

Boyd, C.] [Dec. 14, 1887.

BRITISH CANADIAN LUMBER & TIMBER CO.
v. GRANT.

*Company winding up—Order of Foreign
Court—Defence—Res judicata.*

In the course of proceedings taken in Scotland for winding up the plaintiffs' Company, an order was made by a Scotch court for delivery by the defendant, as one of the officers of the Company, of certain books and papers said to be in his hands, and it was provided that in case of default the liquidator might proceed against the defendant who lived in Ontario, in any court in Ontario having authority to compel delivery, and upon default this action was brought for that purpose.

Held, that there was and could be no final adjudication of rights by the order, for it could only be operative by enforcing it against the person of the defendant by attachment for disobedience, and such enforcement could not be of extra-territorial efficacy. There was no power in winding-up a proceeding to pronounce an order equivalent to a final judgment on the merits based upon service of a person out of the jurisdiction of the Scottish court.

And an order striking out the defence in the action on the ground that it was *res judicata* by the order of the Scottish court was rescinded.

Semble, that the order should have been limited to such books and papers as in the hands of the defendant at its date.

W. H. Lockart Gordon, for the plaintiff.

Hoyles, for the defendant.

Boyd, C.] [Dec. 14, 1887.

In re ALPHA OIL COMPANY.

Company winding up—Appointment of Liquidator—Costs.

Upon a contest for the appointment of liquidator in a winding-up proceeding, it is desirable to follow the rules for guidance to be found in the English cases under the Winding-up Acts. The court abstains from laying down any such rule as that the nominee of the petitioning creditors should have a preference. The court will consider the condition of affairs to ascertain what parties are most interested in the due administration of the estate in liquidation, and other things

being equal, will act upon their recommendation.

And where upon an application under the Dominion Act, the creditors were those whose interests were most to be regarded, and the great bulk of them favoured the appointment of the Sheriff of Lambton, and opposed the nominee of the petitioning creditors, and the sheriff resided in the county where the Company's operations were carried on and where all its books and assets were, and was already *de facto* liquidator under voluntary proceedings taken pursuant to the Ontario Act, and was otherwise well qualified for the position, the court appointed him liquidator.

The rule as to costs suggested in *Re Northern Assam Tea Co.*, L. R. 5 Ch. App. 644, followed.

Arnoldi, for the petitioning creditors.

Hoyles, for the Company and certain of the shareholders.

C. J. Holman, for the sheriff and certain of the creditors.

Mr. Dalton, Q.C.] [Dec. 16, 1887.

In re IRVINE, A SOLICITOR.

Attachment of debts—Order for costs only.

The person to receive payment under an order for payment of costs only, is entitled to an order attaching debts due or accruing due to the person to pay.

Any doubt existing upon the English cases and the Ontario Judicature Act Rules is cleared up by R. S. O. c. 66, s. 72.

W. M. Douglas, for the solicitor.

Chy. Divisional Court.] [Dec. 21, 1887.

MCKAY v. BAKER.

Costs, security for—Husband and wife—Nominal plaintiff.

Action to remove a cloud from the title to certain land of the plaintiff, a married woman, whose husband, when in embarrassed circumstances, had bought the land, and taken a conveyance in her name. The plaintiff had no separate estate, and her husband was not a person of substance. There was no trust between the husband and wife.

Held, reversing the order of Proudfoot, J., in Chambers, that though suing alone and