

Rule 829 provides that "where execution of the judgment or order appealed from has become stayed, all further proceedings in the Court appealed from, other than the issue of the judgment or order and the taxation of costs thereunder, shall be stayed, unless otherwise ordered by the Court appealed to or a Judge thereof."

The order of the Chief Justice of Ontario does not in terms stay the execution of the judgment; its language is, "that the operation of the judgment appealed from herein restraining the defendants from making binders, holders, and sheets, in imitation of the binders, holders, and sheets made by plaintiffs, be stayed pending the hearing and disposition of the defendants' appeal to this Court from the judgment aforesaid."

Execution of the judgment not having been stayed by force of Rule 827, it is not stayed unless the order of Moss, C.J.O., has the effect of staying it, and it appears to me that his order has not that effect. As I read the order, all that is stayed is the operation of so much of the judgment as restrains defendants from making binders, holders, and sheets in imitation of the binders, holders, and sheets of plaintiffs, and Rule 829, which applies only where execution of the judgment or order appealed from has become stayed, has therefore, I think, no application. Indeed it may be open to question whether the Rule applies unless execution has become stayed by the automatic operation of the Rule, and it may well be that the framer of the Rules thought that where an order for the stay was necessary, the terms of the order would provide what effect it should have on the right of the parties to take further proceedings on the judgment.

[Reference to McLaren v. Caldwell, 6 A. R. 456, remarks of Burton, J.A., at p. 494.]

It was probably in view of this opinion . . . that the order of Moss, C.J.O., directs not that "execution" of the judgment but "the operation" of the judgment should be stayed.

Rule 830 being, in my opinion, for these reasons, inapplicable, there was nothing to take away the jurisdiction of the High Court to entertain an application by plaintiffs for an order for a writ of sequestration because of the disobedience of defendants in disregarding the prohibition contained in paragraph 24 of the judgment, while the operation