*Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of Marion Jack Tasker to dismiss the Appeal of Walter Baine Grieve (Appellant) v. Marion Jack Tasker (Respondent), from the Supreme Court of Newfoundland, and on the Petition of the Appellant, Walter Baine Grieve, for special leave to appeal against certain Orders in the matter of the said Appeal; delivered the 28th November* 1905.

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Present:

LORD DAVEY.
SIR FORD NORTH.
SIR ANDREW SCOBLE,
SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

THEIR Lordships are of opinion that the Appeal which has been presented to His Majesty in Council is incompetent, and that the first Petition (the Petition of the Respondent) ought to be granted, and their Lordships will state shortly their reasons for coming to this conclusion.

It is not necessary to go through the whole of this long and complicated story. The starting point is an action commenced by the Respondent against the Appellant on the 23rd December 1896 in the Supreme Court of Newfoundland. In this action Judgment was given on the 13th October 1897, declaring the liability of the Appellant, and on the 6th April 1898 the Supreme Court made a final decree for payment by the Appellant of $22,295. The objection which is taken against that decree

*e* (22)40791. 100.—12/05. [68.] Wt. 3593. E. & S.

is that, at the time when it was made, the Appellant (the Defendant) had obtained his discharge in certain bankruptcy proceedings in Scotland.

Their Lordships are not satisfied that the Appellant did not know the fact of his having obtained his discharge before the Judgment of the 13th October 1897. If it were necessary to express an opinion upon that point, their opinion would be that there is evidence that he did know of the discharge, because he must have received, and it is not denied that he could have received, the letter of the 27th September 1897, which has been mentioned. The inference from the date of that letter is that it was a letter conveying the intelligence that the discharge had been granted. That, however, is immaterial, because the final decree in the suit was not made till the 6th April 1898, and it is not disputed that long before that date the Appellant knew that the discharge had been granted in Scotland, and, in fact, had obtained copies of the discharge. If he intended to raise this point in the action, what was his proper course? His proper course at that time was to have moved the Court to discharge the previous Order of the 13th October 1897 —which, after all, was not a final Judgment, but an Interlocutory Order—and to give him liberty to amend his pleadings by pleading this discharge. He did not do so, but he applied for and obtained leave to appeal to Her Late Majesty in Council, though in that Appeal he could not, apparently, have raised the point in question. This Appeal he subsequently abandoned. In June 1899 he made a motion for an Order setting aside the above Judgment, or limiting its effect to its being made the subject of proof in the bankruptcy proceedings. This motion was dismissed by an Order dated

the 7th June 1899. He did nothing more till 1904. He then applied for an Order which was substantially the same as he had applied for in June 1899. This application was refused on the 29th August 1904. Again, he did not appeal to His Majesty in Council from the Order of the 29th August 1904. It appears that on the 1st December 1904 leave was given to the Respondent to issue execution. On the 20th March 1905, an application by the Appellant for what was, in fact, exactly the same thing as he had already applied for in August 1904, namely, to restrain execution, was refused. He then obtained leave to bring the Appeal which is now before their Lordships, viz., from the Order of the 20th March 1905.

It is manifest, if those dates are looked at, that, in the first place, the Appellant cannot move a step without first getting rid of the previous Judgments of 1897 and 1898, and that, therefore, the Appeal, while those Judgments stand, would be a perfectly idle Appeal; and, in the second place, that the Order from which he has obtained leave to appeal in the Colony is only a repetition of an Order made in the previous year from which he could not appeal. It need scarcely be stated that this Board would never allow an Appellant, who is out of time for appealing from an Order, to make a fresh application to the Court for the same thing over again, and to get it refused in order to enable him to bring himself within time. It would be trifling with the practice of the Board to allow him to do so. The Appellant seems to be perfectly aware of his difficulty, because in his present Petition he asks for leave to appeal against the Orders of the 7th June 1899 and the 29th August 1904. He is perfectly aware of the objection which has been stated to the competency of his Appeal. Their Lordships are

not prepared to say that the Appellant ought to have leave to extend his Appeal in that manner. He is asking for an indulgence from the Board. Is he in a position to ask for that indulgence? Having regard to the delay he has allowed to take place in the assertion of what he thinks are his rights, and to his neglect, when all the facts were known to him and his advisers, to bring the matter properly before the Court, and having regard, further, to the impossibility of his getting any relief, such as was refused to him by the Orders of the 6th June 1899 and 29th August 1904, without setting aside the final Judgment of the 6th April 1898, their Lordships think it is not a case in which they should advise His Majesty to allow him to extend the Appeal in the manner sought.

Their Lordships will, therefore, humbly advise His Majesty that the Respondent's Petition ought to be granted, and the Appeal dismissed, and that the Appellant's Petition for leave to appeal ought to be dismissed.

The Appellant will pay the costs of the Appeal and of both the Petitions.