

(4) That Robbins pay to the liquidator his costs, if any, in connection with the claim of Robbins since the order of 9th December, 1910, refusing Robbins leave to proceed with his action against said company, including the costs of the last motion.

Robbins now asks to extend the time for appealing from the order of the 9th December, 1910, and if extension of time for appealing be granted, he appeals accordingly.

I am of opinion that the order of 9th December, 1910, was within the jurisdiction of the Master in Ordinary and that the time for appealing should not be extended.

The proceedings for winding up were within the Ontario Companies Act, 7 Edw. VII. ch. 34, and sec. 177 applies. The applicant was well aware of his rights and of his limitations, and so the action by him having been commenced he applied, as I have already stated, to the Master in Ordinary for leave to continue that action, and such leave was refused.

The applicant's plain duty then was to submit to that order, not having appealed, and to prove his claim in the regular way in the winding-up proceedings. Instead of doing that, he went on with his action in the foreign Court, apparently not for the purpose of reaching assets out of Ontario, but to obtain what would be proof here of his claim. He recovered a judgment, or what is put forward as such, not upon the merits, but by reason of the affidavit of defence not being sufficient to put the plaintiff to proof of his claim. The company did not, nor did the liquidator, attorn to the jurisdiction of the foreign Court. The appearance to the first summons, and the affidavit, objected to the jurisdiction.

Robbins, the claimant in these proceedings, was bound to conform to and obey the orders in the winding-up, and I am of opinion that the Master in Ordinary was quite right in rejecting as proof of the claim of Robbins proof of his judgment so obtained.

The appeal from the order of the 23rd February, is upon several grounds as stated in the notice of motion. No effect can be given to the objection, if I correctly understand it, that there is no declaration in the order as to whether the winding up is under sec. 173 or sec. 190 of the Ontario Companies Act, 7 Edw. VII. ch. 34. Section 177 applies in either case. Under sec. 190 a company may be wound up (sub-sec. 3): "When on the application of a contributory the Court is of the opinion that it is just and equitable that the corporation should be wound up."

Mr. Moss for the liquidator applied to amend the order, if necessary, and Mr. Hodgins did not object to an amendment if the applicant was "placed in proper position." No injustice on that