

opinion that the business of Madame Bovet, in Hong Kong, had also been transferred to the plaintiffs, or that, at all events, owing to the course of the proceedings of the trial, the defendants were not in a position to say that it had not. The Judicial Committee, however, considered that it was clear upon the evidence that there had been no transfer of the business of Madame Bovet to the plaintiffs, and, consequently, they had no status to maintain the action, a mere assignment of the trade mark giving them no such right. As regards the plaintiffs, the only person who could be deceived by the defendants' use of the trade mark in question, would be Madame Bovet, and it was clear that she was not, in fact, deceived. The appeal was therefore allowed, and the action dismissed.

LEAVE TO APPEAL.—JUDGMENT FINAL AND CONCLUSIVE UNDER
COLONIAL STATUTE — PREROGATIVE RIGHT TO ENTERTAIN
APPEAL.

Re Will of Wi Matua (1908) A.C. 448. This was an application for leave to appeal from the native Appellate Court of New Zealand. Under a statute of New Zealand establishing the court the judgment of this court was declared to be final and conclusive, but the prerogative right of the King in Council to entertain an appeal was not expressly taken away. The questions involved were such as would have been appealable to His Majesty in Council before the establishment of the native court, and it was held by the Judicial Committee (Lords Robertson, Atkinson and Collins, and Sir A. Wilson) that the prerogative right to entertain the appeal could not be taken away except by express words. On the merits of the case, however, their Lordships did not see fit to grant leave to appeal.

BRITISH COLUMBIA PROCEDURE ACT, s. 4—(ONT. RULE 923)—
STATUTORY DUTY TO SUBMIT PETITION OF RIGHT TO LIEUTENANT-GOVERNOR—DAMAGES FOR BREACH OF STATUTORY DUTY.

Fulton v. Norton (1908) A.C. 451 was an action brought against the Provincial Secretary of British Columbia to recover damages, for his refusing to submit the plaintiff's petition of right to the Lieutenant-Governor as required by the Provincial Procedure Act, s. 4 (see Ont. Rule 923). Pending the action the defendant presented the petition and obtained his refusal of a fiat, and he set that up as a defence and paid \$5 into court as damages. At the trial, the judge dismissed the action. On