

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Petition of
Wilfred Badger for special leave to appeal
to His Majesty in Council from a Judgment
of the Court of Appeal of New Zealand,
and from the sentence following thereon,
given and pronounced in the matter of Rex
v. Badger; delivered the 31st July 1907.*

Present at the Hearing :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

SIR HENRI ELZÉAR TASCHEREAU.

SIR ALFRED WILLS.

[*Delivered by Lord Robertson.*]

In May 1903 the Petitioner, who was a solicitor, was convicted in the Supreme Court of New Zealand of criminal libel on another solicitor. The Judge directed the jury that, if the letter founded on contained a charge of unprofessional conduct, it was libellous, and that the letter was not a privileged communication. The jury found the prisoner guilty on the one of the three counts which related to this charge, and acquitted him on the other two counts. An appeal was taken to the Court of Appeal, but the appeal, after argument, was dismissed. The sentence was seven months' imprisonment, which sentence was undergone, and the Appellant was released in 1904.

The explanation given of the long delay in approaching the Judicial Committee is want of means, a recent accession of fortune now enabling the present application.

Their Lordships exercise great caution in advising His Majesty to grant leave to appeal in

criminal cases; and the question is whether special cause has been shown. It is not to be left out of sight that three years have elapsed (owing to whatever cause) since the expiry of the sentence; that the libel related to matters which occurred in 1898; that there are no *primâ facie* signs of a miscarriage either before the jury or in the Court of Appeal; that the intemperate and improper attack on the person libelled was found to have been circulated among persons not interested in the matter discussed; and that the question determined by the Court of Appeal, and now sought to be again raised, is whether the Appellant, who used the word "forgery," had succeeded in keeping within the limits of lawful vituperation.

Their Lordships do not consider the Appellant entitled to such special indulgence as to justify them in advising that special leave be granted, and they will humbly advise His Majesty that this Petition should be refused.
