

1924
*Dec. 12.

FIDELITY-PHENIX FIRE INSUR-
ANCE COMPANY OF NEW YORK } APPELLANT;
(DEFENDANT)

AND

DUNCAN McPHERSON AND OTHERS } RESPONDENTS.
PLAINTIFFS)

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
COURT OF ALBERTA

*Stay of proceedings—Jurisdiction—Security for costs only—Execution for
debt and costs below.*

The appellant company, having been held liable in the courts below for a sum approximately \$7,000, appealed to this court giving security only for the sum of \$500 for the costs of the appeal. The appeal to this court was dismissed with costs. The appellant then applied for a stay of proceedings in the action pending a projected appeal to the Judicial Committee of the Privy Council.

Held that the application as made could not be granted as, security for the debt and costs in the courts below not having been given, the control of the issue of execution for them rests wholly with the provincial courts; a judge of this court can only direct that further proceedings be stayed in this court until the appellant should have an opportunity of presenting a petition for leave to appeal to the Judicial Committee of the Privy Council.

MOTION by the appellant for stay of proceedings pending a projected appeal to the Judicial Committee of the Privy Council.

The facts are fully stated in the judgment of the Chief Justice on the application.

A. C. Hill for the motion.

Herridge contra.

THE CHIEF JUSTICE.—The unsuccessful appellant has applied for a stay of proceedings in this action pending a projected appeal to the Privy Council.

Held liable for a sum approximating \$7,000, the appellant appealed to this court giving security, however, only in the sum of \$500 for the costs of the appeal (Supreme Court Act, s. 75). The plaintiffs might, therefore, at any time have issued execution out of the provincial court for the judgment debt and costs. The certificate of the judgment of this court has not yet issued. After delivery of

*PRESENT:—The Chief Justice in Chambers.

judgment here the defendant moved in the provincial court for a stay of execution pending a projected appeal to the Privy Council. That motion was rejected. Counsel for the plaintiffs opposed the present application on the ground that, security for the debt and costs below not having been given, the control of the issue of execution for them rests wholly with the provincial courts. Section 76 (d) of the Supreme Court Act enacts that

if the judgment appealed from directs the payment of money, either as a debt or for damages or costs, execution thereof shall not be stayed, until the appellant has given security to the satisfaction of the court appealed from, or a judge thereof, * * *

It would seem, therefore, that it was not the policy of Parliament that the Supreme Court of Canada, or a judge thereof, should control, or interfere with, the issue of execution on a judgment for the recovery of money when security for the payment thereof has not been given as indicated in s. 76 (d). One method, and one only, is sanctioned for obtaining a stay of execution in such a case at any stage of the proceedings in this court, and that is the giving of security to the satisfaction of the court appealed from, or a judge thereof. That the control of the issue of execution in such a case is fully vested in the court appealed from is further indicated by the provisions of s. 77. Other cases not within the proviso to s. 76 may fall within rule 136.

But I have jurisdiction to direct, as requested by the appellant, that further proceedings be stayed in this court until it shall have had an opportunity of presenting a petition for leave to appeal to the Judicial Committee of the Privy Council. Such an order may issue upon the appellant undertaking to present its petition for leave to appeal to the Judicial Committee at its first sittings after the first of January next.

The costs of the present application will be costs in the projected appeal, if leave be given, and, if leave be refused, must be paid by the appellant to the respondents.

Motion dismissed.

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FIDELITY-
PHENIX
FIRE INS.
Co. of N.Y.
v.
McPHERSON
The
Chief Justice.