

ch. 51, sec. 75, sub-sec. 4. The immediately preceding section of the Judicature Act, namely, sec. 74, declares that "there shall not be more than one appeal in this Province from any judgment or order made in any action or matter, save only at the instance of the Crown, in a case in which the Crown is concerned, and save in certain other cases hereinafter specified."

Then follows sec. 76, which enacts that, subject to the exceptions and provisions contained in this Act, an appeal shall lie to the Court of Appeal from every judgment, order, or decision of the High Court, whether the judgment, order, or decision was that of a Divisional Court or of a Judge in Court. Mr. Tremear very properly relied on this section as in express terms giving an appeal in the present case, unless it could be shewn that it is excepted somewhere in the Act. I think it is clearly excepted, and that that exception is to be found in the following sec., 77, as amended by 62 Vict. (2) ch. 11, sec. 27. That section as amended enacts that: "(1) An appeal shall not lie from any judgment or order of a Divisional Court except as hereinafter provided. (2) In case a party appeals to a Divisional Court of the High Court in a case in which an appeal lies to the Court of Appeal, the party having so appealed shall be entitled afterwards to appeal from the Divisional Court to the Court of Appeal upon obtaining leave so to do as hereinafter provided, but any other party to the action or matter may appeal to the Court of Appeal from the judgment or order of the Divisional Court without obtaining such leave." The right of appeal to this Court from a Divisional Court, given by this sub-sec. 2, is expressly confined to cases in which an appeal would have lain on the first instance to this Court, which this is not. And the right given to apply for leave to appeal to this Court given by sub-sec. 3 in like manner is confined to judgments or orders of a Divisional Court pronounced on an appeal in a cause or matter in the High Court.

It is therefore clear that an appeal from a judgment of a Divisional Court given upon an appeal from a Surrogate Court, under the Surrogate Courts Act, sec. 36, is not within the exception to sec. 77, sub-sec. 1, and that such an appeal does not lie.

In the case of *McVeain v. Ridler*, 17 P. R. 353, cited by Mr. Jones, this Court in 1897 quashed an appeal in a County Court action from a judgment of a Divisional Court on the ground that no appeal lay either with or without leave. No distinction can be suggested between an appeal in a County