1903
*Nov. 19.

THE CANADIAN MUTUAL LOAN AND INVESTMENT COMPANY (DEFENDANTS) .... APPELLANTS;

AND

JOHN LEE (PLAINTIFF) .... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

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 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 Ont. L. R. 191) but on appeal the Court of Appeal ordered judgment to be entered for L. for $47.04 (5 Ont. 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 subsec. *(d)* of 60 & 61 Vict. ch. 34; and that all that was in dispute was a sum of money less than $1,000 and therefore not sufficient to give jurisdiction to the court.

Held, also that the time for bringing the appeal cannot be extended after expiration of the sixty days from the pronouncing or entry of the judgment appealed from.

APPEAL from a decision of the Court of Appeal for Ontario (1) reversing the judgment at the trial by which the action was dismissed (2), and directing judgment to be entered for the plaintiff for $47.04.

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*PRESENT:—Sir Elzéar Taschereau C.J. and Sedgewick, Davies, Nesbitt and Killam JJ.

(1) 5 Ont. L. R. 471. (2) 3 Ont. L. R. 191.

The facts of the case necessary to understand the judgment of the Supreme Court are sufficiently stated in the above head-note.

W. J. Clark for the respondent moved to quash the appeal on the ground that only a sum of money less than $1,000 was in dispute, and citing *Bank of Toronto* v. *Le Curé, &c. de la Nativité* (1); *Jermyn* v. *Tew* (2).

Shepley K.C. (*Macdonell* with him) contra. The appeal involves the title to land or an interest in land. *Purdom* v. *Pavey* (3); *Stinson* v. *Dousman* (4).

Moreover the future rights of the appellants are affected and subsection (*d*) of the Act 60 & 61 Vict. ch. 34, gives a right of appeal.

If there is no appeal as of right I would ask for special leave under subsec. (*e*). The case is a very important one for loan companies.

The judgment of the court was delivered by:

THE CHIEF JUSTICE.—We are all agreed that this appeal must be quashed. As the case comes before us, there is nothing in it but a controversy as to a pecuniary amount of less than $1,000, and therefore not sufficient to give us jurisdiction.

The contention that the case might be appealable under subsection (*a*) of the Act 60 & 61 Vict. c. 34, cannot prevail. There is no title to real estate or any interest therein in question, *controverted* or *in controversy*, upon this appeal. Compare *Tintsman* v. *National Bank* (5); *Stillwell B. & S. V. Co.* v. *Williamston Oil & F. Co.* (6); *Carne* v. *Russ* (7); *Farmers Bank of Alexandria* v. *Hooff* (8); *Nicholls* v. *Voorhis* (9); *Scully* v. *Sanders* (10). The effect or consequences of a judgment are not a test of our jurisdiction.

(1) 12 Can. S. C. R. 25.
(2) 28 Can. S. C. R. 497.
(3) 26 Can. S. C. R. 412.
(4) 20 How. 461.
(5) 100 U. S. R. 6.
(6) 80 Fed. Rep. 68.
(7) 152 U. S. R. 250.
(8) 7 Peters 168.
(9) 74 N. Y. 28.
(10) 77 N. Y. 598.

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CANADIAN MUTUAL LOAN & INVESTMENT CO. v. LEE.

The Chief Justice.

Wineberg v. *Hampson* (1); *The Emerald Phosphate Co.* v. *The Anglo-Continental Guano Works* (2); *Jermyn* v. *Tew* (3); *Frechette* v. *Simmonneau* (4); *Toussignant* v. *County of Nicolet* (5).

Neither can the right of appeal be supported upon sec. 1, subsec. (*d*) of the Act. There is in the case no matter in question relating to the taking of an annual or other rent, customary or other duty or fee, or a *like demand of a general or public nature affecting future rights.* These last words are governed by the preceding ones. A demand must be of a general and public nature besides affecting future rights. *In re Marois* (6); *Gilbert* v. *Gilman* (7); *Wineberg* v. *Hampson* (1); *Raphael* v. *MacLaren* (8).

The appellant now asks that, failing his maintaining his appeal as of right, we should grant him special leave under subsec. (*c*). But that application is too late, assuming that it could be heard without notice to the respondent. More than sixty days have elapsed since the judgment he would now appeal from; sec. 40 Supreme Court Act; and under a constant jurisprudence, our power to grant special leave is gone, and the time cannot be extended for such a purpose either under sec. 42 which applies exclusively to appeals as of right, or under rule 70 which has always been construed as not applying to delays fixed by statute. Our jurisprudence on the subject under this Ontario Act is the same that we have followed as to leave to appeal *per saltum* under section 26, subsec. 3. *Barrett* v. *Syndicat Lyonnais du Klondyke* (9), and cases therein

(1) 19 Can. S. C. 369.
(2) 21 Can. S. C. R. 422.
(3) 28 Can. S. C. R. 497.
(4) 31 Can. S. C. R. 12.
(5) 32 Can. S. C. R. 353.
(6) 15 Moo. P. C. 189.
(7) 16 Can. S. C. R. 189.
(8) 27 Can. S. C. R. 319.
(9) 33 Can. S. C. R. 667.

cited, to which may be added *In re Smart* (2); and *Stewart* v. *Skulthorpe*, referred to in the second edition of Cassels's Supreme Court Practice, at page 37. See *Credit Company* v. *Arkansas Central Railway Co.* (3); *Brooks* v. *Norris* (4).

Appeal quashed with costs.

Solicitors for the appellants: *Macdonell, McMaster & Geary.*

Solicitor for the respondent: *W. J. Clark.*

(2) 16 Can. S. C. R. 396.
(3) 128 U. S. R. 258.
(4) 11 How. 204.