

1936
* Feb. 17.
* Feb. 18.

MARY BRUCE AND THE NOVA
SCOTIA TRUST COMPANY, EXECU-
TRIX AND EXECUTOR OF AND UNDER
THE WILL OF ALFRED D. BRUCE, DE-
CEASED, AND SHELBURNE SHIP-
BUILDERS LTD. (DEFENDANTS)....

APPELLANTS;

AND

LEWIS O. FULLER ON BEHALF OF
HIMSELF AND ALL OTHER SHARE-
HOLDERS OF SHELBURNE SHIPBUILDERS
LTD. OTHER THAN MARY BRUCE AND
THE NOVA SCOTIA TRUST COMPANY
AFORESAID (PLAINTIFF)

RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA
IN BANCO.

Appeal—Jurisdiction—Appeal from dismissal of appeal from order granting interim injunction—“Final judgment” within Supreme Court Act (R.S.C. 1927, c. 35)—Power and control of Supreme Court of Nova Scotia as to course of proceedings.

Plaintiff, a shareholder in a company, sued (on behalf of himself and other shareholders) for repayment to the company of moneys alleged to have been illegally paid to its manager in compliance with an invalid resolution passed at a meeting of the company, and for an injunction restraining the company from holding any meeting for the purpose of attempting to ratify or confirm said payments; and obtained an interim injunction to that effect until the trial. From dismissal by the Supreme Court of Nova Scotia *in banco* (9 M.P.R. 437) of an appeal from the order of interim injunction, defendants appealed to this Court.

* PRESENT:—Duff C.J. and Rinfret, Cannon, Crocket and Davis JJ.

Held: Appeal quashed for want of jurisdiction. It was clear that the ground of the judgment appealed from was that plaintiff, in support of his application for an interim injunction, had produced a *prima facie* case sufficient to satisfy the court that it was "just or convenient" to hold matters *in statu quo* until final determination of the issue. There was no final determination of any substantive right in issue in the action, and, therefore, the judgment appealed from was not a final judgment within the contemplation of the *Supreme Court Act*.

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The court pointed out that an interim injunction, like all interlocutory orders, bears *in gremio* a reservation of leave to apply; and, further, that the Supreme Court of Nova Scotia has full control over the course of the proceedings; has full power, if convenience or justice so demand, to direct that the issue concerning the holding of a meeting for the specified purpose shall be tried and determined before the issue arising on the claim for repayment is finally disposed of.

APPEAL by the defendants (by leave granted by the Supreme Court of Nova Scotia in banco) from the judgment of the Supreme Court of Nova Scotia in banco (1) dismissing (Chisholm C.J. and Ross J. dissenting) their appeal from an order of Doull J. (2) granting an interim injunction to the effect as stated in the judgment now reported. The appeal to this Court was quashed with costs, on the ground of want of jurisdiction.

W. G. Ernst K.C. for the appellant.

E. T. Parker K.C. for the respondent.

The judgment of the court was delivered by

DUFF C.J.—After fully considering the able argument of Mr. Ernst, we are forced to the conclusion that we have no jurisdiction to entertain this appeal.

The judgment appealed from is a judgment dismissing an appeal from an order by Mr. Justice Doull granting an interim injunction restraining the Shelburne Shipbuilders Ltd. from holding a meeting of the company for the purpose of ratifying or confirming certain withdrawals or payments to the late Alfred D. Bruce, the president or manager in his lifetime of the defendant company, alleged to be in excess of his salary.

The claims endorsed upon the writ are, first, for repayment and reimbursement by the executrix and executor of the deceased Alfred D. Bruce of certain moneys alleged

(1) 9 M.P.R. 437; [1935] 3 (2) 9 M.P.R. 437, at 437-440.
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to have been "wrongfully, improperly and illegally" withdrawn and paid to the said deceased, Alfred D. Bruce, in compliance with an invalid resolution alleged to have been passed at a general meeting of the company; and, second, for an injunction restraining the company from holding or allowing to be held the annual general meeting of the company on the 6th November, 1934, or holding any meeting of the company for the purpose of attempting to ratify or confirm such illegal illegal withdrawals or payments to the said Alfred D. Bruce.

It is clear, from the judgment of the majority of the court, that the appeal from Mr. Justice Doull was dismissed on the ground that, in support of their application for an interim injunction, the plaintiffs in the action had produced a *prima facie* case sufficient to satisfy the court that it was "just or convenient" to hold matters *in statu quo* until the final determination of the issue.

There is no final determination of any substantive right in issue in the action, and, therefore, the judgment is not a final judgment within the contemplation of the *Supreme Court Act*. The argument chiefly emphasized in support of the appeal was that the appellants are, by the restraining order, deprived of the opportunity to avail themselves of their voting rights as shareholders in order to strengthen their defence against the respondents' claim for the repayment of moneys alleged to have been illegally paid to the deceased, Alfred D. Bruce. This is an argument which goes to the merits of the matter, and not to the question of jurisdiction.

It should be observed, however, that an interim injunction, like all interlocutory orders, bears *in gremio* a reservation of leave to apply; and, further, that the Supreme Court of Nova Scotia has full control over the course of the proceedings; has full power, if convenience or justice so demand, to direct that the issue concerning the holding of a meeting for the specified purpose shall be tried and determined before the issue arising on the claim for repayment is finally disposed of.

The appeal will be quashed with costs.

Appeal quashed with costs.

Solicitor for the appellants: V. L. Pearson.

Solicitors for the respondent: Burchell, Smith, Parker & Fogo.