

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition for special leave to appeal in the Case of Kops v. The Queen, from the Supreme Court of New South Wales; delivered 9th June 1894.*

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Present :

THE LORD CHANCELLOR.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by the Lord Chancellor.*]

This is a petition for special leave to appeal in a criminal matter. In the case of *ex parte Deeming* (L. R. App. Ca. 1892, 422), which was a petition for a similar indulgence, the then Lord Chancellor, delivering the opinion of the Board, quoted from the judgment in *Dillett's* case the following passage of which their Lordships entirely approve:—"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."

The point on which special leave to appeal is sought in the present case is whether upon the trial of a prisoner since the passing of the New South Wales Criminal Law and Evidence

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intention that no such comments as those made by the learned Judge who tried this case should be made to the jury; and this appears to have been the view of the minority of the learned Judges in the Court below.

In their Lordships' opinion—having in view the fact that in the English Act to amend the law of evidence (14 & 15 Vict., c. 90) which enabled parties to tender themselves as witnesses, or be called as witnesses in civil actions, the provision was that parties should be both "competent and compellable" to give evidence—when subsequent legislation introduced in part the same capacity as regards criminal cases, rendering the accused competent but not compellable to give evidence, the word "compellable," which in the earlier statute obviously meant "compellable by process of law," must in the subsequent legislation have the same meaning and not any more extended meaning, such as that which has been contended for here. Consequently the argument founded upon the use of the words "not compellable" cannot prevail.

Their Lordships will therefore humbly advise Her Majesty that this petition must be dismissed.

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