

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Petition for
leave to appeal in the case of Davis and
another v. Culpeper, from the Leeward
Islands; delivered Saturday, 25th April
1875.*

Present :

SIR J. W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships can only regard this application as brought to them under the 7th and 8th Victoria, cap. 69, which gave Her Majesty power by a special Order in Council to permit an Appeal to be brought to Her Majesty in Council directly from a Colonial Court of First Instance, without appealing to whatever intermediate Court of Appeal there might be in the Colony. It was a power which was always treated as exceptional, and one for the exercise of which those who sat on this Board required that a very special case should be made. It was also a power, the exercise of which took place in a state of things extremely different from that which now exists in the Leeward Islands, viz., one in which there could hardly be said to be a competent Court of Error or of Appeal in the colony inasmuch as the Appeal lay from a tribunal consisting of lawyers to one which might be altogether a lay tribunal. That that was so seems to be shown by the cases cited, the most recent of which was decided in the year 1850. Now, in the present case their Lordships are called upon to deal with a case in which the

Court of First Instance, which pronounced the decree against which it is sought to appeal, consisted of a single judge of the Supreme Court of the Leeward Islands, the Legislature having provided that an appeal shall lie from a decree so pronounced to the full Court, consisting of the Chief Judge and at least one *puisne* Judge, a Court which must be presumed to be a most competent Court of Appeal. Their Lordships can conceive nothing more mischievous where the Legislature has provided in a particular locality a competent Court of Appeal, than that parties should come here appealing from a Court of First Instance, at a great expense and with great delay, and altogether passing over the intermediate Court of Appeal, which must be presumed to be competent to do justice between the contending parties.

In this instance the local agents of the Petitioners appear to have been better advised than their principals. The principals from the first seem to have had some notion of appealing directly to Her Majesty in Council, but their agents in the colonies carried their Appeal in the regular way to the Court of Appeal, the Supreme Court of the Leeward Islands.

They afterwards, from some unfortunate mistake, which their Lordships cannot but think from the statement made in the petition was capable of being remedied, and would probably have been remedied on a proper application made to that Court, allowed their Appeal to be dismissed for want of prosecution. Even if there had been better grounds for the exercise of the special right of appeal, which in terms is reserved by the statute, it appears to their Lordships that the Petitioners would have been under great difficulty from the lateness of this application. The decree was pronounced on the 15th June 1874. They were informed of it in London as early as the

15th July 1874. They then appeared to have laboured under some misapprehension as to the necessity of getting the whole of the record in order to make an application for special leave to appeal to this tribunal, which was an impression perfectly erroneous, and therefore allowed a considerable period to elapse without doing anything.

Their Lordships, however, not deciding on the ground of delay, but deciding on the ground which I have before stated, namely, the extreme impolicy of allowing such direct appeals when the parties have the means of going to a competent Court of Appeal, must refuse this application. It is wholly unnecessary for them, and they do not think it proper, to pronounce any opinion on the merits of the case. It was only necessary to open them in order to show that there was a substantial question to be tried between the parties, which their Lordships are by no means disposed to deny, though they feel bound to decide against the application upon the grounds already mentioned. The Petition, therefore, must be dismissed, and, as it is opposed by counsel, dismissed with costs.

