuse leave to apply for review of a Master's decision under r 61C of the High Court Rules.

[11] Mr McIntosh accepted that in two cases, *Thompson v Turbott* [1963] NZLR 71 and *Langridge v Wilson* (1989) 3 PRNZ 341, appeals against refusals of special leave to bring an appeal after the expiry of the appeal period have been entertained by this Court. However, he said that, in both of those cases, the issue as to whether there was a right of appeal was not raised. He said that these cases had been noted by this Court in *Hetherington Limited v Carpenter* (1995) PRNZ 1 and had not prevented this Court from expressing an inclination to the view in that case that there was no appeal to the Court of Appeal from the exercise of a discretion in the High Court to refuse special leave to appeal out of time to the Court of Appeal.

[12] In summary, counsel submitted that:

(a) Rule 704(3), being a provision that gave the High Court discretion to grant leave to appeal out of time, fell within the principles articulated in *Lane v Esdaile*;

(b) Even if a decision under r 704(3) were characterised as an extension of time rather than a grant of leave, it would still not be open to appeal on the basis of the decision in *Meates v Taylor*;

(c) If an appeal were allowed in this case that would circumvent the object of r 704(3) to confer the discretion on the High Court. It would also result in an anomalous situation where there could be no appeal without leave from the substantive decision in the High Court (under s 67 of the Judicature Act 1908) but there would be an appeal as of right on the incidental procedural matter. He noted that this anomaly had been highlighted in *Seamar Holdings Limited v Kupe Group Limited* and was one of the reasons for the Court determining that there was no right of appeal in that case.

Section 66 of the Judicature Act

[13] Mr McIntosh also argued that an appeal from the exercise of discretion in the present case did not fall within s 66. He said it was clear from the authorities that the term "judgment decree or order" which appears in s 66 did not apply to all decisions. He referred to the decision of this Court in *Winstone Pulp International Limited v Attorney General* (1999) 13 PRNZ 593, in which this Court said that interlocutory decisions fell within three categories, namely:

(a) Those determining rights or liabilities that are an issue (i.e. the merits);

(b) Those deciding the shape of the substantive proceedings; and

(c) Those which are ancillary but are important rulings on times and procedures.

[14] In *Winstone*, the Court said that decisions in category (a) would be appealable while those in categories (b) and (c) would not be, unless there were exceptional circumstances that meant that substantive rights and liabilities were affected by the ruling.

[15] *Winstone* was a case involving leave to appeal from a decision in commercial list proceedings, so it involved s 24G, not s 66. But, in a decision delivered a few days later, *Association of Dispensing Opticians of NZ Inc v Opticians Board* [2000] 1 NZLR 158, this Court applied the same analysis to s 66 and held that s 66 did not confer jurisdiction to appeal every decision before the High Court in relation to a proceeding. That case related to interlocutory applications for leave to cross-examine, leave to file a further affidavit and for production of a document. The Court said that rulings made in the course of the hearing of proceedings or as part of the trial conduct or management process would not ordinarily be susceptible to interlocutory appeal, whereas rulings which had some substantive effect on rights and liabilities in issue would be.

[16] The Court referred to its earlier decision in *Murphy v Murphy* [1989] 1 NZLR 204, which concerned a purported appeal against the decision of a High Court Judge to decline an application that evidence be reheard in an appeal from a Family Court decision. In that case, Richardson J said at 206:

> It would be extraordinary if, while an appeal to this Court on the issues arising on the substantive appeal may be brought only with leave, an appeal on an incident of the hearing itself could be brought as of right. And it is not to be assumed that the legislature would ever have contemplated a sequence of appeals to this Court from a matter appealed from the District Court to the High Court. The better view is that any matters ancillary to the hearing of the appeal in the High Court…are not subject to separate appeal to this Court.

[17] It was also stated in *Murphy v Murphy* (by Bisson J at 209) that the fact that s 67 of the Judicature Act made express provision for appeals (but only with leave)

from the determination of the High Court on an appeal from an inferior Court meant that it was implicit that there was no jurisdiction or power for this Court to hear and determine an appeal from a judgment of the High Court on an interlocutory application in the course of hearing an appeal from the District Court.

[18] Counsel also referred to *Lobb v Phoenix Assurance Co Limited* [1988] 1 NZLR 285 and *Tait-Jones v Taylor-Jones* (1999) 13 PRNZ 308 to support Professor Tennant's position. In *Lobb*, this Court decided there was no right of appeal against a High Court decision granting leave to appeal to the Court of Appeal. In *Tait-Jones* the High Court found there was no right of appeal against a District Court decision declining leave to appeal to the High Court against a District Court decision refusing leave to commence testamentary promises proceedings out of time.

[19] He therefore submitted that:

(a) The decision to grant leave to Professor Tennant to file her appeal out of time was a decision on an application relating to a matter of procedure and ancillary to any relief claimed in the pleading, and was therefore outside the scope of s 66;

(b) It was also a decision on a procedural issue occurring in the course of an appeal from the District Court to the High Court and should not be appealable to the Court of Appeal as of right where an appeal from the substantive matter could be brought only with leave; and

(c) Being a grant of leave, the High Court's decision is in a special category that means it is not a "judgment, decree or order" in terms of s 66, but simply a permission to adopt a desired procedure (relying on the *Tait-Jones* decision).

Submission for Mr Simes

[20] Counsel for Mr Simes, Ms Simes, disputed the application of *Lane v Esdaile* to the present situation. She said that there was a distinction in principle between a

grant or refusal of special leave to bring a further appeal (where the substantive issue has already been considered twice) and a grant or refusal of an extension of time for the giving of notice of an appeal (where there has not been a previous consideration of the merits). She said *Lane v Esdaile* applied to the former situation, but not to the latter: *Rickards v Rickards* [1990] Fam 194 at 201 and *Foenander v Bond Lewis & Co* [2001] 2 All ER 1019 at [18].

[21] Ms Simes referred us to Canadian authority to the effect that there is a right of appeal against a decision granting or refusing an extension of time to appeal: *Cité du Pont Viau v Gauthier Manufacturing Limited* [1978] 2 SCR 516 at 521.

[22] Ms Simes also submitted that, even in relation to decisions granting or refusing special leave to appeal, a right of appeal can exist in some circumstances, relying principally on Canadian authority. She said such situations are where the Judge has disregarded or misunderstood some essential statutory condition or where there has been a breach of due process and/or the rules as to the exercise of the judicial discretion.

[23] In relation to the latter category she relied on the decision of this Court in *Harris v McIntosh* [2001] 3 NZLR 721 at 724. That case concerned an appeal against a refusal of leave under s 4(7) of the Limitation Act 1950 to bring a claim for exemplary damages in respect of alleged negligence by a dentist in the treatment and subsequent care of a patient. Ms Simes said there was no principled reason to distinguish between an appeal against the grant or refusal of leave to bring an appeal out of time (as in this case) and an appeal against the grant or refusal of leave to bring a proceeding out of time (as in *Harris v McIntosh*).

[24] Ms Simes said that r 704(3) did not exclude a right of appeal from the High Court's exercise of its discretion to grant special leave extending the time for the filing of an appeal. She said a decision under this rule was an exercise of judicial discretion and should be open to appeal on the same basis as other cases involving the exercise of such discretion.

[25] She also said that s 66 of the Judicature Act did not exclude a decision of the kind sought to be appealed in the present case. She submitted that we should not apply the decision in *Murphy v Murphy* in the circumstances of this case. In particular she said that the *Murphy* decision was based at least in part on the fact that the interlocutory ruling could be the subject of appeal as part of an appeal against the substantive decision. She said that was not so in the present case, because an application for special leave to bring an appeal out of time could not be challenged as part of an appeal against the decision made on the merits. She said that, contrary to the reasoning of Bisson J in *Murphy v Murphy*, s 67 of the Judicature Act should be seen as applying only to a final decision of the High Court in relation to an appeal from the District Court i.e. a decision where two different Courts have considered the matter. She said that s 67 did not apply to a preliminary or interlocutory matter within an appeal to the High Court from the District Court, where the issues are being considered for the first time.

[26] Ms Simes said that applying the test set out by Richardson J in the *Association of Dispensing Opticians* case, the present case should be seen as one where a right of appeal is appropriate. She said the decision of Potter J was not a ruling made in the course of a hearing of a proceeding or part of the trial conduct or management process. Rather it was a ruling which determined whether there would be an opportunity to bring an appeal at all, which had a substantive effect on the rights and liabilities in issue.

[27] Ms Simes said we should not apply decisions relating to appeals from interlocutory decisions made in commercial list matters, because of the particular requirements of s 24G of the Judicature Act. Thus, she said that the decisions of this Court in *Stone v Newman* (2002) 16 PRNZ 77, *Meates v Taylor* and the *Winstone* case should be distinguished from the present case.

[28] She also said that *Hetherington Limited v Carpenter* was distinguishable because the Court's comments about there being no right of appeal against a refusal of special leave to bring an appeal out of time were made in the context of a situation where an alternative route (an application for special leave to the Court of Appeal) existed.

[29] Ms Simes argued that the decisions in *Collier, Seamar* and *Tait-Jones* were distinguishable from the present case, and relied on the decisions in *Turbott* and *Langridge* as illustrating situations where this Court has heard appeals of the same kind as the present appeal.

[30] Ms Simes said that if Parliament had intended that there would be no appeal from a Judge's decision to grant an extension of time to bring an appeal, this would have been specifically stated in the Judicature Act or the High Court Rules. She said this Court should not impose a restriction on its jurisdiction to hear appeals in the absence of clear direction from the legislature requiring it to do so.

Discussion

[31] We accept Ms Simes' submission that a distinction has been drawn in England between an application for leave to appeal or special leave to appeal, and an application to extend the time to bring an appeal which exists as of right if brought in time. The decision in *Rickards v Rickards* is clear. If the same distinction applies in New Zealand, the line of authority which starts with *Lane v Esdaile* is not directly on point in the present case.

[32] It should be noted, however, that *Lane v Esdaile* was a case where leave to appeal was required only because the time for bringing an appeal out of time had elapsed. So, while it was a case involving a refusal of leave to appeal, it was in substance very similar to the situation in *Rickards v Rickards*. This was noted in *Rickards v Rickards*, but the distinction between the two situations was nevertheless decisive. Lord Donaldson of Lymington MR said at 201:

> The grant or refusal of an application for leave to appeal is one thing. The grant or refusal of an application to extend the time limited for taking a step in proceedings, including but not limited to giving notice of appeal, is quite another. It arises in a multitude of contexts, none of which have ever been held to be inherently unappealable [with one exception, which was found to be wrongly decided]…Whilst it is true that a right of appeal may be barred either by a refusal of an extension of time or by a refusal of leave, the routes by which the result is achieved and the underlying concepts are essentially different.

[33] In Rickards, the relevant statutory provision allowed for an appeal from a "determination" in the lower Court. The Court of Appeal said a decision on an application for an extension of time to appeal was a determination for that purpose. The Court overruled an earlier decision to the contrary: *Podbery v Peak* [1981] 1 All ER 699. In *Foenander v Bond Lewis & Co* the relevant statutory provision allowed for an appeal from any "judgment or order" of the High Court. A decision refusing an extension of time for the bringing of an appeal was found to be an "order" of a High Court judge for the purpose of that provision.

[34] In New Zealand, *Lobb v Phoenix Assurance Co Limited* establishes that a decision granting or refusing leave to appeal cannot itself be appealed to this Court. But *Thompson v Turbott* and *Langridge v Wilson* are both cases where appeals against decisions either granting or refusing leave extending the time for the bringing of an appeal were entertained, though the Court did not directly address the issue as to whether there was jurisdiction to hear the appeals. Nevertheless the contrast between *Lobb* on the one hand and *Turbott* and *Langridge* on the other suggests the same distinction should be drawn in New Zealand.

[35] When this Court did address the issue in *Hetherington Limited v Carpenter*, it expressed the view (without deciding the point) that there was no right of appeal to the Court of Appeal from the exercise of a discretion by a High Court Judge to refuse special leave to appeal out of time to the Court of Appeal. That is very similar to the situation in the present case, but the point was not finally decided in *Hetherington* because of the existence of an alternative course of action (an application for special leave to this Court) which meant that there was an alternative way of bringing the issue before this Court.

[36] The distinction between leave to appeal and an extension of time to appeal was apparently rejected by this Court in *Meates v Taylor*. That case involved a purported appeal to this Court against a decision in the High Court refusing to extend the time for the making of an application for leave to appeal against an interlocutory ruling in commercial list proceedings under s 24G of the Judicature Act 1908. In giving the judgment of the Court, Hardie Boys J relied on *Lane v Esdaile* and *Collier v Elders Pastoral Ltd* as authority for finding no jurisdiction to entertain the appeal.

He made it clear at 39 that he considered that there was no basis for distinguishing a refusal of leave to appeal from a refusal to extend time for bringing an appeal (or for seeking leave to bring an appeal in that case).

[37] In view of these apparently conflicting authorities, it is necessary to consider this matter from first principles, applying the particular statutory provisions which are relevant in the circumstances of this case.

[38] The starting point is s 66 of the Judicature Act, which provides a right of appeal from any "judgment, decree, or order…of the High Court", except as otherwise provided in the Judicature Act itself or in Rules made under that Act, such as the High Court Rules or the Court of Appeal (Civil) Rules. The question in this case is whether the decision granting an extension of time for the bringing of the appeal is a judgment, decree, or order of the High Court and, if so, whether any other provision of the Judicature Act or the Rules made under it leads to the conclusion that a right of appeal under s 66 does not apply in the present case.

[39] We are satisfied that it is established in New Zealand that there is no right of appeal against a decision of a lower court refusing leave to appeal: *Collier v Elders Pastoral Limited*, and *Lobb v Phoenix Assurance Co Limited*. Those cases are consistent with the English line of authority beginning with *Lane v Esdaile*.

[40] *Seamar Holdings Limited v Kupe Group Limited* is also consistent with that line of authority, though it is an unusual case because of the statutory context (r 61C of the High Court Rules dealing with a High Court Judge's review of an Associate Judge's decision) and the fact that the matter in respect of which leave to appeal had been sought in the High Court was an interlocutory matter in the course of the High Court review hearing.

[41] Hardie Boys J's judgment in *Meates v Taylor* suggests that decisions relating to extension of time for the bringing of an appeal (or seeking leave to do so) should be treated in the same way as decisions actually granting or refusing leave to appeal. However, the decision of the English Court of Appeal in *Rickards v Rickards* was not drawn to the Court's attention. Neither was the earlier decision of this Court in

Thompson v Turbott where an appeal against a decision of the High Court granting special leave extending the time for an appeal to this Court was considered and allowed.

[42] While we accept that there can, in some circumstances, be a great deal of similarity and overlap between a decision granting or refusing leave to appeal and a decision granting or refusing an extension of time to appeal, we have concluded that it is appropriate to follow the English authority in *Rickards v Rickards* and *Foenander v Bond Lewis & Co*. There is no material difference between the statutory provisions applying in those cases and s 66, and we are satisfied that a decision granting or refusing an extension of time for the bringing of an appeal is a "judgment, decree, or order" for the purposes of s 66. We think there is considerable force in the statement made by Lord Donaldson of Lymington MR that the granting or refusal of an application to extend time limited for taking a step in proceedings arises in many contexts, and there is no reason to treat such decisions differently because the step concerned is the bringing of an appeal.

[43] The decision of this Court in *Harris v McIntosh*, an appeal against a refusal of leave to commence proceedings out of time, is a good example. In that case, there was no dispute in this Court that such decision could be the subject of an appeal to this Court. We think there is considerable force in the argument made by Ms Simes that no principled distinction can be made in the present context between a decision refusing to extend time for the commencement of proceedings and a decision refusing to extend time for the commencing of an appeal.

[44] We are mindful that there will be no appeal as of right against the decision of the High Court on the substantive appeal against the District Court costs judgment. Rather, leave to appeal would need to be obtained under s 67 of the Judicature Act. Mr McIntosh referred us to a number of observations by this Court that it would be inappropriate to allow an appeal as of right against a procedural or interlocutory point in the course of the High Court appeal in circumstances where the substantive decision cannot be appealed in the absence of leave being granted. We do not think that concern arises in the present case. We do not see the present situation as being analogous with that which arose in the *Association of Dispensing Opticians* case. In

that case the appellants were seeking to appeal against procedural rulings which affected the way the hearing would be conducted in the High Court. The Court said at [36]:

> …rulings made either in the course of the hearing of the proceeding (using that term in a broad sense, including for example an adjournment application), or as part of the trial conduct or management process would not ordinarily be susceptible to interlocutory appeal. On the other hand rulings which have some substantive effect on rights and liabilities in issue would be. Obviously the boundary lines will not be cut and dried…

[45] One of the reasons for limiting the right of appeal in relation to interlocutory matters was that articulated by Richardson J in *Murphy v Murphy* at 206, which is reproduced at [16] above.

[46] In the present case, the application for extension of time to bring the appeal was a step which had to be taken as a precursor to bringing the appeal, rather than an interlocutory step in the course of the hearing of it. We think that this means that the application for extension of time is an independent application to the High Court which is separate from the appeal itself (should an extension of time be granted and the appeal be brought). It is not an interlocutory step in the course of the hearing of the appeal because there is no appeal at the time the application is considered by the Court. Accordingly, we believe that the concern expressed in *Murphy v Murphy* does not arise in the present case.

[47] We therefore conclude that, in the absence of any provision in the Judicature Act or in the High Court Rules or Court of Appeal (Civil) Rules to the contrary, the decision of Potter J, being a judgment, order or decree made in the High Court, is able to be appealed under s 66 of the Judicature Act. Accordingly, the application to strike out or dismiss the appeal must fail.

Merits

[48] We should not be taken as encouraging appeals against decisions of High Court judges refusing extensions of time to appeal and even less so appeals against decisions granting extensions of time. The decisions are discretionary, and the

threshold for success on an appeal against such a decision is high. As this Court noted in *Harris v McIntosh* at [13], it will be necessary to show that the High Court judge acted on a wrong principle, failed to take into account some relevant matter, took account of some irrelevant matter or was plainly wrong.

Strike out

[49] It is also appropriate that we reiterate what this Court said in the *Association of Dispensing Opticians* case about applications to strike out appeals at [37]:

> …the issue of jurisdiction is not easily separated from the merits and an application to strike out will rarely be appropriate. The preferable course is for any jurisdictional question to be dealt with as a threshold issue on the appeal and, if rejected, for the Court to go on and determine the substantive appeal.

Costs

[50] We award costs of $2,500 to Mr Simes, together with disbursements (including travel and accommodation costs of counsel, if any) to be agreed by counsel or, in the absence of agreement, to be fixed by the Registrar.

Postscript: Dating of Judgments

[51] Before leaving this matter, we record that the error by Professor Tennant's lawyers which led to the need to seek an extension of time was, at least partly, caused by the fact that the District Court judgment was undated. We strongly recommend that all Courts have internal procedures to ensure that all judgments are dated. Most rights of appeal are limited to strict statutory time periods commencing on the date on which judgment is given. In fairness to litigants who may want to exercise such rights, the judgment needs to be dated so it is readily apparent when the period during which an appeal must be brought commences.

Solicitors:
Purnell Creighton, Christchurch for Appellant
Russell McVeigh, Wellington for Respondent