[PRIVY COUNCIL.]

DAILY TELEGRAPH NEWSPAPER CO. LTD. APPELLANTS;

AND

McLAUGHLIN . . . . . RESPONDENT.

[ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.]

PRIVY COUNCIL.* 1904. July 15.

Special leave to appeal from High Court—Reasons for refusing—Judgment appealed from unattended with sufficient doubt.

Special leave to appeal to His Majesty in Council from a judgment of the High Court will not be granted by the Judicial Committee, even in a case involving a large amount of money and important questions of law, where it appears to them that the judgment from which leave to appeal is sought is plainly right or unattended with sufficient doubt to justify the granting of leave.

Observations of Lord *Watson* in *La Cité de Montréal* v. *Les Ecclésiastiques du Seminaire de St. Sulpice de Montréal*, 14 App. Cas., 660, at p. 662, as to the rules to be followed in granting special leave to appeal from the Supreme Court of Canada, applied.

Petition for special leave to appeal from the judgment of the High Court in *McLaughlin* v. *Daily Telegraph Newspaper Co. Ltd.* (*ante* p. 243) dismissed with costs on this ground.

PETITION for special leave to appeal to His Majesty in Council from the decision of the High Court (*ante*, p. 243).

The judgment of their Lordships was delivered by

LORD MACNAGHTEN. As this is the first instance in which an application has been made for special leave to appeal to His Majesty from a decision of the High Court of Australia, their Lordships think it desirable to state the principles which, in their opinion, ought to guide this Board in tendering advice to His Majesty in such a case. The High Court occupies a position of

Present—LORD MACNAGHTEN, LORD DAVEY, LORD ROBERTSON, LORD LINDLEY and SIR ARTHUR WILSON.

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great dignity and supreme authority in the Commonwealth. No appeal lies from it as of right to any tribunal in the Empire. There can be no appeal at all unless His Majesty, by virtue of his Royal prerogative, thinks fit to grant special leave to appeal to himself in Council. In certain cases touching the Constitution of the Commonwealth the Royal prerogative has been waived. In all other cases it seems to their Lordships that applications for special leave to appeal from the High Court ought to be treated in the same manner as applications for special leave to appeal from the Supreme Court of Canada, an equally august and independent tribunal. And their Lordships think that they cannot do better than repeat the observations which were made by Lord *Watson*, in delivering the judgment of this Board in the case of a petition to Her late Majesty, in which the City of Montreal was the applicant; *La Cité de Montréal* v. *Les Ecclésiastiques du Seminaire de St. Sulpice de Montréal* (14 App. Cas., 660, at p. 662).

"It is the duty of their Lordships," said Lord *Watson* in that case, "to advise Her Majesty in the exercise of her prerogative, and in the discharge of that duty they are bound to apply their judicial discretion to the particular facts and circumstances of each case as presented to them. In forming an opinion as to the propriety of allowing an appeal, they must necessarily rely to a very great extent upon the statements contained in the petition with regard to the import and effect of the judgment complained of, and the reasons therein alleged for treating it as an exceptional one, and permitting it to be brought under review. Experience has shown that great caution is required in accepting these reasons, when they are not fully substantiated, or do not appear to be *primâ facie* established by reference to the petitioner's statement of the main facts of the case, and the questions of law to which these give rise. Cases vary so widely in their circumstances that the principles upon which an appeal ought to be allowed do not admit of anything approaching to exhaustive definition. No rule can be laid down which would not necessarily be subject to future qualification, and an attempt to formulate any such rule might therefore prove misleading. In some cases, as in *Prince* v. *Gagnon*, (8 App. Cas., 103), their Lordships have

had occasion to indicate certain particulars, the absence of which will have a strong influence in inducing them to advise that leave should not be given, but it by no means follows that leave will be recommended in all cases in which these features occur. A case may be of a substantial character, may involve matter of great public interest, and may raise an important question of law, and yet the judgment from which leave to appeal is sought may appear to be plainly right, or at least to be unattended with sufficient doubt to justify their Lordships in advising Her Majesty to grant leave to appeal."

In *Prince* v. *Gagnon*, to which Lord *Watson* refers, it was stated that their Lordships were not prepared to advise Her late Majesty to exercise her prerogative by admitting an appeal to Her Majesty in Council from the Supreme Court of Canada, "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 or of a very substantial character."

In the present case the question before the High Court was a question partly of fact and partly of law. The action was brought to recover from a limited company certain shares which had formerly stood in the plaintiff's name, but had been transferred under the authority of a deed purporting to have been executed by the plaintiff by his attorney. His case was that the power of attorney, though it bore his genuine signature, was void, because at the time when his signature was obtained he was of unsound mind, and incapable of understanding what he was doing. After a careful review of the facts, the High Court, differing from the Judge of first instance, came to the conclusion that, when the plaintiff executed the power of attorney in question, "he had no knowledge of what he was doing except that he knew that he was signing his name, which under the circumstances was, as described by Dr. Lamrock," who was his medical attendant, "a mere mechanical act." Having come to this conclusion on the facts of the case the High Court held that the power of attorney was void and the deed of transfer a nullity. Now the petitioners, as their Lordships understand, do not propose to contest the finding of the High Court on the question of fact, nor indeed would their Lordships be disposed to advise His Majesty to admit an

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appeal on such a question. The petitioners, however, allege that the case involves a large sum of money, as apparently it does, and that the question is one of general interest, which may also be admitted. But their Lordships, having had the advantage of hearing argument on both sides, see no reason to doubt that the judgment of the High Court is right. The case of *Thompson* v. *Leach*, (3 Mod., 301 ; Carthew, 435), referred to in the judgment of the High Court, seems to be an authority on the point; and the case of *Elliot* v. *Ince* (7 D. M. & G., 475), which is also referred to in the judgment in one of its aspects, though not the one chiefly discussed, comes very near the present case. There a lady who was tenant-in-tail of copyholds executed a power of attorney authorizing her attorney, first, to procure her admission as tenant-in-tail and, secondly, to surrender after admission, and then to take re-admission in fee. She was a lunatic so found at the time of the execution of the power of attorney. All the proceedings contemplated were taken, and on the face of them appeared to be regular. It was contended after her death that she died entitled to the copyholds in fee. The Vice-Chancellor so decided. But Lord *Cranworth*, L.C., on appeal, held that unless a lucid interval were proved she must be treated as tenant-in-tail. His Lordship's view was that everything depended on the validity of the power of attorney, and that, if she was of unsound mind when she executed the power of attorney, "the substratum," to use his Lordship's expression, was "removed." Now, if the power of attorney is mere waste paper, it is difficult to see how anything which rests on it as the foundation and groundwork of the whole superstructure can be of any validity, whether the transaction is beneficial to the lunatic or not. The risk to a company acting on a power of attorney is no doubt considerable, but the directors can protect themselves to some extent by making careful enquiries —a precaution not apparently taken in the present case. As custodians of the register they cannot expect perfect immunity. They are always exposed to the risk of forgery.

Their Lordships therefore are unable to advise His Majesty to grant special leave to appeal, and the petition must be dismissed with costs.

Petition dismissed with costs.