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* June 4.

CHARLES BEAMISH *et al.*.....APPELLANTS;

AND

H. A. N. KAULBACH.....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Appeal—Original Court not a Superior Court—Judgment not appealable—B. N. A. Act sec. 99—Supreme and Exchequer Court Act sec. 17.

Held,—On a motion to quash, that an appeal will not lie to the Supreme Court of *Canada* in cases in which the Court of original jurisdiction is not a Superior Court, and that the Court of Wills and Probate for the County of *Lunenburg, Nova Scotia*, is not a *Superior Court* within the meaning of the 17 section of *The Supreme and Exchequer Court Act*.

APPEAL from a judgment of the Supreme Court of *Nova Scotia*, maintaining the decree or judgment of the Court of Wills and Probate for the county of *Lunenburg, N. S.*, upholding the validity of the last will and testament of *Beamish Murdock*, deceased.

Mr. *W. F. MacCoy*, for respondent, moved to quash the appeal, on the ground that the Supreme Court of *Canada* had no jurisdiction to hear the cause, because

*PRESENT.—Ritchie, C.J., and Strong, Fournier, Henry, Taschereau and Gwynne, J. J.

the Court of Probate, where the cause originated in *Nova Scotia*, is an Inferior Court, (R. S. N. S., c. 90); and contended that under the 17 section of the Supreme and Exchequer Court Act, an appeal does not lie in cases in which the Court of original jurisdiction is not a Superior Court, and cited *Hilliard* on new trials (1); *King v. Hanson* (2); *Queen v. Stock* (3).

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—

Mr. Cockburn, Q. C., *contra*.

THE CHIEF JUSTICE :—

I do not think there can be any doubt in this case. The statute puts it beyond all doubt that the cause must originate in a Superior Court in the Province, then go to the highest Court of final resort, and then here. In no other case will an appeal lie; except, of course, when brought under sec. 27 of *The Supreme and Exchequer Court Act*, allowing an appeal by consent of parties direct from a Superior Court of original jurisdiction, or when brought in a criminal case under sec. 49 of the Act. The Court of Probate from whose decision the appellant now appeals is in every sense of the word an Inferior Court. The proceedings before that Court are entirely different from those of a common law court, and are subject to a writ of prohibition from the Supreme Court of *Nova Scotia*.

The appeal should be quashed.

STRONG, FOURNIER, HENRY and GWYNNE, J. J., concurred.

TASCHEREAU, J. :—

I agree with the judgment of the Court that the appeal should be quashed, but I do not wish it to be understood that I concur with the remarks of the Chief Justice, that an appeal will lie from a Superior Court

(1) Pp. 559, 585.

(2) 4 B. & Ald. 521.

(3) 8 A. & E. 405.

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— of original jurisdiction direct to this Court by consent
of parties. I reserve my opinion as to the right of the
Federal Parliament to allow an appeal otherwise than
from the highest Court of Appeal in the Province.

Appeal quashed with costs.

Solicitor for appellant : *Samuel G. Rigby.*

Solicitor for respondent : *W. F. McCoy.*
