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 \*Jan. 5.  
 \*Jan. 11.

BENJAMIN STEVENSON (RESPONDENT) . . APPELLANT;  
 AND  
 DAME FLORA FLORANT (PETITIONER) . . RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,  
 PROVINCE OF QUEBEC

*Practice and procedure—Stay of proceedings—Leave to appeal to Privy Council—Proceedings in execution—Suspension—Application for stay after leave to appeal obtained—Supreme Court Act, R.S.C. [1906] c. 139, s. 37, rule 136.*

An application for special leave to appeal to the Privy Council, and even the granting of such leave, do not, as a matter of law or by the rules of this court, *ipso facto* operate as a suspension of proceedings in execution of the judgment rendered by the Supreme Court of Canada.

Pursuant to rule 136, the practice of this court has been to make orders for stay of execution of its judgments pending the time necessary for applying to the Privy Council for leave to appeal. But, except for very special reasons, this court will be slow to exercise the wider discretion which the rule authorizes.

As a general rule, it is desirable, where leave to appeal to the Privy Council is granted, that the conditions attached to such leave and the terms upon which it is allowed should be left to the Judicial Committee.

MOTION for an order staying the execution of a judgment of this court pending the bearing of an appeal to the Privy Council.

A. S. Bruneau for motion.

H. G. Gérin-Lajoie *contra*.

RINFRET J.—This application is for an order staying the execution of the judgment of the Supreme Court of Canada pending the hearing of the appeal herein to His Majesty's Privy Council.

This judgment was rendered on the 18th day of June, 1925.

On the 25th day of the same month, it was ordered by a judge of this court in chambers that, upon the appellant giving, on or before the 6th day of July, 1925, security to the amount of \$1,000 to indemnify the respondent from the costs incurred as well in this court as in the lower courts, to the satisfaction of the registrar of this court, all proceedings herein, except a settlement of the minutes of judgment, be stayed until the 31st day of July, 1925, to afford appellant an opportunity of applying to the Judicial

\*PRESENT:—Mr. Justice Rinfret in chambers.

Committee of His Majesty's Privy Council for leave to appeal from the judgment rendered.

The above order is now spent, both for the reason that the period of time during which it was to remain in force has expired, and because the purpose of the order has been served, since the appellant has obtained leave to appeal as appears from His Majesty's order dated the 12th day of October, 1925, and duly filed in this court.

When the present application was made, the judgment of the Supreme Court of Canada rendered on the 18th of June, 1925, had not yet been certified by the registrar of this court to the proper officer of the court of original jurisdiction, so that this court, or a judge thereof was still competent to entertain the application and make the order (*In re Strathcona Fire Company, Lemire v. Nicol* (1) ).

An application for special leave to appeal to the Privy Council, and even the granting of such leave, do not, as a matter of law or by the rules of this court, *ipso facto* operate as a suspension of proceedings in execution.

Under s. 58 of the *Supreme Court Act*, so soon as the judgment of this court in appeal has been certified by the registrar of this court to the officer of the court of original jurisdiction and all proper and necessary entries have thereupon been made, all such proceedings may be taken thereon as if the judgment had been entered or pronounced in the said last mentioned court.

Pursuant to rule 136, it has been the practice of this court to make orders for stay of execution of its judgments pending the time necessary for applying to the Judicial Committee of the Privy Council for leave to appeal from the judgment rendered. Except however for very special reasons, such as no doubt existed in *Schofield v. Emmerson Brantingham Implement Company* (2), this court will be slow to exercise the wider discretion which the rule undoubtedly authorizes. As a general rule, it is desirable, where special leave to appeal to His Majesty's Privy Council is granted, that the conditions attached to such special leave and the terms upon which it is allowed should be left to the Judicial Committee.

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—  
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(1) [1924] S.C.R. 510.

(2) Cameron's Pract., 3rd Ed.,  
469.

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In this case, the petition for special leave contained a prayer

that execution of the judgment of the Supreme Court of Canada be stayed pending the hearing of the appeal.

In the report of the Board, dated the 28th day of July, 1925, their Lordships, while recommending that leave ought to be granted to the petitioner and defining the terms as the circumstances of the case in their view required, made no order with regard to the stay of execution of the judgment of this court. It is not to be doubted therefore that their Lordships thought that a stay of execution ought not to be ordered in the premises. Any temporary relief against the judgment of this court until judgment shall be given in this case by the Judicial Committee of the Privy Council should properly be left to the Judicial Committee itself.

The application is dismissed with costs.

*Motion dismissed.*

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