

IN THE MATTER OF
THE CUSHING SULPHITE FIBRE COMPANY.

1906
*Feb. 8.

ON APPEAL FROM THE SUPREME COURT OF NEW
BRUNSWICK.

Appeal—Jurisdiction—Discretionary order—Stay of foreclosure proceedings—Final judgment—Controversy involved—“Winding-up Act”—R.S.C. c. 129, s. 76—R.S.C. c. 135, s. 28.

Leave to appeal to the Supreme Court of Canada under the seventysixth section of the “Winding-up Act” can be granted only where the judgment from which the appeal is sought is a final judgment and the amount involved exceeds two thousand dollars.

A judgment setting aside an order, made under the “Winding-up Act,” for the postponement of foreclosure proceedings and directing that such proceedings should be continued is not a final judgment within the meaning of the Supreme Court Act, and does not involve any controversy as to a pecuniary amount.

APPLICATION for leave to appeal from the judgment of the Supreme Court of New Brunswick, rendered on the 5th of January, 1906, reversing the order of Mr. Justice McLeod, under the “Winding-up Act,” which postponed the proceedings for the foreclosure and sale of certain mortgaged lands of the company.

The questions which arose on this application are stated in the judgment now reported.

Blair K.C., Pugsley K.C. and Hazen K.C., for the application.

R. G. Code and C. S. Hanington, contra.

DAVIES J.—This was an application made to me, in chambers, on behalf of the liquidators of the com-

*PRESENT:—Mr. Justice Davies in Chambers.

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pany for leave to appeal to the Supreme Court of Canada, from a judgment of the Supreme Court of New Brunswick of the 5th of January last, allowing an appeal of the Eastern Trust Company from an order made by Mr. Justice McLeod, who had charge of the winding-up proceedings of the company, postponing, for the second time and until the first day of May next, 1906, the sale of certain very valuable property of the Cushing Sulphite Fibre Company, Limited.

The sale was to have taken place under a decree of foreclosure made by the Court of Equity of the province prior to the granting of the winding-up order. The sale had been previously postponed by Mr. Justice McLeod, acting as the judge under the winding-up proceedings, to a date in November last and then again by the order made by him in November till May next, and it is from the judgment of the Supreme Court of New Brunswick setting aside this latter order and ordering, in lieu thereof, that the Eastern Trust Company, the mortgagee of the limited sulphite company's property, "have leave to proceed in their suit as they may be advised," that I am asked to grant leave to appeal to this court.

The section of "The Winding-up Act," under which it is contended that I have the power to grant the leave asked for is the seventy-sixth. It provides that

an appeal shall lie to the Supreme Court of Canada by leave of a judge of the said Supreme Court from the judgment of (*inter alia* the full court of New Brunswick), if the amount involved in the appeal exceeds two thousand dollars.

At the very threshold of the application, therefore, I must be satisfied that this condition, which alone gives this court power to hear an appeal, exists.

It is not contended that it does directly or that any amount at all is directly involved. But it is argued that the property to be sold is a most valuable one, amounting to several hundreds of thousands of dollars, and that indirectly it is of great importance whether the liquidators under the "Winding-up Act" or the referee of the Court of Equity should have the control of the sale, and that the adverse and contending bondholders hold bonds for sums very much beyond this two thousand dollar limit, and that, consequently, more than that amount is involved in the appeal.

I am not able to appreciate this argument. I cannot see that any amount whatever would be involved in the appeal sought. All that would be involved would be the power and, conceding that, the judicial discretion of Mr. Justice McLeod in postponing the date on which the sale of the property was to take place. But with respect to neither the power to make the order nor the judicial discretion exercised in the making of it, if the power exists, have we been vested with jurisdiction.

Then again, I do not think the judgment sought to be appealed from a final judgment within the meaning of that phrase in the Supreme and Exchequer Courts Act. The twenty-eight section of that Act declares that

except as provided in this Act or in the Act providing for the appeal, an appeal shall lie only from *final* judgments, etc.

Mr. Blair and Mr. Hazen contended that it must be held to be "provided" in the section of the "Winding-up Act" cited by me above, that an appeal shall lie from all judgments involving more than two thousand dollars. I do not so construe the two sections. I

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think they must be read together and that, unless otherwise specifically or by reasonable inference “provided” in the Act allowing an appeal, it shall lie only from final judgments, and only from them in cases where the amount involved exceeds two thousand dollars.

The judgment of the Supreme Court of New Brunswick is not a final judgment within the meaning of those words as used in the Act. It is simply an interlocutory judgment setting aside an order postponing a sale and giving the plaintiff leave to proceed as he may be advised and it does not involve any amount whatever.

The application is refused with costs.

Application refused with costs.
