

Province of Nova Scotia.

SUPREME COURT.

Macdonald, C. J.] NORTH SYDNEY MINING CO. v. GREENER. [July 22.

Equitable execution—Receiver—Application for order to sell bonds refused.

Plaintiff company having recovered a judgment against the defendant for a large sum, obtained an order appointing a receiver, by way of equitable execution, to receive the rents, profits, surplus, and other proceeds, and all moneys which the defendant then was, or thereafter might be entitled to, in respect of his interest in certain bonds of the plaintiff company, which bonds were in the possession of the Eastern Trust Company under an agreement between the defendant and plaintiff company and a third person, by which the first proceeds of the bonds when sold by the plaintiff company were to be paid to the Eastern Trust Company, and \$35,000 of such proceeds were to be forthwith paid by the Eastern Trust Company to the defendant. Plaintiff company now applied for an order that the receiver do offer for sale defendant's interest in the bonds.

Held, that there was no jurisdiction to make such an order, and the application was refused. *Flegg v. Prentis* (1892), 2 Ch. D. 430, and *De Peyrecave v. Nichol*, 42 Weekly Notes, 702, followed.

C. H. Cahan, for plaintiff. F. F. Mathers, for defendant.

Macdonald, C. J.] ELLIS v. MCDUGALL DISTILLING CO. [Aug. 2.

Month's notice of intention to proceed—Proceedings in the case.

Plaintiff brought action against defendant company for payment of a dividend, to which defendant company pleaded a defence. The last step taken in the action was notice of trial given about two years before the present motion. The defendant went into liquidation under the winding-up Act, which operated as a stay of all proceedings. The defendant company in July, 1898, gave notice of motion for an order to remove the said stay so far as this cause of action is concerned, and plaintiff objected to the hearing of the motion on the ground that one month's notice of intention to proceed should first have been given.

Held, that defendant's application is a proceeding in the case under O.L.X.R. 9, and is governed by *McLachlan v. Morrison*, 23 N.S.R. 139. The month's notice not having been given, the application was dismissed with costs.

J. A. Chisholm, for plaintiff. J. M. Chisholm, for defendant company.