REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Ontario.] JERMYN *v.* TEW. [May 20.

Jurisdiction—60-61 Vict., c. 34 (D.), s. 1—Amount in dispute.

Action by an assignee for the benefit of creditors to set aside as a preference a mortgage given by one member of an insolvent firm, upon his individual real estate, within sixty days before making an assignment for the benefit of creditors. The mortgage was to secure an indebtedness by the insolvent firm, amounting to $2,200. Before the action came on for trial, the real estate comprised in the mortgage was sold to a prior mortgagee, who, after satisfying his own claim, paid the whole surplus, amounting to $270, to the appellant, Jermyn. The action was tried before the Chancellor on the 12th of April 1897, and he declared the mortgage to be void, and ordered Jermyn to pay over the $270 to the respondent Tew. On appeal to the Court of Appeal for Ontario, BURTON, C.J.O., and MACLENNAN, J.A., were of opinion that the appeal should be allowed, OSLER, J.A., and MOSS, J.A., were of opinion that it should be dismissed. The appellant thereupon appealed to the Supreme Court of Canada. Upon the application of the appellant to have the appeal allowed and the security approved under s. 46 of the Supreme Court Act objection was taken that under 60-61 Vict., c. 34 (Dom.), s. 1 (C.), no appeal lay, as the amount in controversy in the appeal did not exceed the sum of $1,000. MACLENNAN, J.A., held that under sub-sec. (f) of the same clause $270 could not be considered as the amount in controversy, and also that the title to real estate or some interest therein was in question, and that an appeal would lie under sub-sec. (a) of the same clause. The appeal was accordingly proceeded with, the appeal case was settled and printed, and factums were delivered by the appellant and respondent, and the appeal entered for hearing. Upon the appeal being called,

Nesbitt, for the respondent, objected that under the circumstances there could be no appeal.

H. Cassels, for appellant, contra.

The Court (Sir HENRY STRONG, C.J., TASCHEREAU, GWYNNE, SEDGEWICK, and KING, JJ.), unanimously allowed the objection and quashed the appeal, but, under the circumstances, with costs only as of a motion before a Judge in Chambers. The Court was of opinion that sub-sec. (f) could not affect the construction of sub-sec. (c), and that as the only possible result of the appeal would be the determination of who should receive the $270, the case was governed by sub-sec. (c), and did fall under sub-sec. (a).