

account will be done to the appellant. He was of the first, apparently, to recognize that it was just and equitable that the corporation should be wound up, and he recognized the validity of the winding-up order by applying to the Master in Ordinary for leave to proceed with his action. I will allow the amendment as asked, so that the winding-up proceedings may be properly carried on as intended under the Ontario Companies Act. The terms of the order have given me a great deal of difficulty. With great respect I am unable to agree with the learned Master as to the terms imposed by the order complained of. Nor can I see what is to be gained by the claimant in holding on to a judgment which the Master will not accept, and is not bound to accept, as proof of Robbins' claim. I would require express authority before holding that the mere refusal to refrain from proceeding in a foreign country in a Court of that country without leave of a Judge in this country, would warrant the exclusion of the person so proceeding from coming into winding-up proceedings here and proving a just claim, if any, against an estate being so wound up. The Master, as I have said, may reject the judgment as sufficient proof, but the claimant should not be penalized because in the assertion of his alleged right he did get a judgment in a Court in the United States. The vacating of the judgment may require action by the claimant in that country, which he is unwilling to take, and which the Court here cannot compel him to take, and to make it a condition of proving any claim in any way is beyond the power of the Master in Ordinary.

As to the right to reject the judgment as proof of the debt, see *Keating v. Graham*, 26 O.R. 361. Proceeding to obtain judgment in a foreign country against a company being wound up in Ontario is a very different thing from seizing property of such company out of Ontario. A creditor would not be allowed to hold property seized, merely for debt, and apart from any question of lien. [Reference to the following cases as being "the strongest in favour of the liquidator": *In re International Pulp & Paper Co.*, 3 Ch. D. 594; *Flack's case*, [1894] 1 Ch. 369; *In re Jenkins & Co.*, *Solicitors' Journal* (1907), vol 51, p. 715.]

As against the liquidator's contention is the case of *In re Lake Superior Native Copper Co., Limited*, 9 O.R. 277 . . .

Upon the best consideration I can give to the case, the order is in excess of the jurisdiction of the Master in Ordinary, and the appeal should be allowed, but only to the extent of striking out those parts which seek to compel the claimant to vacate his foreign judgment. As that requires some action to be taken by him in a foreign country and in a foreign Court, nothing in the