1913

*Oct. 14.
*Oct. 21.

JAMES ALBERT STEPHENSON, TENA STEPHENSON, WILLIAM STEPHENSON AND MARGARET STEPHENSON (DEFENDANTS) ...

THE SAID TENA STEPHENSON.....APPELLANT;

AND

THE GOLD MEDAL FURNITURE MANUFACTURING COMPANY (PLAINTIFFS) ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

Appeal—Jurisdiction—Reserve of further directions—"Final judgment"—Construction of statute—"Supreme Court Act," R.S.C. 1906, c. 139, s. 2(e); 3 & 4 Geo. V. c. 41, s. 1.

Before the amendment, in 1913, to sec. 2(e) of the "Supreme Court Act," R.S.C. 1906, ch. 139, judgments were rendered maintaining an action on a bond by which two of the defendants were ordered to pay to the plaintiffs an amount not exceeding that secured by the bond to be ascertained upon a reference to the master and further directions were reserved; as to another defendant, recovery of the same amount, to be ascertained in the same manner, was ordered, but there was no reserve of further directions. Upon an appeal by the last mentioned defendant,

Held, Davies J. dissenting, that the judgment sought to be appealed from (23 Man. R. 159) did not finally conclude the action as proceedings still remained to be taken on the reference, consequently, it was not a final judgment within the meaning of section 2(e) of the "Supreme Court Act," prior to the amendment by the statute 3 & 4 Geo. V., ch. 51 (assented to on the 6th of June, 1913), and it was not competent to the Supreme Court of Canada to entertain the appeal. *The Rural Municipality of Morris* v. *The London and Canadian Loan and Agency Co.* (19

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Anglin and Brodeur JJ.

1913

STEPHENSON
v.
GOLD MEDAL FURNITURE MFG. CO.

Can. S.C.R. 434). followed. *Ex parte Moore* (14 Q.B.D. 627), distinguished; *Clarke* v. *Goodall* (44 Can. S.C.R. 284), and *The Crown Life Ins. Co.* v. *Skinner* (44 Can. S.C.R. 616), referred to.

Per Anglin and Brodeur JJ.—The amendment of the "Supreme Court Act" by the first section of 3 & 4 Geo. V. ch. 51, has not affected whatever right the appellant may have had at the time the judgment was rendered in respect to an appeal to the Supreme Court of Canada. *Hyde* v. *Lindsay* (29 Can. S.C.R. 99); *Cowen* v. *Evans* (22 Can. S.C.R. 331); *Hurtubise* v. *Desmarteau* (19 Can. S.C.R. 562); and *Taylor* v. *The Queen* (1 Can. S.C.R. 65), referred to.

Per Davies J. dissenting.—The judgment in question does not reserve "further directions" and comes within the rule and principle determining what are "final judgments" laid down in the case of *Ex parte Moore* (14 Q.B.D. 627).

MOTION to quash an appeal by the defendant Tena Stephenson from the judgment of the Court of Appeal for Manitoba(1), reversing the judgment of Metcalfe J., at the trial, by which nonsuit was entered in the action against her, and declaring her liable for the amount of a bond executed by her in favour of the plaintiffs.

The action was on a guaranty by the defendants which had been given to secure the respondent company the indebtedness then existing and the future indebtedness of the Stephenson Furniture Company towards the plaintiffs to the extent of $2,600. The guaranty purported to be signed by the defendants James Albert Stephenson, his wife, Tena Stephenson, and by William Stephenson and Margaret Stephenson, father and mother of James Albert Stephenson. At the trial the defendants moved for a nonsuit which was granted in respect to Tena Stephenson and Margaret Stephenson and judgment was entered against William Stephenson and James A. Stephenson with a

(1) 23 Man. R. 159.

reference to the master to take the accounts and ascertain the amount, if any, due by the Stephenson Furniture Company to the plaintiffs.

By the judgment now appealed from, rendered on the 17th of March, 1913 (prior to the amendment of sec. 2(*e*) of the "Supreme Court Act," R.S.C. 1906, ch. 139, by the statute 3 & 4 Geo. V. ch. 51, defining the words "final judgment") the judgment against James A. Stephenson and William Stephenson was affirmed without variation, but the judgment dismissing the action as against Tena Stephenson was reversed and the action against her maintained for the amount, if any, not exceeding $2,600, which, on a reference to the master to take accounts, etc., should be found to be due to the plaintiffs by the Stephenson Furniture Company. As to Tena Stephenson there was no reserve of further directions in the judgment appealed from.

Grayson Smith, for the respondents, supported the motion to quash the appeal on the ground that the judgment was not final. He cited *Clarke* v. *Goodall* (1); *Crown Life Insurance Co.* v. *Skinner*(2); and *The Rural Municipality of Morris* v. *The London and Canadian Loan and Agency Co.*(3).

W. L. Scott, contra, distinguished the cases cited in support of the motion, and relied upon *Ex parte Moore*(4) to shew that the judgment appealed from was a final judgment in regard to Tena Stephenson and that, without any further action by the court,

(1) 44 Can. S.C.R. 284.
(2) 44 Can. S.C.R. 616.
(3) 19 Can. S.C.R. 434.
(4) 14 Q.B.D. 627.

1913

STEPHENSON v. GOLD MEDAL FURNITURE MFG. CO.

The Chief Justice.

execution could issue against her as soon as any liability was determined upon the master's report becoming absolute.

THE CHIEF JUSTICE.—The motion to quash should be granted. *Ex parte Moore*(1) has been considered; *The Rural Municipality of Morris* v. *The London and Canadian Loan and Agency Co.*(2) is followed.

DAVIES J. (dissenting).—The judgment appealed from adjudged that the judgment allowing a nonsuit as against Tena Stephenson be reversed and that the above respondent company should and do recover judgment against her

> for the amount, if any, due by the Stephenson Furniture Co, Limited, to them not exceeding the sum of $2,600 (the amount of her guarantee) and that it be referred to the master to take the accounts and ascertain the amount due by the Stephenson Furniture Company to the respondents and that Tena Stephenson, appellant, should and do pay to the plaintiffs, the respondents above, that amount and costs.

There was nothing said about "further directions." In my opinion this judgment comes within the rule and principle determining what are "final judgments" laid down in the case of *Ex parte Moore*(1), and is not at variance with any of our previous decisions in cases where further directions are reserved.

I would, therefore, dismiss the motion to quash the appeal.

IDINGTON J.—Of the many decisions going to shew that the judgment herein is not a final judgment within

(1) 14 Q.B.D. 627. (2) 19 Can. S.C.R. 434.

the meaning of the "Supreme Court Act," as it stood when this appeal was taken, the case of *The Rural Municipality of Morris* v. *The London and Canadian Loan and Agency Co.*(1) seems to cover the exact contention set up by Mr. Scott in resisting the motion to quash herein which, it seems to me, must prevail with costs.

ANGLIN J.—This is not an action in the nature of a suit in equity within section 38(*c*) of the "Supreme Court Act." It is an ordinary common law action to enforce liability on a bond. In order to establish jurisdiction in this court to entertain her appeal, the appellant must successfully maintain that the judgment against which that appeal is taken is a "final judgment" within the definition of that term in the "Supreme Court Act."

That judgment was pronounced on the 17th of March, 1913. Under a series of decisions (*Hyde* v. *Lindsay*(2); *Cowen* v. *Evans*(3); *Hurtubise* v. *Desmarteau*(4); *Taylor v. The Queen*(5)) it is clear that whatever right of appeal to this court the appellant had when judgment was given against her by the Court of Appeal has not been affected by the subsequent amendment of the "Supreme Court Act" changing the definition of a final judgment, which was assented to on the 6th of June, 1913.

But, in answer to the motion to quash the appeal on the ground that the judgment against the appellant, Tena Stephenson, is not a final judgment, it is

(1) 19 Can. S.C.R. 434.
(2) 29 Can. S.C.R. 99.
(3) 22 Can. S.C.R. 331.
(4) 19 Can. S.C.R. 562.
(5) 1 Can. S.C.R. 65.

1913

STEPHENSON v. GOLD MEDAL FURNITURE MFG. CO.

Anglin J.

urged that, inasmuch as by that judgment further directions are not reserved and under it execution may issue without any further action by the court, so soon as the amount of the liability has been determined by the master's report becoming absolute (Man. K.B. Rules, Nos. 683, and 692), this case is distinguishable from such cases as *Clarke* v. *Goodall*(1), and *The Crown Life Ins. Co.* v. *Skinner*(2).

In the trial court judgment was awarded against two of the defendants, James Albert Stephenson and William Stephenson, in these terms:—

> And it is further ordered and adjudged that the plaintiffs do recover judgment against the defendants James Albert Stephenson and William Stephenson for the amount, if any, due by the Stephenson Furniture Company, Limited, to the plaintiff not exceeding the sum of twenty-six hundred dollars ($2,600), being the amount mentioned in the guarantee sued on herein and that it be referred to the master of this honourable court to take the accounts and ascertain the amount due by the said Stephenson Furniture Company, Limited, to the plaintiff.
>
> And this court doth further order and adjudge that the said James Albert Stephenson and William Stephenson do pay to the plaintiff its costs of this action.
>
> And this court doth further order and adjudge that further directions and the costs of the reference be reserved until after the master shall have made his report.

On appeal, that judgment was affirmed without variation. As against Tena Stephenson the action had been dismissed at the trial, but, on appeal, this part of the judgment of the trial judge was reversed and judgment was rendered against Tena Stephenson in the following terms:—

> That the appellant, the above named plaintiff, should and do recover against the defendant Tena Stephenson for the amount, if any, due by the Stephenson Furniture Company, Limited, to the plaintiff not exceeding the sum of $2,600, and that it be referred to the master of the Court of King's Bench to take the accounts and

(1) 44 Can. S.C.R. 284. (2) 44 Can. S.C.R. 616.

1913

STEPHENSON v. GOLD MEDAL FURNITURE MFG. CO.

Anglin J.

ascertain the amount due by the said Stephenson Furniture Company, Limited, to the plaintiff; and that the said Tena Stephenson should and do pay to the plaintiff such amount and the plaintiff's costs of its action as against her in the Court of King's Bench, and that the said judgment in the Court of King's Bench be amended accordingly.

And this court did further order and adjudge that the defendant, Tena Stephenson, do and shall pay to the plaintiff its costs of appeal as against her forthwith after taxation.

It is difficult to understand why, as a result of the judgment of the Manitoba Court of Appeal, further directions should have been reserved in regard to her co-defendants and not in regard to Tena Stephenson, the liability found in each case being, apparently, the same in every respect. The difference was probably due to mere inadvertence; but that may not safely be assumed.

I agree with the appellant's contention that, upon the judgment as entered, execution may issue against her as soon as the master has made his report and it has become confirmed without any further order or direction of the court. Moreover, she is not met with the difficulty which would have presented itself had the judgment in appeal been rendered by the appellate court for Ontario, that, until the amount of the liability is determined there is nothing to shew that it will reach the appealable figure (see *Wenger* v. *Lamont*(1). There is no monetary limitation on the right of appeal in Manitoba cases.

But, although it would be eminently unsatisfactory that an appeal should be entertained by this Court from a judgment under which it may be, for aught that appears before us, that nothing will ultimately be found to be due by the appellant (the master

(1) 41 Can. S.C.R. 603.

1913

STEPHENSON v. GOLD MEDAL FURNITURE MFG. CO.

Anglin J.

is to find the amount of the liability of the principal debtor, *if any*), I would be disposed to accept her contention that the judgment rendered against her in the Manitoba Court of Appeal is final within such authorities as *Ex parte Moore*(1); *Re Alexander*(2); *Bozson* v. *Altrincham Urban District Council*(3), and that it would be appealable to this court if "final judgment" had not been defined in our statute as it was before the amendment of 1913. The judgment against the appellant is similar to that sometimes rendered in the English King's Bench Division for an amount to be ascertained by an official referee; see Snow's Annual Practice, 1913, page 675.

A similar judgment rendered in the Exchequer Court would be final for the purpose of appeal to this court under section 82 of the "Exchequer Court Act" (R.S.C. 1906, ch. 140), which provides that

> a judgment shall be considered final for the purposes of this section if it determines the rights of the parties, except as to the amount of damages or the amount of liability.

But, in contrast to this special provision applicable only to appeals from the Exchequer Court, from which, as a final court, this court is the immediate appellate tribunal, we had, before the recent amendment, a declaration in the "Supreme Court Act" that in the cases of appeals from the provincial courts, which normally come to this court only after the judgment of the court of first instance has been dealt with by a provincial appellate court, final judgment shall mean

> any judgment, rule, order or decision whereby the action, suit, cause, matter or other judicial proceeding is finally determined and concluded.

(1) 14 Q.B.D. 627. (2) (1892) 1 Q.B. 216.
(3) (1903) 1 K.B. 547.

1913

STEPHENSON v. GOLD MEDAL FURNITURE MFG. CO.

Anglin J.

The action against the present appellant is not concluded by the judgment of the Court of Appeal. In that action, the reference proceedings are yet to be taken and it may be that there will be a series of appeals from the findings of the master. Further proceedings in the action are necessary before it can be said to be "concluded" — before there will be a judgment in it enforceable against the appellant. I am, for these reasons, of the opinion that the judgment against which this appeal is taken is not final within the definition of final judgment in the "Supreme Court Act" as it stood prior to the recent amendment.

The motion to quash should be granted with costs.

BRODEUR J.—I concur in the opinion of Mr. Justice Anglin.

Appeal quashed with costs.

Solicitors for the appellant: *Aikins, Fullerton, Foley, & Newcombe.*

Solicitor for the respondent: *F. J. G. McArthur.*