Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of Leclaire and others, Respondents, to dismiss the Appeal of Macfarlane et al. v. *Leclaire* et al., *from the Court of Queen's Bench of Lower Canada; delivered* 10*th February,* 1862.

Present:

LORD CHELMSFORD.
LORD KINGSDOWN.
LORD JUSTICE KNIGHT BRUCE.
SIR EDWARD RYAN.
LORD JUSTICE TURNER.
SIR JOHN T. COLERIDGE.

THE question upon this Petition to dismiss the Appeal for want of jurisdiction turns entirely upon that part of the 30th section of the Act of the Province of Lower Canada, passed in the 34th Geo. III, cap. 6, which enacts that the judgment of the Court of Appeals of the Province shall be final in all cases where the matter in dispute shall not exceed the sum or value of 500*l.*

The learned Counsel for the Appellants has raised a preliminary objection to the reception of the Petition, which must first be disposed of. When the Judgment appealed from was pronounced, the Court, upon the application of the Appellants, made an Order granting them leave to appeal, and it is contended that until this Order, proceeding from a Colonial Court, construing a Colonial Act, is set aside, the right to appeal which it confers cannot be questioned. But there is no ground for this objection. If the Appellants had a right to appeal notwithstanding the Act, an application for the leave of the Court was unnecessary; and if an Appeal was excluded by the Act, the Order was an excess of jurisdiction, and must be regarded as a

nullity. At all events, the Petition to dismiss the Appeal on the ground of want of jurisdiction having been referred by Her Majesty in Council to the Judicial Committee, the Order of the Court below cannot be allowed to stand in the way as an impediment to their Lordships determining the competency of the Appeal.

In order to ascertain the value of the matter in dispute, it is necessary to advert to the nature of the proceedings. The Petitioners brought their action in the Superior Court of Montreal against one Delesderniers, to recover the amount of certain promissory notes and interest, amounting in the whole to a sum of much less than 500*l.* sterling, viz., the sum of 417*l.* 0*s.* 8*d.* Canadian currency. By a proceeding analogous to the process of foreign attachment in the city of London, the Petitioners with their declaration claimed a writ of *saisie arrêt*, or attachment before judgment, against certain goods of the debtor, which they alleged to be in the possession of the Appellant, and prayed that he might be summoned as "tiers saisie" or "garnishee." The debtor, Delesderniers, suffered judgment by default in the action, and was condemned by the Court to pay the 417*l.* 0*s.* 8*d.*, the sum demanded. Upon the writ of *saisie arrêt* being issued against the Appellant he made a declaration denying that he had in his possession any goods of the debtor, and alleged that the goods claimed by the Petitioners to have been the property of the debtor were purchased by the Appellants from one Prevost for the sum of 1642*l.* 14*s.* 5*d.* currency. The Petitioners, in reply, alleged facts to show that the transfer of the property was fraudulent and void as against the creditors of Delesderniers, and particularly (" nommément") as against himself. The Superior Court dismissed the contestation, that is, the proceeding against the Appellants as " garnishee," on the ground that they could not declare the assignment of the property to be void without Prevost being made a party to the action. But, upon appeal, the Court of Queen's Bench reversed the Judgment of the Superior Court, and ordered the Appellants to make a further declaration upon oath of the goods comprised in the alleged transfer which were unsold at the date of the *saisie arrêt* or attachment. The effect of this Judgment of the Queen's Bench was to render all the goods con-

tained in the assignment from Prevost which were in the possession of the Appellants at the time of the attachment liable to the claims of the creditors of the original Defendant; the Petitioners, by issuing their attachment, securing to themselves priority of satisfaction unless the debtor was insolvent, in which case they would only be entitled, *pari passu*, with the rest of the creditors. The course of proceeding under such a Judgment is to give notice to the creditors to come in and prove their debts by a particular day, after which a final distribution of the property is made amongst them.

In determining the question of the value of the matter in dispute upon which the right to appeal depends, their Lordships consider the correct course to adopt is to look at the Judgment as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by an Appeal. If his liability upon the Judgment is of an amount sufficient to entitle him to appeal, he cannot be deprived of his right because the matter in dispute happens not to be of equal value to both parties; and, therefore, if the Judgment had been in his favour his adversary might possibly have had no power to question it by an Appeal. In this case the effect of the Judgment was to place in jeopardy the whole of the goods contained in the assignment from Prevost, for which a sum of 1,642*l.* currency had been paid. This property became immediately liable to satisfy the claims of creditors of the original Defendant to an uncertain and indefinite amount. It may turn out in the result that the Petitioners are the sole creditors of Delesderniers, and therefore that the goods in possession of the Appellants may have to bear no greater liability than the amount of the debt due to the Petitioners. But all this was contingent at the time of the Judgment, and it is the immediate effect of the Judgment which must be regarded, as the right to appeal arises as soon as it is pronounced. The Petitioners, however, contend that the Judgment is interlocutory merely, and therefore that an Appeal against it is premature. But, although the Judgment is interlocutory in form it is final in its effect upon the rights of the Appellants. The goods which they claimed as their own are finally and conclusively fixed by the Judgment to be the property of the original debtor, and must

be applied in satisfaction of his debts, and there is no mode by which the Appellants can be relieved from it except by an Appeal. Their Lordships are of opinion that, under the circumstances, the matter in dispute upon which the Appeal is founded exceeds the value of 500*l.*, and that the Petition to dismiss the Appeal must therefore itself be dismissed with costs.