

1905

*Sept. 26.

*Sept. 27.

IN THE MATTER OF THE CUSHING SULPHITE FIBRE CO.

ON APPEAL FROM THE SUPREME COURT OF NEW
BRUNSWICK.

*Appeal per saltum—Winding-up Act—Application under sec. 76—
Defective proceedings.*

Leave to appeal *per saltum*, under sec. 26 of the Supreme Court Act, cannot be granted in a case under the Dominion Winding-up Act. An application under sec. 76 of the Winding-up Act, for leave to appeal from a judgment of the Supreme Court of New Brunswick was refused where the judge had made no formal order on the petition for a winding-up order and the proceedings before the full court were in the nature of a reference rather than of an appeal from his decision.

APPLICATION for leave to appeal from the judgment of the Supreme Court of New Brunswick under the Winding-up Act or in the alternative from the judgment of Mr. Justice McLeod, ordering the appellant company to be wound up and appointing a liquidator, without an appeal being first had to the Supreme Court of New Brunswick *en banc*.

Teed K.C. for the application.

Pugsley K.C. contra.

DAVIES J.—This was an application to me under the 76th section of the Winding-up Act of the Dominion for leave to appeal from a judgment of the Supreme Court of New Brunswick dismissing an appeal to that court from an assumed judgment or order made by Mr. Justice McLeod relating to the winding-

PRESENT:—Mr. Justice Davies, in Chambers.

up of this company. The motion was, in the alternative, for leave to appeal *per saltum* from the order of Mr. Justice McLeod dated the 15th day of September, ordering and directing the winding up of the company, or for leave to appeal from the previous judgment of the Supreme Court of the 12th September.

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As a matter of fact Mr. Justice McLeod made no formal order in the matter of the winding-up proceedings until after the appeal court of New Brunswick had given their judgment. In fact he declined to do so, stating at the close of his opinion that:

As the matter is a very important one I will not make an order now, but I will order it to go by way of appeal to the Supreme Court, and I will order it to be entered on the motion paper to-morrow morning, and if there is any difficulty then, it may be treated as a reference from me and I will act on the order of the court.

When the matter, therefore, came before the Supreme Court of New Brunswick, it was more in the nature of a reference than in the nature of an appeal.

If I granted an appeal from their judgment it would seem to me to be a purely academic one. I am of opinion, under the 76th section of the Act, that leave to appeal *per saltum* cannot be allowed, and as there was no formal judgment given by Mr. Justice McLeod before the 15th September, from which an appeal could be taken to the Supreme Court of New Brunswick, I do not think I can grant leave to appeal from the judgment or order made by the latter court on the 12th September. As a matter of fact, the judges in the Supreme Court of New Brunswick were equally divided, and the order made was "that this appeal drop and be dismissed, the court being equally divided."

In my opinion the proper course is for the parties desiring to appeal to take an appeal out from the

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formal order for winding up, signed by Mr. Justice McLeod, of the 15th September, to the Supreme Court of New Brunswick, and apply subsequently to a judge of this court for leave to appeal from the disposition that court may make on the appeal to it.

The application, therefore, will be dismissed with costs, and as the case presents very special features which, in my judgment, justify special counsel in attending, I fix the costs at \$50.

On the merits of the case I desire to be understood as expressing no opinion whatever.

Application dismissed with costs.
