

Moss, C.J.O.:—The defendants moved under sec. 48 (e) of the Supreme Court Act, R. S. C. 1906 ch. 139, for special leave to appeal to the Supreme Court, and under sec. 71 of the same Act to extend the time for bringing the appeal. A similar motion was at the same time made on behalf of the defendants in a case of *Irving v. Grimsby Park Co.* (post). The respective respondents, among other answers to the applications, raised the objection that, inasmuch as these were cases in which no appeal to the Supreme Court lay as of right, and as the 60 days within which an appeal is required to be brought, as enacted by sec. 69 of the Supreme Court Act, had expired, this Court had no jurisdiction to entertain the motions. In other words, unless the application is brought within 60 days from the signing or entry or pronouncing of the judgment sought to be appealed from, it cannot be entertained.

As far as I am aware, this is the first time that the question has been raised, although numerous applications have been heard and several have been allowed under almost precisely similar circumstances. And, unless it is plainly apparent that the provisions of the Act prohibit us from so doing, we ought to adhere to the practice which has prevailed up to this time. But, so far from it being apparent that the Court is without jurisdiction, the contrary appears to be the case. The power to act under sec. 71 is unquestionable in the ordinary case of a judgment pronounced by this Court upon an appeal in which the subject matter leaves no question as to the right to entertain it. And so when, under sec. 76 (9) of the Judicature Act, as enacted by 4 Edw. VII. ch. 11, sec. 2, this Court, in the exercise of its discretion, has allowed a further appeal to it from a Divisional Court.

Nor does there appear to be any good reason for treating differently a case in which under sec. 76 (a) leave has been given to appeal directly to this Court instead of to a Divisional Court. An order to that effect having been made, the case is in this Court in precisely the same position as if here under either of the other ways. It could have found its way here by means of the other channels, and being here is dealt with as any other case properly before the Court.

Sub-head (e) of sec. 48 of the Supreme Court Act is intended to enable this Court to place any case in which it has given final judgment in the same position as regards an appeal to the Supreme Court as cases following under sub-heads (a), (b), (c), and (d). When a case does not come