

2. A preliminary inquiry cannot be taken before a magistrate for the purpose of sub-s. 2.

3. The judges of the Chancery Division Court of the High Court of Justice for Ontario have the jurisdiction conferred by common law and par. 2, c. 18, 28 Vict. (D.), in prohibition in criminal cases notwithstanding that no rules have been made under par. 533 (b) and 754 of the Code.

*Bartram*, for the motion.

Meredith, C. J.]

[Nov. 23, 1900.

IN RE WILLIAM LAMB MANUFACTURING CO.

*Company—Voluntary assignment by—Petition for winding-up order—Discretion.*

Where the insolvency of the company is admitted, the Court has no discretion under s. 9 of the Winding-up Act, R.S.C. 129, to refuse to grant a winding-up order on the petition of a creditor who has a substantial interest in the estate, although the company has made a voluntary assignment for the benefit of its creditors, and most of them are willing that the winding-up should be under such assignment. *Wakefield Rattan Co. v. Hamilton Whip Co.*, 34 O.R. 107, not followed.

*Gideon Grant*, for petitioners. *George Bell*, for company and assignee.

Falconbridge, C.J., Street, J.]

[Nov. 26, 1900.

BUTLER F. McMICKEN.

*Action on judgment—Period of limitations—Renewal of writ—Order nunc pro tunc—Jurisdiction—New evidence on appeal—Conflict of Canadian and English precedents.*

The action was brought in a County Court upon a judgment recovered November 15th, 1877. The writ of summons was issued on November 12th, 1897. It was renewed for one year on November 9th, 1898. It was then served on the defendant on November 2nd, 1899, in London, England, but the writ so served not being a writ for service out of the jurisdiction, on January 30th, 1900, on notice to the defendant, the County Court Judge set aside the service, but gave leave to the plaintiff to renew the writ nunc pro tunc as of November 8th, 1899, for one year and issue a concurrent writ for service out of the jurisdiction. The plaintiff accordingly did this, and issued and served a concurrent writ to which the defendant appeared and filed a defence, setting up: (1) That the claim was barred by the Statute of Limitations, under R.S.O. 1877, c. 103, s. 23, on the authority of *Jay v. Johnston*, [1893] 1 Q.B. 25, 189; (2) That the order of January 13th, 1900, allowing the amendment of the writ nunc pro tunc, was ultra vires; (3) That he had obtained a discharge under the Insolvent Act in force in Canada, in 1881. He did not, however, prove any discharge, and