

## The Legal News.

VOL. V. DECEMBER 9, 1882. No. 49.

### APPEALS TO THE PRIVY COUNCIL FROM THE SUPREME COURT.

The general principle by which the Judicial Committee of the Privy Council is guided in considering applications for leave to appeal from decisions of the Supreme Court has been more than once stated; but in no instance have the considerations which influence the decision in such cases been explained by their lordships with more clearness than in a judgment pronounced on the 24th of June last, in the case of *Bank of New Brunswick v. McLeod*. We do not think that any report has appeared of this judgment; but we find a very clear synopsis in a letter, which has been communicated to us, from Messrs. Bompas, Bischoff & Dodgson, solicitors, to Mr. Kaye, Q.C., of St. John, N.B. These gentlemen write as follows:—

"The Petition of the Bank for special leave to appeal came on yesterday before the Privy Council. No one appeared for the respondent.

"We regret to have to inform you that after hearing our counsel very fully in support of the petition their lordships rejected the application and refused leave to appeal.

"Their lordships' reasons were stated very shortly and were to the following effect:—

"First. The policy of the Dominion Legislature is to discountenance appeals in matters of Insolvency, so much so that not even an appeal to the Supreme Court of Canada is allowed, and the final decision is made to rest with the highest court in each province.

"Second. The Dominion Legislature cannot affect the Prerogative of the Crown to grant special leave to appeal, but in advising Her Majesty whether the prerogative should be exercised, the Privy Council pays attention to the expressed wishes of the colony, and will not recommend its exercise except in cases of general interest and importance, and then only when it manifestly appears that the Court below have erred in a matter of law.

"Third. But even if it should be shown that the Court below has so erred, leave will be re-

fused if it appears that the Court below has decided the case independently of any point of law upon a particular view of the facts, for the Privy Council adopts the facts as found by the Court below, and will not review such findings in an appeal entertained as an act of grace.

"Fourth. Their Lordships without expressing any decided opinion as to whether the Court below were right or wrong on the point of law (*i. e.*, the construction of the Bill of Sale Act and the Insolvency Act of 1875), thought that the question was arguable, and if the decision had turned upon this alone would have been prepared to grant an appeal. But it appeared to their Lordships that the judgment of the Supreme Court was founded on the special facts of the case as found by the Court, the decision as to which affected only the parties to the case, and did not involve any general question. Their Lordships could not review the finding of the Supreme Court to the effect that there was, in fact, no agreement to allow the overdraft; that the transaction was a voluntary assignment on the part of the Insolvents, and that it was made in contemplation of bankruptcy to the knowledge of the Bank.

"It is fair to add that the views clearly expressed by their Lordships during the course of the argument, lent no colour whatever to any supposition that their Lordships agreed with the findings of the facts of the case by the Supreme Court.

"Thus it appears that although the tendency of their Lordships' opinions seemed to favour the views of the Bank, both as to the construction of the statutes and as to the true effect of the transaction between the parties, yet acting on the rules they have now for the first time laid down, their Lordships felt themselves constrained to reject the application.

"The propriety of these rules cannot, we think, be questioned, though we much regret that in the present instance they should bear so hardly on our clients."

### IRREGULARITIES IN THE JURY ROOM.

In the case of *People v. Gray*, decided on the 12th of August, and reported in 9th Pacific Coast Law Journal, p. 778, the Supreme Court of California had occasion to pronounce upon the misconduct of a jury who seem to have been as thirsty as the Dublin jury in a recent famous