

Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of The Canadian Pacific Railway Company for special leave to appeal to His Majesty in Council in the Matter of Blain v. The Canadian Pacific Railway Company, from the Supreme Court of Canada; delivered the 7th June 1904.

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

The question which is put forward by the Petitioners as the important question of law, for the decision of which they ask this Board to advise the Crown to exercise its prerogative of giving leave to appeal from the Supreme Court of Canada, is thus stated in the Petition: "The
" Petitioners submit that their obligations to
" their passengers, whether arising out of con-
" tract, or otherwise, do not include the duty
" of protecting them against assaults by their
" fellow-passengers, or render them answerable
" in damages for failure to afford such pro-
" tection." Their Lordships are not disposed to advise His Majesty to give leave to appeal from the Supreme Court for the purpose of discussing that question. They repeat what was said by this Board in the case of *Clergue v. Murray*, *Ex parte Clergue* (1903, App. Ca., p. 521), where, as in the present case, the Petitioner elected to appeal to the Supreme Court, and not to His Majesty in Council direct, as he might have done. After quoting the case of *Prince v. Gagnon* (8 App. Ca., 103), and *The Consumers' Cordage*

Company, Limited, v. Connolly, their Lordships say this :—“ It would be nothing less than a mis-
“ carriage of justice if their Lordships were to
“ impose on the Respondents (the Defendants in
“ the action) a fourth hearing of the case with all
“ the expenses attendant upon an Appeal to His
“ Majesty in Council, after there have been
“ three decisions in the Canadian Courts, the
“ final decision being that of the Supreme Court
“ of the Dominion, which is entitled to every
“ confidence on the part of the Canadian people.”

Their Lordships will humbly advise His Majesty that the Petition ought to be dismissed. The Petitioners will pay the Respondent's costs of opposing the Petition.
