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## APPEALS FROM COUNTY COURTS. (ONTARIO.)

Section 52 of The County Courts Act gives a right of appeal to a Divisional Court of the High Court of Justice in three classes of cases :—

1. " From every decision made by a Judge of a County Court under any of the powers conferred upon him by any rules of Court or any statute, unless provision is therein made to the contrary; and "

2. " From every decision or order made by a Judge of a County Court sitting in Chambers under the provisions of the law relating to interpleader proceedings, the examination of debtors, attachment of debts and proceedings against garnishees; and "

3. " From every decision or order made in any cause or matter disposing of any right or claim."

The section is limited in its operation by this concluding proviso — " provided always that the decision or order is in its nature final and not merely interlocutory." The proviso applies to all of the three classes of cases: *Baby v. Ross*, 14 P.R. 440.

In some instances there is difficulty in determining whether or not an appeal will lie from a particular order or decision, from which an appeal is desired, inasmuch as there has not in any of the decided cases been formulated any test which will apply to determine whether an order or decision within the section is " in its nature final " or " merely interlocutory."

The test applied under the English Rules governing the time for appealing from final and interlocutory orders will not apply under the proviso; the language of the proviso precludes the application to it of that test: *Bank of Minnesota v. Page*, 14 A.R. 347.

The language of the proviso indicates that the test to be applied under it must bear upon the character of the subject matter adjudicated upon, whereas the test under the English Rules relates not to the nature of the order, but to the position it occupies in its relation to the action as a whole: *Salaman v. Warner*, L.R. (1891) 1 Q.B. 734.