would have had a lien for their costs: Winding-up Act, sec. 66; R.S.O. 1897 ch. 147, sec. 11; and the sheriff would have been bound, on the request of the claimants to proceed to realize the amount of such costs: Gillard v. Milligan, 28 O. R. 645. But the fi. fa. did not bind the goods of the Saw Bill Company, as it was not in the hands of the sheriff to be executed, for the sheriff was instructed not to seize until further advised: Foster v. Smith, 13 U. C. R. 243; and the sheriff was not advised until after the petition had been presented, and by sec. 7 of the Act the winding-up commences at the presentation.

Appeal dismissed with costs.

DECEMBER 23RD, 1903.

DIVISIONAL COURT.

SEXTON v. PEER.

Parties—Mortgage Action—Death of Plaintiff—Assignment of Portion of Interest—Revivor—Executors—Assignee—Costs.

Appeal by Harold L. Lazier from order of STREET, J. (ante 845) reversing order of Master at Hamilton allowing appellant to continue the action as party plaintiff against the other parties named as defendants. The parties agreed upon the terms of an order to be substituted for that of the local Master except as to costs, which they left to be determined by the Court.

W. E. Middleton, for appellant.

W. S. McBrayne, Hamilton, for respondents.

THE COURT (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.) held that the proper order as to costs, under all the circumstances, was that appellant be allowed the same costs, to be added to his claim as mortgagee, as he would have been entitled to if the order now made had been made in the first place upon a proper application in Chambers, and that except as to these costs, each party do pay his own costs of and incidental to both of the appeals.