

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.]

[Nov. 16, 1903.]

CAN. MUTUAL RESERVE FUND LIFE ASS. v. DILLON.

Appeal—New trial—Alternative relief.

In an action on a policy of insurance on the life of plaintiff's husband, the defence being misrepresentation and concealment of material facts, plaintiff obtained a verdict though defendant's counsel claimed that there was no case to go to the jury. On appeal to the Court of Appeal, claiming judgment for defendants or in the alternative a new trial, such alternative relief was granted (5 O.L.R. 434). The defendants then appealed to the Supreme Court to obtain the larger relief.

Held, that the appeal did not lie; that it was not an appeal from the order for a new trial, and that the judgment refusing to enter a dismissal of the action was not final. Appeal quashed without costs.

Lucas and Wright, for motion to quash. *Aylesworth*, K.C., contra.

Ont.]

CANADIAN MUTUAL LOAN CO. v. LEE. [Nov. 19, 1903.]

Appeal—Amount in dispute—Title to land—Future rights.

L. had given a mortgage to The Standard Loan and Savings Co. as security for a loan and had received a certain number of the company's shares. All the business of that company was afterwards assigned to the Canadian Mutual Loan Co., and L. paid the latter the amount borrowed with interest and \$460.80 in addition and asked to have the mortgage discharged. The company refused, claiming that L. as a shareholder in the Standard Co. was liable for its debts and demanding \$79.20 therefor by way of counterclaim. At the trial of an action by L. for a declaration that the mortgage was paid and for repayment of the said \$460.80, such action was dismissed (1 O.L.R. 191), but on appeal the Court of Appeal ordered judgment to be entered for L. for \$47.04 (5 O.L.R. 471). The defendants appealed to the Supreme Court.

Held, that the appeal would not lie; that no title to lands or any interest therein was in question; that no future rights were involved within the meaning of sub-s. (d) of 6c & 61 Vict., c. 34; and that all that was in