

I understand that on behalf of the garnisher it is asserted that the lands by the sale of which the taxes are to be levied are the lands of non-residents, and if this be conceded then the moneys collected by the sheriff, the garnishee, are by the assessment act declared to belong to the "Non-Resident Land Fund," (see 154) and the treasurer's duty is to open an account with every municipality with that fund, and the County Council may issue debentures on the credit of that Non-Resident Land Fund, (see 160) which as I understand in the present case has been done, which debentures are to be negotiated and the proceeds paid into that fund, and the interest on the debentures, and the principal when due, are to be paid out of that fund. A provision is made for distributing the surplus money of the non-resident land fund, reserving a sum dependent on the amount of such debentures which is unpaid, and each municipality of the county is to have a rateable portion of such surplus, according to the arrears due on non-resident lands in such municipality.

I take the effect of this to be a specific appropriation by the Legislature of the moneys arising from the sale of lands of non-residents for taxes, and that such specific appropriation is as effectual to prevent the judgment creditors obtaining payment of the moneys, as a prior assignment of the debt would be in ordinary cases.

The same order must be made as in the last case.

PRIVY COUNCIL.

BEFORE LORD CHELMSFORD, LORD KINGSDOWN, LORD JUSTICE KNIGHT BRUCE, SIR EDWARD RYAN, LORD JUSTICE TURNER, SIR JOHN TAYLOR COLERIDGE.

MARQUIS, Appellant and ALLAIRE, Respondent.

Right of Appeal to the Privy Council.

Held, that notwithstanding the 34 Geo. III. cap. 6, s. 30, and the 12 Vic. cap. 57, s. 19, the judgment of the Court of Queen's Bench is not final in all cases, where the matter in dispute does not exceed the sum or value of five hundred pounds sterling, and does not relate to any fee of office, duty, rent, revenue, or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents, or such like matters or things, where the rights in future might be bound, and that the Privy Council can in its discretion allow appeal in such cases.

That the case of *Cuvillier v. Aylmer* (2 Knapp 72) did not receive that full and deliberate consideration, which its great importance demanded.

That the case of *Cuvillier v. Aylmer* is overruled.

(10th February, 1862.)

The action before the Superior Court in Quebec, was one directed against four defendants, who were sought thereby to be condemned, jointly and severally, to pay to Allaire, the plaintiff, the sum of £165 3s. 7d., with interest at 4½ per cent, for a few weeks previous to the institution of the action, borrowed by them (as plaintiff pretended), trading as bankers in partnership, under the name of "La Caisse d'Economie de St. Roch," from him, the plaintiff.

It was pretended in the Superior Court, that all the defendants were officers of La Caisse d'Economie de St. Roch, a charitable institution founded under the auspices of La Société de St. Vincent de Paul, and that by the constitution and by-laws of that Caisse, none of its officers were to receive any compensation for their services; that the defendants, instead of properly discharging their duties, traded for their own benefit with the monies of the Caisse, the consequences of which were its bankruptcy, and the non-payment to the plaintiff of the amount of his deposit.

The Superior Court condemned the four defendants, jointly and severally, to pay to the plaintiff the sum of £165 3s. 7d. with interest at 4½ per cent. from 13th April, 1855, and costs.

An appeal was instituted by Marois from that judgment, but it was confirmed, the motives only being changed.

On the 10th February, 1862, the following judgment was pronounced by the Lords of the Judicial Committee of the Privy Council on Marois' petition for leave to appeal.

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 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 3s. 7d. 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. 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. 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. Aylmer* (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 in the Registry of the Privy Council as security for the costs of the respondent.

Petition granted.

GENERAL CORRESPONDENCE.

Assessment—Income—when taxable—Personal Property.

DRUMBO, 10th April, 1862.

TO THE EDITORS OF THE LAW JOURNAL.

SIR,—I. A., a clerk in a store at a salary of \$400 a year, has no real or chattel property; says it takes the whole of his salary to clothe and board him during the year. Is he liable under the Assessment Law to be assessed for his salary as an income?

2. B. has a House and Lot in a village, is assessed for it \$200; is also a clerk in a store at a salary of \$400, has no