

HIS MAJESTY THE KING,

1931  
 May 1.  
 May 1.

PLAINTIFF;

vs.

Nos. 9370, 10314

CONSOLIDATED DISTILLERIES LIMITED

AND W. J. HUME,

DEFENDANTS.

AND

9371

HIS MAJESTY THE KING,

PLAINTIFF;

vs.

CONSOLIDATED DISTILLERIES LIMITED,

AND F. L. SMITH,

DEFENDANTS.

*Practice—Appeal—Stay of execution—Discretion of judge as to amount of security*

Judgment was given against the defendants in the three cases for over \$700,000, and appeals have been taken therefrom to the Supreme Court of Canada. On motion of defendants for stay of execution, it was contended that the judge could in his discretion, in ordering security to be furnished, fix a smaller amount than that for which judgment was given.

*Held*, that Rule 208 of the General Rules and Orders of this Court did not apply to the subject-matter of this application.

2. That under Section 71, ss. "d" of the Supreme Court Act, the discretion conferred upon a judge granting a stay of execution refers only to the *form* or manner in which the security is to be given and does not extend to the *amount* of said security.

MOTION for Stay of Execution pending appeal to the Supreme Court.

The Motion was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

*Arthur Holden, K.C.*, for the motion.

*F. P. Varcoe, K.C.*, *contra*.

THE PRESIDENT, now (May 1, 1931), handed down the following reasons.

This was an application, under the provisions of Rule 208 of the practice of the Exchequer Court, by Mr. Holden, of counsel for the defendants, for a stay of execution in

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the above cases which were tried at the same time before me on the 29th and 30th days of January last. Mr. Varcoe opposed the application on behalf of the Attorney-General of Canada.

Judgments were delivered herein in the month of March last, whereby the informations filed by the Attorney-General were sustained, and the defendants found liable for the sums of money sued for in the several informations with the exception of the claims for interest, which were disallowed. Costs were also ordered to follow the event in each case.

Appeals to the Supreme Court of Canada have been launched by the defendants in each case. The aggregate of the amounts for which judgment was given in these cases exceeds \$700,000, a heavy burden upon the defendants if the security on stay of execution pending the appeal has to be given in an equal amount.

Mr. Holden submitted that under the provisions of Rule 208 of the Exchequer Court practice I might exercise discretion in ordering security and fix a smaller sum than the judgments find the defendants liable to pay to the plaintiff.

I am unable to accept Mr. Holden's contention that the Exchequer Court rule applies to the subject-matter of his application. That rule, it seems to me, is to be confined to applications for a stay of execution in cases where an appeal has not been taken to the Supreme Court from a judgment of this court. On the other hand, where an appeal to the Supreme Court has been launched, it seems to me that the provisions of section 71 (*d*) of the Supreme Court Act (R.S., 1927, c. 35), govern a Judge of the Exchequer Court in fixing security to be given on a stay of execution pending the appeal. Those provisions read as follows:

"71 (*d*) if the judgment appealed from directs the payment of money, either as a debt or for damages or costs, the execution of the judgment shall not be stayed, until the appellant has given security to the satisfaction of the court appealed from, or of a judge thereof, that if the judgment or any part thereof is affirmed, the appellant will pay the amount thereby directed to be paid, or the part thereof as to which the judgment is affirmed, if it is affirmed only as to part, and all damages awarded against the appellant on such appeal."

If an application were made under this section I would be constrained to hold that the discretion conferred upon me there refers only to the *form* or manner in which the

security is to be given and does not extend to the *amount* of the security. No other interpretation can, it seems to me, be placed upon the words used. It is a burdensome rule but it is prescribed by an Act of Parliament and I could not depart from it by any forced construction in case of any party to litigation.

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The application as now made will be dismissed with costs.

*Ordered accordingly.*