Judgement of the Lords of the Judicial Committee of the Privy Council on the Petition for special leave to appeal of Robert MacMillan v. *The Grand Trunk Railway Company of Canada, from the Supreme Court of Canada; delivered Friday, May 17th, 1889.*

Present:

LORD WATSON.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

WITH regard to applications like the present, the following rules were laid down by this Board in the case of *Prince* v. *Gagnon* (8 Appeal Cases, 103), "Their Lordships are not prepared to "advise Her Majesty to exercise her prerogative "by admitting an appeal to Her Majesty in "Council from the Supreme Court of the "Dominion, save where the case is of gravity, "involving matter of public interest, or some "important question of law, or affecting property "of considerable amount, or where the case is "otherwise of some public importance of a very "substantial character." This case admittedly does not affect property of considerable amount, nor can it well be described as being of a very substantial character, because after giving credit for the sum already paid by the Canadian Pacific Railway on account of the Petitioner's claims, the sum at stake is reduced to something under 250*l.* sterling. It is therefore necessary to consider whether the judgment of the Supreme Court of Canada against which leave is sought to appeal, involves and determines matter of public interest or an important question of law.

A 58750. 50.—5/89. Wt. 1260. E. & S.

It appears to their Lordships that it does neither. The settlement made between the Petitioner and the Canadian Pacific Railway, taking the account given of it in the Petition, makes it exceedingly doubtful whether it would be open to this Board to decide the legal question upon which four of the learned judges of the Supreme Court of Canada entertained different opinions.

In the next place, if the question which the Petitioner desires to raise had related to the usual practice of the Grand Trunk Railway in making contracts with consignors of goods, there might have been some room for admitting the appeal, if the court had put an authoritative construction upon the ordinary form of contract. But that is not the fact. This is an exceptional case; the jury, according to the statement of the Petitioner having found that the Respondents' usual form of contract was not adopted when they undertook to carry the Petitioner's goods.

Then it is said that the judgment of the Supreme Court establishes an important precedent. If it had done so, as their Lordships have already indicated, there might have been some reason for entertaining this application. But again, on examining the judgment as set forth in these papers, it turns out that upon the question of law the learned judges were two to two, and the decision went upon the ground that a fifth judge, the learned Chief Justice, was of opinion that the point upon which the other judges had differed did not arise in the case. It is quite impossible that a judgment attained by such division of opinion can bind the Supreme Court of Canada, or the Courts of Appeal in the Provinces, and therefore it appears to their Lordships that, upon all points requisite in order to warrant their advising Her Majesty to exercise her prerogative, the Petitioner's case, upon his own statement, fails.