

because the order appealed from was interlocutory, and leave to appeal had not been obtained (Rule 507).

The Court was of opinion that the order was interlocutory within the meaning of sec. 25 of the Judicature Act, R.S.O. 1914 ch. 56: Holmsted's Judicature Act, 4th ed., p. 117; *Stewart v. Royds* (1904), 118 L.T. Jour. 176; *Gibson v. Hawes* (1911), 24 O.L.R. 543.

If there were any doubt as to the order being interlocutory, the Court should determine that it was interlocutory: sec. 25 (2).

If the contention as to the effect of sec. 76 of the Supreme Court Act was well-founded, it was doubtful whether an order to stay was necessary—it might yet be open to the appellant to invoke the section upon the reference, and, if the referee decided to proceed with the reference, to apply for a direction to him to refrain from so doing until the appeal to the Supreme Court of Canada had been heard and determined. As to the effect of the section, see *In re Weatherley*, [1918] W.N. 366, 367. But no opinion is expressed as to the effect of the section; and it is suggested that, even if the contention of the appellant is right, the order appealed from, being unreversed, might be an answer to any such application as mentioned.

*Appeal dismissed with costs.*

FIRST DIVISIONAL COURT.

FEBRUARY 10TH, 1919.

\*WADE v. JAMES.

*Assignments and Preferences—Assignment for Benefit of Creditors—Sale of Assets of Insolvent Estate by Assignee to Creditor—Inspector of Estate—Resale to Wives of Assignors—Fraud upon Estate—Judgment Directing Account of Profits—Right to Set up Illegality of Transaction as Defence to Action upon Promissory Notes Given for Part of Price upon Resale.*

Appeal by the defendants from the order of MASTEN, J., ante 77, 43 O.L.R. 614, dismissing an appeal from the report of the Master in Ordinary made in pursuance of a reference directed by the judgment at the trial.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

I. F. Hellmuth, K.C., for the appellants.

A. C. McMaster, for the plaintiff, respondent.