Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of Robert Milroy Walker for special leave to appeal in formâ pauperis *in the Matter of Robert Milroy Walker (Plaintiff)* v. *Critchett Walker (Defendant), from the Supreme Court of New South Wales, delivered the* 13*th February* 1903.

Present at the Hearing:

LORD MACNAGHTEN.
LORD SHAND.
LORD ROBERTSON.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This Petition was before their Lordships on the 3rd February. It was an application for special leave to appeal and to prosecute the appeal *in formâ pauperis*. It appeared that no application for leave to appeal had been made to the Supreme Court of New South Wales from which it was desired that an appeal should be brought. On that ground, apart from all other objections, it seemed to their Lordships that the application was irregular.

The learned Counsel for the Petitioner referred their Lordships to a case in New South Wales, *Ex parte The Commissioner for Railways* (20 N.S.W. Reports, Cases in Equity, p. 28), and stated that that case was understood in New South Wales to have laid down the rule that a litigant desiring to prosecute his Appeal to His Majesty in Council *in formâ pauperis* ought

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to "apply direct to the Privy Council" without applying in the first instance to the Supreme Court for leave to appeal. Their Lordships do not think that the Judgment of Simpson J., to which particular reference was made, is open to that construction. All that the learned Judge seems to have meant was that the Supreme Court could not authorize an intending Appellant to prosecute his Appeal before His Majesty in Council *in formâ pauperis*.

It was also suggested that the practice of this Committee had not been uniform, and the Registrar informed their Lordships that he could not say that there was no foundation for that suggestion.

As it is most important that the practice should be uniform, and the rule clearly laid down, their Lordships directed that further enquiries should be made, and that in the meantime the Petition should stand over.

The Registrar has informed their Lordships that during the last four years there have been ten applications for leave to prosecute an Appeal *in formâ pauperis* bearing on the point under consideration, and that in one of those cases leave was granted, although it appeared from the Petition that no application for leave to appeal had been made to the Court below. The circumstances of that case were so peculiar as to justify a departure from the ordinary rule. With the exception of that case the practice on the point now in question seems to have been uniform, and certainly there was one case—an unreported case—from New South Wales (*Comber* v. *Hogg*, heard on the 27th November 1900) in which it appears from the shorthand notes that the application was refused expressly on the ground that no application for leave to appeal had been made to the Supreme Court.

Their Lordships desire that it should be clearly understood, as a rule of general if not universal

application, that this Committee will not entertain a petition for leave to prosecute an appeal *in formâ pauperis*, where the Court below has power to grant leave on the usual conditions, unless in the first instance an application for leave to appeal has been made within due time to the Court from which it is proposed that the appeal should be brought.

The Order in the present case from which it was proposed to appeal was made on the 23rd of May 1901. The time for applying to the Supreme Court for leave to appeal is the period of 14 days only. When the prescribed period has expired without any application having been made for leave to appeal, the successful litigant is entitled to rely upon his decree and to feel assured that the litigation is at an end. The application for leave to appeal and to appeal *in formâ pauperis* was not lodged in the Privy Council Office until the expiration of more than 18 months from the date of the Order. In these circumstances the application, even if it were not irregular, would be absurd. But their Lordships desire it to be understood that, in their opinion, this Petition ought to be refused on the ground that no application for leave to appeal was made within due time to the Supreme Court in New South Wales.

Their Lordships will accordingly humbly advise His Majesty to dismiss the Petition, but that in accordance with the usual practice the Council Office fees should be remitted.