Ontario statute that the said policies should be payable to his wife and in case of her dying before him to his children. After this declaration was made he mortgaged the same property to the P. L. Co. giving the same policies as collateral, and the first mortgage was assigned to the P. L. Co, and was, in fact, paid off with the proceeds of the second loan. The mortgage to the P. L. Co. contained a provision that it was to be void on payment at a certain time of the principal and interest thereon at the rate of ten per cent per annum "until fully paid and satisfied." In an action to have the assignment of the policies cancelled

Held, (Dec. 10, 1890) that the P. L. Co. could only hold the policies as collateral security for the mortgage to the C.L. Ins. Co., and not as security for their own mortgage.

Held further, that the mortgage to the P. L. Co. only carried interest at the rate of ten per cent until the principal was payable, and after that date the statutory rate governed. *Rykert* v. *St. John* (10 Can. S. C. R. 278) followed.

Appeal dismissed with costs.

Delamere, Q. C., for appellants.
Beck, for respondent.

North-West Territories.]

MARTIN v. MOORE.

Appeal—Jurisdiction—Service of writ out of Jurisdiction—Order of judge—Final judgment—Practice.

A writ of summons, in the ordinary form of writs for service within the jurisdiction, was issued out of the division for the District of Alberta of the Supreme Court of the North West Territories and a judge's order was afterwards obtained for leave to serve it out of the jurisdiction. The writ having been served in England, the defendant moved before a judge of the Court below to set aside the service, alleging that the cause of action arose in England and he was, therefore, not subject to the jurisdiction of the courts in the Territories; also, assuming the Court had jurisdiction, that the writ was defective as the practice required that a judge's order should have been obtained before it issued. The motion was refused, and the decision of the judge refusing it was affirmed by the full court. The defendant then sought to appeal to the Supreme Court of Canada.

Held, (March 11, 1891) Gwynne, J., *hesitante*, that the judgment sought to be appealed from was not a final judgment in an action, suit, cause, matter or other judicial proceeding within the meaning of the Supreme Court Act, and the Court had no jurisdiction to hear the appeal.

Appeal quashed with costs.

Chrysler, Q. C., for the appellant.
Moss, Q. C., for the respondent.

Ontario.]

HOBBS v. ONTARIO LOAN AND DEBENTURE CO.

Mortgage—Re-demise clause—Creation of tenancy—Rent reserved—Tenancy at will—Agreement for lease—Specific performance—Excessive rent—Intention.

A mortgage of real estate provided that the money secured thereby, $20,000 with interest at seven per cent., should be paid as follows:—$500 on Dec. 1, 1883, and on the first days of June and December in each of the years 1884, 1885, 1886, 1887, and $15,500 on June 1st, 1888. The mortgage contained the following clause:

"And the mortgagees lease to the mortgagor the said lands from the date hereof until the date herein provided for the last payment of any of the moneys hereby secured, undisturbed by the mortgagees or their assigns, he, the mortgagor, paying therefor in every year during the said term, on each and every of the days in the above proviso for redemption appointed for payment of the moneys hereby secured, such rent or sum as equals in amount the amount payable on such days respectively according to the said proviso, without any deduction."

The goods of the mortgagor having been seized under execution the mortgagees claimed payment as landlord under the said clause of a year's rent out of the proceeds of the sale of the goods under the Statute of Anne.

Held, (Dec. 10, 1890) that it is competent for mortgagee and mortgagor to create by agreement the relation of landlord and tenant between them.