

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Petition of The
Victorian Railway Commissioners for special
leave to appeal in the matter of The Victorian
Railway Commissioners v. Brown, from the
High Court of Australia; delivered the 20th
June 1906.*

Present :

THE EARL OF HALSBURY.

LORD DAVEY.

SIR ARTHUR WILSON.

SIR ALFRED WILLS.

[Delivered by Lord Davey.]

Their Lordships have considered the very full statement of the grounds for this Petition by Sir Robert Finlay, but they cannot see their way to advise His Majesty to grant special leave to appeal in this case.

One matter which weighs in their Lordships' minds very much is that the Victorian Railway Commissioners, who are the proposed Appellants on this Petition, have elected the Court to which they will appeal. They had the option, if they thought fit, of appealing direct from the Supreme Court of Victoria to His Majesty in Council; or they might elect to go to the High Court, from which it is known that there is no appeal unless special leave be given.

Now the High Court of Australia is a Court of the very highest authority, as to which Lord Macnaghten in delivering the Judgment of this Board in the case of the "Daily Telegraph" Newspaper Company, Limited, *v. McLaughlin* (Appeal Cases 1904, page 777), says:—"It occupies a position of great dignity and supreme authority in the Commonwealth. No appeal lies from it as of right to any tribunal in the Empire." If the parties think fit to appeal

to the High Court instead of coming to this Board and the Judgment appealed from is affirmed by the High Court, their Lordships will not as a rule entertain a Petition for special leave to appeal. Their Lordships say "as a rule" advisedly, because it must not be understood that their Lordships disclaim their power of doing so, but a very special case must be made in order to induce them to exercise their power.

The same point arose with reference to the Supreme Court of Canada in the case of *Clergue v. Murray* (Appeal Cases 1903, page 521). After stating the well-known principles upon which this Board has advised leave to appeal from the Supreme Court of Canada, their Lordships say this: "And in the case of the *Consumers Cordage Company v. Connolly* (which was a Petition for leave to appeal from a Judgment of the Supreme Court of Canada heard by this Board on June 27th, 1901), it was said that where a person has elected to go to the Supreme Court it is not the practice to allow him to come to this Board except in a very strong case. It is different where a man is taken before the Supreme Court, because he cannot help it. But where a man elects to go to the Supreme Court, having his choice whether he will go there or not, this Board will not give him assistance except under very special circumstances."

Exactly the same considerations apply to a Petition for leave to appeal from the High Court of Australia, and their Lordships, being of opinion that the circumstances of this case are not of that special character, will therefore humbly advise His Majesty that the Petition be dismissed.
