Directions of the Lords of the Judicial Committee of the Privy Council with reference to the Appeal of Sauvageau v. *Gauthier from the Court of Queen's Bench for the Province of Quebec in the Dominion of Canada; delivered May 5th*, 1874.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

IT is desirable to state shortly how this question arises. It appears that Martel was indebted to the Insolvent Sénécal in a certain sum of money, for which a rentcharge had been commuted. That sum of money was payable by instalments, and it was also secured by hypothecation upon the land upon which the rent had originally been charged. The insolvent, a considerable time before his insolvency, assigned this, with other choses in action, to Louis Gauthier, the Respondent, for value; but notice of the assignment was not given to Martel until Sénécal was in insolvent circumstances. Louis Gauthier sued Martel, the original debtor, for certain instalments of that sum; the whole value of the particular debt so assigned being considerably below the appealable amount of 500*l*. In that state of things the Appellant, who was the general assignee of the insolvent estate of Sénécal, intervened, and there remained no question as to the liability of the original debtor; but the simple question tried in the suit, and which is now brought before their Lordships on appeal, was, whether the particular assignee could claim

the sum sued for, or whether it had passed by the general assignment of the insolvent's effects to his general assignee. The solution of that question, of course, depended upon the further question, whether "signification" or notice was necessary to complete the title of the particular assignee, and whether that notice had been given in proper time.

A preliminary objection is now taken to the hearing of this Appeal on the ground that it was not competent to the judges of the Court of Queen's Bench in Canada to allow such an Appeal; and in support of that contention we are referred to Article 1,178 of the Canadian Code of Procedure, which limits the cases in which an appeal lies as of right to Her Majesty in Council from final judgments rendered in appeal or error by the Court of Queen's Bench. That Article provides that such an appeal will lie, first, "where the matter in dispute relates "to any fee of office, duty, rents, revenue, or any "sum of money payable to Her Majesty;" secondly, "in cases concerning titles to lands or "tenements, annual rents, or other matters in "which the rights in future of parties may be "affected;" thirdly, "in all other cases wherein "the matter in dispute exceeds the sum or "value of 500*l.* sterling." It is clear that the case falls neither within the first nor the third of these clauses. The only clause within which it is sought to bring it is the second. But, their Lordships are of opinion that it does not really fall even within that clause. It has been argued, that, inasmuch as the particular debt which was in question in this suit was payable by instalments, the title to it was a matter in which the rights in future of the parties might be affected. But their Lordships do not think that that is the true construction of the clause. The matter in question was the

whole debt; and their Lordships think that the mere circumstance of the debt being payable by instalments would not make the case appealable to Her Majesty in Council if it were not otherwise appealable. It was further suggested the same question might arise in respect of the other assets comprised in the assignment to Gauthier, and that the decision in this case would govern the rights of the parties as to all those assets. But their Lordships have not the means of knowing whether the title to those other choses in action would stand upon precisely the same ground as the title to that in question in this suit. Some of them may have been realised, and as to some of them notice may have been given long before the insolvency. Their Lordships cannot assume that the facts touching these other debts were before the judges in Canada; and, even if they were, their Lordships, considering the mode in which this litigation arose, viz., by the intervention of the general assignee in a suit brought by the particular assignee to realise a small sum as against one of those debtors, and not in a suit brought by the general assignee to impeach the whole transaction, are not satisfied that it was a case in which the Court of Queen's Bench would have had jurisdiction to allow the Appeal. The power of the Court of Queen's Bench to allow an Appeal is clearly limited by the Code; it has no power, upon special grounds not provided for by the Code, to grant special leave to appeal.

The question, therefore, is, what ought now to be done? Now their Lordships are of opinion that this case very much resembles the case of *Retemeyer* v. *Obermuller*,* decided as early as 1837, in which it appeared that the Appeal had been irregularly allowed in the colony, the security not having been completed within

*2 Moore P. C. Cases.

the proper time. In that case, Lord Brougham, having stated that the irregularity was fatal to the Appeal as it stood, said this: "The "Respondent has, however, appeared to the "Appeal here, and lodged his case. It is clear, "therefore, that the Appellant must have been "led to suppose that any objection on the "score of irregularity was waived; and though "their Lordships are of opinion that the "order made by the Court below, allowing the "Appeal, was, for want of the security being "completed, irregular, and could not be cured "by any waiver or implied consent on the part "of the Respondent, yet they think it would be "a fit case to recommend the allowance of the "Appeal upon a petition presented for that "purpose. The result will be that the case "must stand over for such application." In that case it was held that the irregularity was fatal to the Appeal as it stood; and the Committee, though it thought that there might be ground for allowing a special appeal, directed the case to stand over in order that there should be an application for special leave to appeal. It also pointed out that the Respondent, in allowing the case to be lodged, might have induced the Appellant to suppose that the objection on the score of irregularity was waived. And upon this last point their Lordships cannot but observe that the proper course, when such a question as this arises, is to come here by petition as early as possible, and before the cases are lodged, and the expense of preparing those cases is incurred, in order to bring the point before their Lordships, and to get the Appeal dismissed. It is then open to their Lordships to recommend Her Majesty either to dismiss the Appeal, in which case the parties are not put to the expense of preparing for the hearing; or to grant special leave to appeal. Their Lordships, if they were to dismiss

this Appeal upon the objection now taken for the first time, would be disposed to dismiss it without subjecting the Appellant to the costs, which have been so unnecessarily incurred. On the other hand, they are not prepared to say that if a petition had been presented to them for special leave to appeal, there may not be circumstances in this case which would have induced them to recommend Her Majesty to grant such leave to appeal. They by no means invite such an application, but leave it for the consideration of the Appellant whether he would prefer to have the Appeal now dismissed without costs, or whether he would wish the case to stand over in order that he may present a petition for special leave to appeal upon such grounds as he thinks might induce their Lordships to recommend Her Majesty to give that leave.

Mr. Wills.—If I could not found the application higher than it stands at present, I feel it would be useless. It occurs to me that this case may—and it seems probable that that may be the key to what was done below without our beng informed of it—really affect the whole of the debts, which come to the 19,000 dollars; and, if so, it would really be a matter which would bring it far above the appealable amount.

Sir J. W. Colvile.—In recommending any course, you would also consider what you think are the merits of the Appeal.

It is also to be considered, that in those cases in which an Appeal having been irregularly allowed in the colony, special leave to appeal has been granted here, their Lordships have always required fresh security for costs to be given.

It is as well that your client should know that.

Mr. Wills.—Would your Lordships allow it to stand in this way,—the Appeal to be

dismissed without costs, unless a petition for special leave be lodged before 15th of June?

Sir J. W. Colvile.—Yes, I think so.

Mr. Wills.—Then we will consider it.