

Old sec.
46, 47, 49,
title to lands.

final resort in the province, in the matters set out in new section 41, and the unsuccessful party desires to obtain leave to appeal from the Supreme Court. The jurisdiction of the Supreme Court to grant leave must depend upon the Court first holding that the facts of the case bring it within one or other of the sub-sections of 41. In all such cases, advantage will be gained by consulting the decisions of the Court on the corresponding provisions of the Act. (Supreme Court Practice, Vol. I., pp. 209-249, 276-291, Vol. II., 47-58). Inasmuch as the precise language of old sub-section 46 (b) has not been reproduced in new section 41, it may be advisable to discuss some of the leading cases decided under the old section, and consider how they will apply to the language of the new.

'TITLE TO LANDS OR TENEMENTS.'

The jurisprudence of the Supreme Court is well settled that not only petitory actions, but also certain possessory actions, fall within the language of this sub-section. (*Delisle v. Arcand*, 36 S. C. R. 23, and other decisions on p. 217 *et seq.*, Vol. I. Sup. Ct. Prac.). There are however certain possessory actions which strictly do not involve title to lands, *e.g.*, servitudes, bornage, toll roads, and bridges, and these have in certain cases been held to be within the jurisdiction of the Supreme Court, because they were covered by the last part of section 46 (b), namely, 'other matters or things where rights in future might be bound,' which expression has been construed to mean 'matters or things *ejusdem generis* with title to lands and tenements' (*Odell v. Gregory*, 24 S. C. R. 663). So far, therefore, as the judgments in these cases were based upon the words 'rights in future might be bound,' they no longer will be authority for the jurisdiction of the Court, as new section 41 (d) does not contain these words. The only reference to 'future rights' in the new section is in sub-section (c), which is mainly copied from the corresponding provision in 48 (d), and which is as follows: "The taking of any annual rent customary or other fee or others matters by which rights in future of the parties may be affected." This gives the expression 'future rights' a very limited application, for 'annual rents' has been construed as limited to 'rentes foncières' or ground rents, and does not include an annuity under a will or like charge or obligation. There has been no decision of the Court construing the expression 'customary or other fee.' Where the word fee has been construed (*Bank of Toronto v. Les Curé*, 12 S. C. R. 31, *Odell v. Gregory*, 24 S. C. R. 661), it has been limited to a fee payable to His Majesty.