that very matter, viz.:—"I agree to allow the Commissioner, by his officers or servants, to enter upon the land and burn off the grass should they consider it necessary." It is very difficult to imagine words more distinct to reserve control, and, as the only argument to differentiate this case from *Dennis* v. *Victorian Railways Commissioner* (1), was that the Commissioners had lost control of the land, I think the reference which has just been made to that agreement disposes of that objection. I therefore think the appeal should be dismissed.

HIGGINS J. I concur. I think the Commissioners cannot keep control of the land and at the same time escape the consequences of having that control.

Appeal dismissed with costs.

Solicitor, for appellants, *Guinness*, Crown Solicitor for Victoria.
Solicitors, for respondents, *Blake & Riggall*, Melbourne.

B. L.

[HIGH COURT OF AUSTRALIA.]

McGEE . . . . . APPELLANT;

AND

THE KING . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

Appeal to High Court—Special leave—Appeal in criminal matter.

The High Court will not grant special leave to appeal in a criminal matter unless there is reason to think that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done.

In re Dillet, 12 App. Cas., 459; *Ex parte Deeming*, (1892) A.C., 422; and *Kops* v. *The Queen*; *Ex parte Kops*, (1894) A.C., 650, followed.

Therefore, where on a criminal trial a written statement made by a person supposed to be about to die, and who had since died, was admitted in evidence

(1) 28 V.L.R., 576; 24 A.L.T., 196.

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for the prosecution, and there was evidence that the prisoner afterwards admitted that the statement was true, and the prisoner was convicted:

Held, that special leave to appeal from the conviction should be refused, notwithstanding that the evidence might not be admissible under the provisions of a Statute relating to the admission of depositions on the ground of a failure to comply with some provision of the statutory law.

Special leave to appeal from decision of Supreme Court (*R.* v. *Hansen & McGee*, 9 W.A.L.R., 92), refused.

APPLICATION for special leave to appeal from the Supreme Court of Western Australia.

At the Criminal Sessions of the Circuit Court at Kalgoorlie on 20th March 1907, William Hansen and John Andrew McGee were charged with (1) attempting to steal and in order to do so opening a locked receptacle by means of a key; (2) attempting to steal gold about a mine; (3) being in a building with intent to commit a crime.

During the trial evidence was given on behalf of the Crown that one Edward Marley was dead, and thereupon a statement made by Marley, in the form of a deposition, was tendered in evidence, and counsel for the prisoner objected to its being received in evidence on the ground that, whether it was tendered under secs. 110, 111 and 112 of the *Justices Act* 1902 or under sec. 108 of the *Evidence Act* 1906, it was not admissible in evidence on several grounds. The objection was overruled and the evidence was admitted. There was evidence that McGee was present when the statement was made by Marley and cross-examined him, and that after the statement was made McGee said to a constable in whose custody he was "that he was pleased that Marley had made a statement and that he had told the truth."

The prisoners having been convicted on all the counts, *Parker* C.J., before whom the trial took place, on the application of counsel for McGee, stated a case for the opinion of the Full Court as to the admissibility in evidence of the deposition of Marley. The Full Court (*Parker* C.J., *McMillan*, *Burnside*, and *Rooth* JJ.), held that the evidence was admissible, and affirmed the conviction: *R.* v. *Hansen & McGee* (1).

(1) 9 W.A.L.R., 92.

Application was now made on behalf of McGee to the High Court for special leave to appeal from this decision.

Starke, for the appellant.

GRIFFITH C.J. The rule laid down by the Privy Council as to the kind of criminal cases in which special leave to appeal will be granted is well established, and may best be expressed by reading two or three passages from judgments of that Board. In the case of *Reg.* v. *Bertrand* (1), *Sir John Coleridge*, with whom were associated Lord *Wensleydale* and *Sir Edward Vaughan Williams*, delivered the opinion of the Judicial Committee, in which he said:—"The result is, that any application to be allowed to appeal in a criminal case comes to this Committee labouring under a great preliminary difficulty—a difficulty not always overcome by the mere suggestion of hardship in the circumstances of the case; yet the difficulty is not invincible. It is not necessary, and perhaps it would not be wise, to attempt to point out all the grounds which may be available for the purpose; but it may safely be said, that when the suggestions, if true, raise questions of great and general importance, and likely to occur often, and also where, if true, they show the due and orderly administration of the law interrupted, or diverted into a new course, which might create a precedent for the future; and also where there is no other means of preventing these consequences, then it will be proper for this Committee to entertain an appeal, if referred to it for its decision."

In the judgment in a previous case of *Falkland Islands Co.* v. *The Queen* (2) which was quoted in *Reg.* v. *Bertrand* (3), and was also quoted in the later case of *In re Dillet* (4), this passage occurs:—"It may be assumed that the Queen has authority by virtue of her prerogative to review the decisions of all colonial Courts, whether the proceedings be of a civil or criminal character, unless Her Majesty has parted with such authority. But the inconvenience of entertaining such appeals in cases of a strictly criminal nature is so great, the obstruction which it would offer

(1) L.R. 1 P.C., 520, at p. 530.
(2) 1 Moo. P.C.C. (N.S.), 299, at p. 312.
(3) L.R. 1 P.C., 520.
(4) 12 App. Cas., 459, at p. 466.

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to the administration of justice in the colonies is so obvious, that it is very rarely that applications to this Board similar to the present have been attended by success." In *Kops* v. *The Queen*; *Ex parte Kops* (1), Lord *Herschell* L.C. quoted with approval the following passage from *In re Dillet* (2), which was again quoted with approval in *Ex parte Deeming* (3):—"The rule has been repeatedly laid down, and has been invariably followed, that Her Majesty will not review or interfere with the course of criminal proceedings, unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done." That rule has several times been followed by this Court.

In the present case it is suggested that a deposition by a person who was dangerously ill and was not expected to live, taken in the presence of the accused, who cross-examined the deponent, and who afterwards admitted that that deposition was true, was on technical grounds inadmissible in evidence. It is clear that that is not a case in which it appears that "substantial and grave injustice has been done." That is a sufficient reason why special leave to appeal should be refused.

O'CONNOR J. and ISAACS J. concurred.

HIGGINS J. I should like to add that in *Ex parte Carew* (4) those cases to which the Chief Justice has referred have been followed.

Special leave to appeal refused.

Attorneys, *Gaunson & Lonie*, Melbourne, for *Smith & Lavan*, Perth.

B. L.

(1) (1894) A.C., 650, at p. 652.
(2) 12 App. Cas., 459, at p. 467.
(3) (1892) A.C., 422, at p. 423.
(4) (1897) A.C., 719.