[PRIVY COUNCIL.]

VICTORIAN RAILWAYS COMMISSIONERS. APPELLANTS;

AND

GEORGE BROWN . . . . . RESPONDENT.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

Appeal to Privy Council from High Court—Special leave—Election of party as to tribunal.

PRIVY COUNCIL.*

1906.

June 20.

If a party chooses to appeal from the Supreme Court of a State to the High Court instead of to the Privy Council, and the judgment appealed from is affirmed by the High Court, the Privy Council will not as a rule entertain a petition for special leave to appeal.

PETITION for special leave to appeal to His Majesty in Council from the decision of the High Court (*Victorian Railways Commissioners* v. *Brown*) (1).

The judgment of their Lordships was 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 Railways 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,

**Present.*—The Earl of Halsbury, Lord Davey, Sir Arthur Wilson, Sir Alfred Wills.

(1) 3 C.L.R., 316.

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 Co. Ltd.* v. *McLaughlin* (1), says:—"The High Court 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* (2). 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 Co. Ltd.* v. *Connolly* (which was a petition for special leave to appeal from a judgment of the Supreme Court of Canada, heard by this Committee on June 27, 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 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.

(1) (1904) A.C., 776, at p. 777. (2) (1903) A.C., 521, at p. 522.