Master's report, and was refused on the ground that the Divisional Court had no jurisdiction. A similar decision had been arrived at by the Q.B. Division in *Re Galerno*, 46 U. C. Q. B.

Rule 471 defines the jurisdiction of a Divisional Court, and appeals of this kind are not included in its provisions unless all parties consent.

S. H. Blake, Q.C., for plaintiff.—The Judicature Act and Rules have not taken away the right of appeal in this case. He referred to Taylor & Ewart, pp. 23, 25, 26, 27, 68, 75, 76, 79, 99; J. A. s. 9, ss. 2, 3, and to sect. 12, 52, which expressly continue the former practice also. *Ib.* secs. 29, 33, 35, 36, 39, and Rule 471. Rule 523 applies to "any judgment," and therefore must be intended to include all judgments, however pronounced.

This, moreover, was a suit pending before the Judicature Act, and is therefore to be governed by the former practice.—Taylor & Ewart, p. 404, Rule 494. The Decree in the cause was pronounced 5th May, 1880.

Bethune, Q.C., in reply Rule 494 is confined to proceedure and does not affect the question of jurisdiction.—*Cur. adv. vult.*

Sept. 8, 1882.—THE CHANCELLOR.—I cannot successfully distinguish this case from *Re Galerno*, and I think that the case must be struck out as not being appealable to a Divisional Court, with costs of the motion to strike out. It is contrary to the whole course of decision to say the Act allows this appeal—*Alport* v. *Ingram; Re Galerno; Trude* v. *Phœnix Ins. Co.*, 18 C. L. J. 54 The policy of the Act is not to encourage these intermediate appeals. Rule 494 does not apply, for the case is not pending in the sense of that order. What was pending was the proceeding in the Master's office. If the plaintiff is too late to carry the case to the Court of Appeal a special application for leave to appeal, notwithstanding the lapse of time, must be made.

FERGUSON, J.—I concur.

Cause struck out.

RECENT ENGLISH PRACTICE CASES.

TURNER v. HANCOCK.

Imp. J. A., sec. 49; O. 55, r. 1—Ont. J. A. sec. 32, Rule 428.

Cost of trustee—Appeal as to costs.

A trustee's costs cannot be said to be within the discretion of the Court, and are excepted out of the above section and rule.

Re Hoskins, L. R. 6 Ch. D. 281, disapproved.

Quere as to costs of trustee upon proceedings taken under Trustee Relief Act.

March 24, C. A.—L. R. 20 Ch. D. 303.

This action was brought for the purpose of carrying into effect the trusts of a certain settlement. It was tried before Bacon, V. C., who ordered that the trusts should be carried into effect, but refused to allow the trustee his costs. The trustee appealed, and the question was whether the appeal was allowable.

JESSEL, M. R.—It is clear, in my opinion, that this a case in which an appeal as to costs is allowable. The only excuse for the objection to the appeal is the recent case of *In re Hoskins*, L. R. 6 Ch. D. 281. In *Cotterell* v. *Stratton*, L. R. 8 Ch. D. 295, the claim of trustees for costs is rightly put on the same footing as that of mortgagees. (Reads Lord Selborne's words in that case, at p. 302.) But it is said that *In re Hoskins*, L. R. 6 Ch. D. 281, is a different effect. In that case James, L. J., is reported to have said, "The present is not a case where the appellant is *ex debito justitiæ* entitled to costs; the costs of a trustee being subject to the discretion of the Court." If we have to choose between the authority of Lord Selborne and Lord Justice James, I should be inclined to follow Lord Selborne's decision. But I go further, for I think it was not in the power of the Court in *In re Hoskins* to overrule the previous authorities; therefore I must take the decision in that case to have been founded on a mistaken view of the law, and to be subject to review. That being so, we come to the words of O. 55 (Ont. Rule 428), which are as follows:" (Reads it.) "That does not include the costs of a mortgagee or trustee, which I have shewn to be not in the discretion of the Court. *Farrow* v. *Austin*, L. R. Ch. D. 58 (*supra* p. 454), is directly in point. I think, therefore, that this appeal must be allowed to proceed.

COTTON, L. J.—I am of the same opinion. . . There is no doubt the Court has power to deprive