

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of Louis Marois for leave to appeal from the Court of Queen's Bench of Lower Canada ; delivered 10th February, 1862.*

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Present :

LORD CHELMSFORD.

LORD KINGSDOWN.

LORD JUSTICE KNIGHT BRUCE.

SIR EDWARD RYAN.

LORD JUSTICE TURNER.

SIR JOHN TAYLOR COLERIDGE.

THIS Petition for leave to appeal depends upon the same Act of the Province of Lower Canada as the case of *Macfarlane v. Leclaire* from the Court of Queen's Bench at Montreal, which their Lordships have just disposed of (34 Geo. III, cap. 6), but the questions raised in the two cases are entirely different. Upon the present Petition it is not denied that the matter in dispute is not of the value of 500*l.* sterling, but the Petitioner prays that he may have leave to appeal granted to him upon the special circumstances of his case. The sum actually recovered in the action against the Petitioner is only 165*l.* 3*s.* 7*d.* with interest at 4½ per cent., but he states that in consequence of his having been held to be liable to the Plaintiff in that action as a member of an incorporated society, carrying on a banking business for a loan or deposit made by the Plaintiff to or with the Banking Company, other depositors in the Bank have brought numerous actions against him, by which he is sought to be rendered liable to claims amounting to upwards of 4,000*l.* It was argued, but not very strongly pressed, that the existence of these actions following upon the Judgment might possibly bring the case within the class of exceptions in the 30th section of the Act, and so entitle the Petitioner to

appeal, although the immediate sum or value in dispute is less than 500*l*. It would be difficult, however, without straining the words of the Act to make the exceptions apply to the Petitioner's case. But the Petitioner contends, that although he is precluded from an appeal in consequence of the insufficient value of the matter in dispute, and is unable to bring himself within the exceptions, that it is still open to him to apply to Her Majesty in Council for leave to appeal, and that the peculiar circumstances of his case justify the application.

He maintains that the jurisdiction by way of appeal from all Colonial Courts is a prerogative of the Crown, which cannot be taken away except by the express words of an Act of the Legislature to which the Crown has given its assent ; and that in the Colonial Act in question, not only are there no words to take away the prerogative, but that it is expressly reserved by the 40th section, in which it is declared that nothing in the Act contained shall be construed in any manner to derogate from certain specified rights of the Crown, "or from any other right or prerogative of the Crown whatsoever." But here the Petitioner is met by the case of *Cuvillier v. Aylwin* (2 Knapp, 72), in which the very point which he raises was decided in the Privy Council against him. If the question is to be considered as concluded by this decision his Petition must be at once dismissed ; but upon turning to the report of the case, their Lordships are not satisfied that the subject received that full and deliberate consideration which the great importance of it demanded. The report of the Judgment of the Master of the Rolls is contained in a few lines, and he does not appear to have directly adverted to the effect of the proviso contained in the 40th section of the Act on the prerogative of the Crown.

Their Lordships must not be considered as intimating any opinion whether this decision can be sustained or not, but they desire not to be precluded by it from a further consideration of the serious and important question which it involves. The Petitioner must understand that the prayer of his Petition will be granted, but at the risk of a Petition being hereafter presented from the opposite party, upon which his Appeal may be dismissed as incompetent.

Their Lordships will, therefore, humbly report to

Her Majesty that leave ought to be granted to the Petitioner to enter and prosecute his Appeal upon lodging a deposit of 300*l.* in the Registry of the Privy Council as security for the costs of the Respondent.

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