

MASTEN, J., reading the judgment of the Court, said that the appellants claimed as creditors of the Middlesex Mills Limited, for the price of goods supplied. The appellants were not parties to this action, nor were they present or represented when the order complained of was made. They applied to this Court to set aside the clause of the order approving the agreement, without having obtained any leave to intervene in the action.

A preliminary objection was taken that, in these circumstances, the appellants had no status to appeal, and the Court had no jurisdiction to entertain their application.

The learned Judge said that he knew of no Rule or provision of the Judicature Act, and the Court had been referred to none, authorising such an appeal by strangers to the action; but the Court was referred to the old Chancery practice as stated in *In re Markham* (1880), 16 Ch.D. 1, referred to in *In re Securities Insurance Co.*, [1894] 3 Ch. 410. That case made it clear that leave to appeal may be granted to a person who, without being a party, is either bound by the order or is aggrieved by it, or is prejudicially affected by it; but it also made it clear that, unless such leave is granted on application for that purpose, such person cannot intervene and appeal.

In the present case no leave has been granted, and the appeal must therefore be dismissed.

With respect to the motion by the appellants for an order of this Court granting leave to appeal *nunc pro tunc*, there is no material before the Court on which to found such an application; the application should be made not to this appellate Court, but to the High Court Division; and on the facts now disclosed it should not be granted *ex parte*, even if the Rules permit such a course. And again, it was plain that the time for appealing from the order had long since expired.

As a motion for leave might hereafter be made by these appellants to the High Court Division, on notice to the other parties interested, the learned Judge refrained from discussing the merits of the case, as they appeared on the statement of counsel.

It was sufficient to say that the present application to this Court must be dismissed with costs.

It was not intended by anything said in this judgment to interfere with any claim that might be made under sec. 16 (f) of the Judicature Act.

*Appeal dismissed.*