

"defect of jurisdiction in the tribunal that made it, or of manifest fraud in the party procuring it." And then, after saying that it did not appear that the Supreme Court had asserted a right to exercise power in excess of what he had laid down, but to have quashed the proceedings on the ground that the Court of Mines had acted without jurisdiction, and had been misled by fraud of the petitioning creditor, on both which points the Privy Council drew a different conclusion from the Supreme Court on the facts stated in the affidavit. He proceeds—

"In order to determine the first question, it is necessary to have a clear apprehension of what is meant by the term, 'want of jurisdiction.' There must, of course, be certain conditions on which the right of every tribunal of limited jurisdiction, to exercise that jurisdiction depends. But these conditions may be founded either in the character and constitution of the tribunal, or upon the nature of the subject matter of the inquiry, or upon certain proceedings which have been made essential preliminaries to the inquiry, or upon facts, or a fact to be adjudicated upon in the course of the inquiry. It is obvious that conditions of the last differ materially from those of the three other classes, objections founded on the personal incompetency of the Judge, or on the nature of the subject matter, or on the absence of some essential preliminary, must obviously, in most cases depend upon matters which, whether apparent on the face of the proceedings, or brought before the Court by affidavit, are extrinsic to the adjudication impeached. But an objection that the Judge has erroneously found a fact in which, though essential to the validity of his order, he was competent to try, assumes that, having general jurisdiction over the subject matter, he properly entered up the inquiry, but miscarried in the course of it. The Superior Court cannot quash an adjudication upon such an objection without assuming the functions of a *Court of Appeal*, and the power to re-try a question which the judge was competent to decide." And after some other observations he cites a passage from *Bunbury v. Fuller*. It is a general rule that no Court of limited jurisdiction, can give itself jurisdiction by a wrong decision in a point collateral to the case upon which the limit to its jurisdiction depends, and however its decision may be final on all particulars making up together that subject matter which, if true, is within its jurisdiction, and however necessary in many cases it may be for it to make such a preliminary inquiry, yet upon this preliminary question its decision *must always be open to inquiry in the Superior Court*. In *Bunbury v. Fuller*, the Commissioners had jurisdiction over the matter, and were the sole judges of the amount of compensation, but to ascertain the exact amount, they had to decide whether the defendant's lands in Mildenhall were subject to tithes; if they were not, the amount of compensation would be less than if they were; he decided they were not, and although the Act said the award should be final and conclusive, and gave an appeal to the Quarter Sessions, the Court held that it was not conclusive. That the party injured was not bound to take the remedy provided by the Act and appeal to the Quarter Sessions, as "*no one is bound to appeal against a nullity*," and that the correctness of the Commissioners' decision must be inquired into, and after quoting the passage I have already quoted from *Thrope v. Cooper*, that the omission to exercise jurisdiction, if injurious to either party, has the same effect as exceeding it, say "this is extremely reasonable." If the Commissioners in the present case have, for any reason, omitted to take a district of 9,700 acres of titheable land into account, nothing could be more unjust than that the plaintiff should be barred by this award, as to an unquestionable right before it was made, simply because it awarded him a compensation for tithes of land of a different class situate in other parts of the parish. So here, if the proprietor could show that an error in deciding in some of these preliminary questions, such, for instance, as if the award had stated that he had lost his right to 47 and part of 48 by adverse possession. Could he not have had it quashed? and had he not also a right (if he chose to exercise it) to apply for that reason, or because some other preliminary question was wrongly decided, to have the award sent back? Then, is it just to permit the silence of the Commissioners to deprive him of his right to those remedies? In *Richards v. The South Wales Railway Co.*, 13 Jur. 1097, the verdict of the Jury under the Land Clauses Consolidation Act was as follows:—

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Value of land purchased	305
Severance on 13½ acres	157
Loss of water on 25 acres	112
Severance of a road owing to crossing and expense incurred thereby	450

1,024