Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of Wilfley Ore Concentrator Syndicate, Limited, for special leave to appeal to His Majesty in Council in the matter of Wilfley Ore Concentrator Syndicate, Limited (Plaintiff), v. N. Guthridge, Limited (Defendant), from the High Court of Australia; delivered the 27th June 1906.

Present:

LORD DAVEY.
SIR ARTHUR WILSON.
SIR ALFRED WILLS.

[*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.* (1892, App. Ca., p. 367). 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 con-"struct" 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

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" 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 similar applications for leave to appeal from the Supreme Court of Canada, and he referred to the case of *Prince* v. *Gagnon* (L.R. 8 A.C. 103) 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* (L.R. 14, A.C. 660) in the following words (at p. 662):—

" 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 pre- " sented 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*,
" 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."

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.