

Ont.]

WATERS v. MANIGAULT.

[April 23]

Appeal—Jurisdiction—Title to land—Duty—Future rights—60 & 61 Vict., c. 34—Ditches and Watercourses Act.

W. applied for an injunction to restrain M. and others from proceeding to construct a ditch on land adjoining his own under an award which had been lost and which W. claimed was illegally obtained. He also claimed that the ditch would bring water on his land and injure it. His action was dismissed by the trial judge whose judgment was affirmed by the Court of Appeal. On appeal to the Supreme Court of Canada,

Held, that no question of title to real estate or any interest therein was involved so as to permit of an appeal under sub-s. (a) of 60 & 61 Vict., c. 34; that the charge upon W.'s land for a proportionate part of the cost of the ditch by reason of benefit was not the taking of a duty under sub-s. (d); and that no future rights of W. were affected; the case was not therefore, one in which an appeal would lie.

As the respondent might have taken exception to the jurisdiction in time to have saved the expense of printing the case and factum for the appeal, he was only allowed the costs of a motion to quash. Appeal quashed with costs.

Folinshee, for appellant. *Stuart*, for respondent.

Ont.]

BANK OF TORONTO v. QUEBEC FIRE INS. CO.

[April 27.]

Fire insurance—Proof of loss—Increase of risk—Appeal—Questions of fact.

The John Eaton Co., of Toronto, whose premises were destroyed by fire in 1897, had insurance on the stock amounting to \$219,000, and actions were brought against five companies by the Bank of Toronto as assignees of the claims by an assignment after the loss. The companies defended on the grounds of false and fraudulent statements in the proofs of loss; that the fire was caused by the act of the insured; that the risk was increased by overstocking and heavy insurance; and that the Bank was not in law the assignee of the policies. Two of the causes were tried before FERGUSON, J., and the others by MEREDITH, C.J., all without a jury, and all resulted in a verdict for the Bank which was sustained by the Court of Appeal. On appeal to the Supreme Court of Canada:

Held, per STRONG, C.J., and TASCHEREAU, SEDGWICK and KING, JJ., that the appeal depended almost entirely on questions of fact passed upon by two courts and for a second appellate court to reverse would be going in the teeth of many former decisions; that on the question of law that the proofs were defective, it being claimed that according to the evidence the accounts of stock were padded and the true value was much less than the insurance, the reasons given by the trial judge and judges in appeal were conclusive, namely that the explanation of the discrepancy had been