

F. E. Hodgins, K.C., for Harre Robbins.
C. A. Moss, for the liquidator.

BRITTON, J.:—On the 9th August, 1910, Harre Robbins commenced an action in the Court of Common Pleas, No. 2 Allegheny Co., Pa., against the above company. Service of the summons in that action was made by leaving a copy in the office of one S. W. Heckart, who was then the treasurer and secretary of that company.

On the 18th August, 1910, a winding-up order was made at Toronto of the said company, and an interim liquidator was appointed.

On the 14th October, 1910, E. R. C. Clarkson was appointed permanent liquidator.

In August, the then solicitor of the company at Pittsburg caused to be entered a conditional appearance to the Robbins action. Such appearance reserves the right to the defendant to object to the jurisdiction of the Court. Robbins took no further action upon his first summons, but caused an alias summons to be issued which was served personally upon Heckart on the 16th September, 1910. No appearance was entered, but on the 14th October an affidavit was filed in the action by Heckart, objecting to the jurisdiction of the Court. Robbins did not on the return day of the writ take any step in that suit, but on the 7th December, 1910, he made application to the Master in Ordinary for leave to proceed as a creditor of the company with his action in the Allegheny County Court. On the 9th December, an order was made refusing such leave. On the 14th December, Robbins, in the face of that order, continued proceedings in the foreign Court and as a result, and without any trial upon the merits, obtained on the 5th January, 1911, a judgment against the company for \$8,810.39. Robbins then presented his claim to the liquidator, supporting it by his affidavit and by exemplification of the record of the judgment, and this claim coming before the Master in Ordinary was disallowed by the Master's order of the 23rd February, 1911. This order in addition to disallowing Robbins' claim, further directed:

(1) That before Robbins be permitted to file proof of any claim as a creditor in the winding-up of the said company, he vacate the judgment obtained by him in the foreign Court.

(2) That the said Robbins within 4 weeks from the date of that order vacate his judgment and file a claim as creditor if he be advised to file such claim.

(3) That in default of the vacating of such judgment and filing his claim, the claim of Robbins be disallowed; and