Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the Petition to rescind the Order in Council granting Special Leave to Appeal in formâ pauperis *to John Edward Quinlan in the Matter of a Cause intituled Quinlan* v. *Quinlan, from the Royal Court of St. Lucia; delivered 13th July* 1901.

Present at the Hearing:

LORD HOBHOUSE.
LORD DAVEY.
LORD ROBERTSON.
SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

This is a petition to discharge an Order in Council of the 29th June 1900 whereby leave was given to the Respondent on this application to appeal *in formâ pauperis* against certain orders or decrees of the Royal Court of St. Lucia. Those orders or decrees were (1) a final decree for separation of the Respondent and his wife (2) a final decree in a mortgage suit instituted by his wife against the Respondent and (3) an order for execution of the mortgage decree.

On the original application the present Respondent made the usual affidavit of poverty. The peculiarity of the case is that it appears from the Civil Procedure Code of St. Lucia (Articles 934, 940) that a litigant wishing to appeal from the Royal Court to the Court of Appeal of the Windward Islands must name his sureties or deposit his security with his notice of appeal.

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This seems inconsistent with any power to appeal *in formâ pauperis* and it does not appear that any such power is recognised. It was therefore necessary for the Respondent being a pauper if he wished to appeal to apply for special leave to appeal here. Moreover it seems doubtful whether if he had appealed to the Court of Appeal of the Windward Islands in the separation suit he could afterwards have appealed as of right to the King in Council as no pecuniary interest was *primâ facie* involved in that suit but in the mortgage suit he could have appealed as of right from an adverse judgment of the Court of Appeal.

In these circumstances their Lordships advised Her late Majesty to make the order which it is now sought to discharge. But in doing so they warned the then Petitioner and present Respondent that he must be prepared to meet an application to discharge the Order.

The present application is based on the grounds that the former petition contained misleading statements, and that material facts were withheld. It is fair to the Respondent to say that his petition does not appear to have contained any actual misrepresentation of any material facts though many of the allegations in it were irrelevant. But it is said that it did not fully state the effect of the evidence in the two suits and that if their Lordships' attention had been called to the proceedings at the trial it would have at once appeared that there was no foundation for the proposed appeals and that in fact the appeals in both suits were frivolous.

With regard to the separation suit the question was one purely of fact and it was very properly admitted by Counsel for the Respondent that on the evidence before the Court he could not hope to induce their Lordships to reverse the decision of the Chief Justice.

In the mortgage suit the Respondent by his defence admitted the deeds sued on but pleaded that by a counter instrument the sum recoverable on them was reduced or limited and that only a less sum than that claimed was owing. The Respondent however gave no evidence at the trial in support of his pleaded defence and the judgment for the sum appearing to be due on the face of the deeds was therefore inevitable. It was however said that an action of improbation of the mortgage deeds had been commenced before the trial and that by the code the mortgage suit should have been stayed until that action had been tried and decided. The pleadings in this improbation action are not before their Lordships and are not even included in the record of the mortgage suit which has been sent to the Registrar. Their Lordships therefore could not take any notice of it if they heard the appeal and there being no evidence for the present Respondent they could do nothing but affirm the decree of the Royal Court. They ought however to add that it does not appear from the description of the action in the former petition that it was such an action as would necessarily operate as a stay of proceedings in the principal suit. The Chief Justice in his affidavit says that it raised only the same points as were raised in the defence and might have been brought forward at the trial if the Respondent had been prepared to do so. Their Lordships have come to the conclusion that no substantial point is raised in the appeal either in the separation suit or in the mortgage suit.

Leave to appeal to the King in Council *in formâ pauperis* is not of course and in the opinion of their Lordships it ought not to be granted where it is made apparent that the proposed appeal is idle and frivolous. It would be wrong to put parties to the expense of opposing such an appeal in a case where they could not recover

any costs if successful. But in saying this their Lordships do not intend to invite a premature discussion of the merits of the case on a petition to discharge an order to appeal *in formâ pauperis* nor will they entertain an application of that character. Usually the statement of Counsel shewing that there is a real question to be argued should be received and it is enough if there be such a question although the success of the proposed Appellant may be doubtful.

In the present case their Lordships are satisfied on the materials before them that there is no question to be tried in either suit and if the facts had been as fully before them when they advised the Crown to make the order as they are now the order would not have been made. They have therefore humbly advised His Majesty that the Order in Council of the 29th June 1900 should be discharged. The Petitioner does not ask for costs.

The Respondent suggested that their Lordships might grant a new trial on the ground of the bias said to have been exhibited against him by the Chief Justice. They could of course after hearing the appeals direct a remand if they considered that justice required that course. But it would have to be shown that there had been a serious miscarriage of justice. In the present case nothing of the kind appears. The question in each suit was purely one of fact and there are no grounds for saying that the judgments were wrong on the materials before the Court or that the Respondent was prevented from adducing further evidence if he had been so minded.