Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of Bertrand J. Clergue and Another for special leave to appeal to His Majesty in Council from a Judgment of the Supreme Court of Canada pronounced in the Matter of Clergue and Another (Plaintiffs) v. Elizabeth Murray and Another (Defendants); delivered the 21st July 1903.

Present:

LORD DAVEY.
LORD JAMES OF HEREFORD.
LORD ROBERTSON.
SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

THE Petitioners in this case brought an action in the High Court of Justice for Ontario for specific performance of an alleged contract. The High Court held that there was no contract in fact, and that, if there was a contract, there was no memorandum in writing to satisfy the Statute of Frauds. The Petitioners then appealed to the Court of Appeal for Ontario, which Court confirmed the decision of the High Court. The Petitioners were still dissatisfied. They had now two courses open to them. They might appeal either to His Majesty in Council, or to the Supreme Court of Canada. They elected to appeal to the Supreme Court of Canada, and the Supreme Court took the same view that had been taken in the Court of Appeal for Ontario and dismissed the Appeal. They now come to this Board, and ask this Board to advise His Majesty to give special leave to appeal from the Judgment of the Supreme Court of Canada.

According to c. 135 of the Revised Statutes of Canada, 1886, Section 71, there is no Appeal

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from any judgment or order of the Supreme Court of Canada (which is, as its name imports, the Supreme Court of the Dominion) except by special leave of His Majesty in Council.

The principles upon which this Board will advise His Majesty to grant special leave to appeal from the Supreme Court of Canada have been laid down over and over again. Their Lordships repeat these principles now, because it appears from this case, as from other cases, that Canadian Counsel do not always observe them. In the case of *Prince* v. *Gagnon* (8 A.C., 103), this Board said:—"Before the constitution of the "Supreme Court of the Dominion of Canada "there was a right to appeal from the Courts "then in existence where the value of the matter "in controversy was beyond 500*l*., but that does "not apply to the Supreme Court. The language "of the Legislature of the Dominion is: 'The "'judgment of the Supreme Court shall in all "'cases be final and conclusive . . . saving "'any right which Her Majesty may be "'graciously pleased to exercise by virtue of "'Her Royal prerogative'; and their Lordships "are not prepared to advise Her Majesty to "exercise Her prerogative by admitting an "Appeal to Her Majesty in Council from the "Supreme Court of the Dominion, 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." Accordingly their Lordships did not advise Her Majesty to allow an Appeal in that case.

Rev. Stat. of Canada, 1886, c. 135, s. 71.

Those principles have been consistently acted on by this Board. And in the case of *The Consumers' Cordage Company, Limited,* 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 the 27th June 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.

Their Lordships think that Canadian Counsel ought to consider these principles before bringing a case like the present before them. It would be nothing less than a miscarriage of justice if their Lordships were to impose on the Respondents (the Defendants in the action) a fourth hearing of the case, with all the expenses attendant upon an Appeal to His Majesty in Council, after there have been three decisions in the Canadian Courts, the final decision being that of the Supreme Court of the Dominion which is entitled to every confidence on the part of the Canadian people.

In the opinion of their Lordships this Petition is one which ought never to have been presented, and they will humbly advise His Majesty that it ought to be dismissed.