Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition ~~for leave~~ to rescind the Order granting leave to appeal in the case of Goldring v. *La Banque D'Hochelaga, from the Court of Queen's Bench for Lower Canada; delivered February 7th*, 1880.

Present:

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

THEIR Lordships, upon the best consideration they can give to this case, are of opinion that it is not one in which it was competent to the Court of Queen's Bench to grant the leave to appeal. The 1,178th Article of the Code of Procedure is precise that an appeal lies to Her Majesty in her Privy Council from final judgments rendered in appeal or error by the Court of Queen's Bench. Then it gives the cases in which the appeal is allowed. There is no express provision for the allowance of such an Appeal from an interlocutory Order. The arguments in support of the Order of the Court has proceeded chiefly upon section 822 of the same Code, which is one of those which relate to procedure in respect of writs of capias. That article appears to their Lordships clearly to imply that the decisions to which it relates are no more than interlocutory Orders. If the decision of the Superior Court on the matter therein referred to had been regarded as a final judgment, there would have been no necessity to give by this article special leave to appeal, because it would have been appealable

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under Article 1,115, as pointed out by Mr. Digby. The real object of the article is to make special provision for an appeal to the Court of Queen's Bench from an interlocutory Order of a particular kind. The Code gives by Article 1,116 an appeal against certain other interlocutory judgments, but in these cases Article 1,119 provides that there must be a preliminary motion before the Appellate Court, in order that that Court may decide whether the particular judgment falls properly within the terms of Article 1,116. But an appeal from an interlocutory judgment under Article 822 was not to be subject to that provision, and hence the necessity for that article. The judgment of the Court of Queen's Bench upon a judgment of the Superior Court in this matter cannot be regarded as a final judgment within the meaning of Article 1,178, unless it can be shown that proceedings under the provisions of Article 796, and the subsequent articles of the Code which relate to the particular subject of capias ad respondandum, are so severed from the general suit that they are to be treated as something separate in their nature, and not as incident to the suit. Their Lordships are of opinion that the Code has not expressed that they are to be so treated, and that from their nature they are merely incidental to the suit and in the nature of process therein. They are, therefore, of opinion that the judgment of the Queen's Bench, which is the subject of this Appeal, is not a final judgment within the meaning of the Code, and consequently that the Appeal has not been regularly brought before Her Majesty in Council. It has been suggested that their Lordships may now recommend Her Majesty to grant, as they have unquestionably power to do, special leave to appeal; but they are of opinion that there are not before them sufficient grounds for making

such a recommendation. They, therefore, think that the prayer of this Petition must be granted; but, considering that the point is novel, and that the Court of Queen's Bench has seen fit to allow this Appeal, they do not think it is a case for costs. Their Lordships will, therefore, humbly advise Her Majesty accordingly.