STREET, J. SEPTEMBER 26TH, 1902.

CHAMBERS.

REX EX REL. McFARLANE v. COULTER.

Appeal—To Judge of High Court—From Order of County Court Judge Quashing Quo Warranto Proceedings—Right of Appeal—Power to make Order.

Appeal by relator from order of County Court Judge of Essex setting aside the fiat, the relation, and all proceedings taken thereon. On 21st January, 1902, upon the application of the relator, the Judge granted a fiat giving the relator leave, upon entering into the proper recognizance, to serve a notice of motion upon James A. Coulter, under sec. 20 of the Municipal Act, to set aside his election as reeve of the township of Colchester North. The proceedings were taken and styled in the County Court of Essex, and the recognizance was duly entered into and filed, and notice of motion served on the respondent on 21st January. On 10th March, 1902, respondent, by leave of the same Judge, gave a notice of motion, returnable before him on the 11th March, 1902, to set aside the fiat, notice of motion under it, and all the proceedings in the relation. On 21st March respondent's motion to set aside all the relator's proceedings was heard and judgment reserved. On 1st August the motion was granted, and the order in appeal made, setting all proceedings aside with costs.

W. M. Douglas, K.C., for the appellant, the relator.

J. H. Rodd, Windsor, for the respondent.

STREET, J.:—The appeal must be dismissed upon the ground that no appeal lies from the order appealed against to a Judge in Chambers. The proceedings were intituled and carried out in the County Court of Essex, and appeals from County Courts lie in ordinary cases to a Divisional Court. Under the Municipal Act of 1892, 55 Vict. ch. 42, sec. 187, sub-sec. 3, for the first time an appeal was given from the decision of the Judge trying the matter, to a Judge of the High Court. Such appeal is not from any interlocutory proceedings, but from the decision of the Judge in the matter upon the merits.

I express no opinion as to whether the County Court Judge had any power to make the order appealed against. No such power is expressly given him, and unless he have it by implication, which the Court of Appeal in Regina ex rel. Grant v. Coleman, 7 A. R. 619, thought he had not under the laws as it then stood, his duty was to go on and try the matter