

back to such magistrate to enter judgment accordingly, and issue execution thereupon. He may also by his order set aside the judgment and direct that a new trial be had before such magistrate, and may in and by said order give all directions necessary to give effect to the same, and may direct by which party or parties the costs of the trial shall be paid; and such magistrate shall upon such order hold such new trial, and enter judgment thereon, as thereby directed, and the costs of review shall in all cases be in the discretion of the Judge, and shall be taxed by him with or without notice and may be recovered by attachment."(b)

As soon as reviews began to be taken under this Act the question arose whether the decision of a Supreme or County Court Judge on a review was final or whether it could be appealed to the Supreme Court of the Province, and there is probably no question in the Province which has led to more judicial uncertainty or is more unsettled at the present time.

The point was first agitated in the case of *Ex parte Richards*(c) in 1873, where a review had been refused by a Judge of the Supreme Court and then an application was made to the Supreme Court for a certiorari to review the decision, which was refused.

The Court pointed out that having elected his tribunal by going to a single Judge in the first instance the applicant was bound by his decision.

"By coming here," said the Court, "you are in reality appealing from the Judge's decision, while the Statute does not provide an appeal."

In 1882 the Court decided in *Ex parte Kane*(d) that a certiorari would not be granted to remove review proceedings before a Supreme Court Judge, but that the proper remedy was by motion to set aside his order.

Then in *Smith v. Kinnie*(e) in 1890 the Court overruled the *Kane* case, and squarely held that a review decision by a Supreme Court Judge is final, and the same principle was affirmed in

(b) Con. Stat. N.B. Chap. 122, Sec. 6(1).

(c) 15 N.B.R. 6.

(d) 21 N.B.R. 370.

(e) 30 N.B.R. 226.