

PRIVY
COUNCIL.
1906.
—
COLONIAL
BANK OF
AUSTRALASIA
LTD.
v.
MARSHALL.

agree with the High Court of Australia in holding that there was no evidence proper to be left to the jury of negligence on the part of the respondents. They will humbly advise His Majesty that this appeal should be dismissed.

The appellant bank will pay the respondents' costs of and incidental to the appeal as between solicitor and client.

Appeal dismissed with costs.

[PRIVY COUNCIL.]

WILFLEY ORE CONCENTRATOR SYNDI- }
CATE LIMITED } APPELLANTS ;

AND

N. GUTHRIDGE LIMITED DEFENDANTS.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

PRIVY
COUNCIL.*
1906.
—
June 27.

*Appeal to the Privy Council from High Court—Special leave—No question of law—
Case of great importance to parties—No question of public importance.*

There being in a judgment of the High Court no question of law upon which that judgment could be objected to, the fact that the case is one of a substantial character and of great importance to the parties is not a sufficient ground for granting special leave to appeal to the Privy Council.

Petition for special leave to appeal from the judgment of the High Court in *N. Guthridge Limited v. Wilfley Ore Concentrator Syndicate Limited*, 3 C.L.R., 583, dismissed.

PETITION for special leave to appeal to His Majesty in Council from the decision of the High Court: *N. Guthridge Limited v. Wilfley Ore Concentrator Syndicate Limited* (1).

* *Present.*—Lord Davey, Sir Arthur Wilson, Sir Alfred Wills. (1) 3 C.L.R., 583.

The judgment of their Lordships was delivered by

LORD DAVEY. Their Lordships have very carefully considered this petition and have had an opportunity of considering the arguments by Mr. Terrell in support of it. They have also looked through the judgment of the learned Chief Justice in the High Court, and they see no fault to find with the law as there laid down. Whether it was rightly applied to the particular case is, of course, another question, but the law as laid down seems to their Lordships to be in entire accordance with the judgment of the House of Lords in the case of *The Anglo-American Brush Electric Light Corporation v. King, Brown, & Co.* (1). Both the judgments of Lord *Halsbury* (then Lord Chancellor) and of Lord *Watson* expressly lay down that the specification is not required to contain "explanations or directions which would enable a workman of ordinary skill to construct" the patented invention. All that is required is that the specification of the patentee should "convey to men of science and employers of labour information which will enable them, without any exercise of inventive ingenuity to understand his invention and to give a workman the specific directions which he failed to communicate." Therefore the construction of the document was, as the Chief Justice says, a matter for the Court, and the Court put its construction upon it, and held that it did disclose the invention in a sufficient way to enable a mining mechanician, or a mining engineer, to give the necessary directions to the skilled workmen who were to make the machine in accordance with it. It appears, therefore, to their Lordships that there is no question of law upon which the judgment of the learned Chief Justice can be objected to. It is a question of great importance no doubt, but a mere question concerning the value of the patent to the parties themselves, or, in other words, it is a matter of private right, and not one involving any question of public importance.

Mr. Terrell said quite truly that this Board had laid down that, in considering the question of whether leave to appeal should be given from the High Court of Australia, it would act upon the same principles on which it has been in the habit of acting on

PRIVY
COUNCIL.
1906.

WILFLEY
ORE CONCEN-
TRATOR
SYNDICATE
LTD.
v.
GUTHRIDGE.

(1) (1892) A.C., 367.

PRIVY
COUNCIL.
1906.
—
WILFLEY
ORE CONCEN-
TRATOR
SYNDICATE
LTD.
v.
GUTHRIDGE.
—

similar applications for leave to appeal from the Supreme Court of Canada, and he referred to the case of *Prince v. Gagnon* (1) in which Lord *Fitzgerald* specified certain circumstances under which the Board would be disposed to advise an exercise of the prerogative; but the case of *Prince v. Gagnon* was commented upon by Lord *Watson* in the well-known case of *La Cité de Montréal v. Les Ecclésiastiques du Séminaire de St. Sulpice de Montréal* (2), in the following words:—"It is the duty of their Lordships 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 shewn that great caution is required in accepting these reasons when they are not fully substantiated, or do not appear to be *prima 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* (1), 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."

(1) 8 App. Cas., 103.

(2) 14 App. Cas., 660., at p. 662.

List
Stamp Duties,
Chief
Commissioner
of v Buckle
(1998) 72
ALJR 243

List
Stamp Duties,
Chief
Commissioner
of v Buckle
(1998) 37
ATR 393

The present case is said, no doubt, to be of a very substantial character; but in the opinion of their Lordships that is not a sufficient ground to induce them to recommend His Majesty to give leave to appeal from the decision of the High Court of Australia. They will, therefore, humbly advise His Majesty that the petition ought to be dismissed. The petitioners must pay the costs of the petition.

PRIVY
COUNCIL.
1906.

WILFLEY
ORE CONCEN-
TRATOR
SYNDICATE
LTD.
r.
GUTHRIDGE.

Appl
Nicholas'
Trusts, Re 85
FLR 188

Expl/Dist
Davidson
(Collector of
Imposts) v
Charnside
(1906) 7 CLR
324

Appl
Stamp Duties,
Chief Comr of
v Buckle
(1995) 38
NSWLR 574

Dist
CSD (NSW) v
Buckle (1998)
192 CLR 226

[HIGH COURT OF AUSTRALIA.]

DAVIDSON (COLLECTOR OF IMPOSTS) . . . APPELLANT;

AND

ARMYTAGE RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

Stamps Act 1892 (Vict.) (No. 1274), secs. 4, 28, Schedule, Part VIII.—Stamp duty
—“*Deed of settlement*”—*Deed executing special power of appointment.*

H. C. OF A.
1906.

A deed exercising a special power of appointment created by a settlement, which was executed at a time when no *ad valorem* duty was payable thereon, is a “*deed of settlement*” within the meaning of Part VIII. of the Schedule to the *Stamps Act 1892*.

MELBOURNE,
Sept. 24, 25,
26; *Oct.* 15.

Moffat v. Collector of Imposts, 22 V.L.R., 164; 18 A.L.T., 144, approved.

Griffith C.J.,
Barton and
O'Connor JJ.

The value of the actual interest dealt with in such deed is the basis on which the duty is to be assessed.

Decision of Full Court (*Armytage v. Collector of Imposts*, (1906) V.L.R., 504; 28 A.L.T., 9), reversed.

APPEAL from the Supreme Court of Victoria.

A special case was stated by the Comptroller of Stamps for Victoria under sec. 71 of the *Stamps Act 1890* (Vict.), which set out the following facts: On 1st March 1886 a disentailing assurance and re-settlement was made between Frederick W. Armytage,