

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of The Midland Navigation Company Limited for special leave to appeal to His Majesty in Council in the matter of The Midland Navigation Company Limited v. The Dominion Elevator Company Limited, from the Supreme Court of Canada; delivered the 26th July 1904.*

Present:

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

Their Lordships think that this is not a case in which they can advise His Majesty to exercise His Prerogative. It is not for their Lordships to say whether they would, or would not, have drawn the same inferences of fact as were drawn in the Supreme Court. The Petitioners seek to appeal from an adverse decision of the Supreme Court—invoked, it may be added, by themselves, because they were the Appellants to the Supreme Court. They come here, therefore, to ask for special leave to appeal, and the conditions under which such a leave can alone be granted are now very well known to gentlemen practising at the Bar, or ought to be. They would have to make out that there was a question of law of such great and general importance as would justify their Lordships in advising the exercise of the Prerogative. So far as their Lordships can make out, no question of law at all arises here. The learned Counsel for the Petitioners was asked to state the question of law, and he

did not succeed in satisfying their Lordships that there was any question of law in the case. This is a simple case of a shipowner making a contract for a cargo of wheat to be shipped in his ship at a certain hour, on a certain day, and sending his ship to the port to obtain the cargo. The duties of the parties are reciprocal. The shipowner must have his ship there in time to receive the cargo, so as to get the cargo on board before the stipulated hour, and the shipper must have his cargo ready to be put on board in time to enable the ship to clear before the stipulated hour. Whether either of those parties failed in the discharge of their part of the contract is absolutely, and entirely, a question of fact, and the inference has to be drawn from the circumstances of the particular case. Their Lordships therefore think, without expressing any opinion as to whether the decision of the Supreme Court was either right or wrong, that this is not a case in which they ought, consistently with established principles, to advise His Majesty to exercise His Prerogative. They will accordingly humbly advise His Majesty that the Petition ought to be dismissed. The Petitioners must pay the costs of the Petition.

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