

and no triable issue raised. *Jacobs v. Booth's Distillery Co.*, 85 L. T. R. 262, distinguished.

Appeal allowed with costs and judgment for plaintiffs granted with costs.

MACMAHON, J.

DECEMBER 23RD, 1903.

WEEKLY COURT.

RE SAW BILL LAKE GOLD MINING CO.

*Company—Winding-up—Preferential Claim for Costs—
Fi. Fa. in Sheriff's Hands Before Winding-up—Instructions not to Seize.*

Appeal by claimants Hazlewood and Whalen and F. H. Keefer from so much of an order of the local Master at Hamilton as disallowed the claim of the appellants for costs, sheriff's fees, and interest, claimed as a preferential lien on the estate of the company. The claimants Hazlewood and Whalen recovered a judgment against the company on 4th October, 1900, for \$400 damages and \$140.21 taxed costs. A writ of fi. fa. goods and lands was issued on 2nd November, 1900, and on 5th November sent to the sheriff of the district of Ruiny River, in which the lands of the company were situated. The letter of the claimants' solicitor enclosing the fi. fa. gave the following instructions to the sheriff: "You need not make seizure on the Saw Bill property chattels unless I further advise you, except that the placing of the writ keeps everything in their possession under seizure." On 20th March, 1901, the company made an assignment for the benefit of their creditors, and on 26th March a petition for a winding-up order was presented and the order subsequently obtained. On 1st April the solicitor telegraphed the sheriff to make a seizure, and a seizure under the writ was made by the sheriff about 6th April, and on 4th May, after the winding-up order was obtained, the sheriff withdrew from possession. The claimants were the only creditors who had an execution in the sheriff's hands.

C. A. Moss, for appellants.

A. O'Heir, Hamilton, for liquidator.

E. H. Ambrose, Hamilton, for certain creditors.

MACMAHON, J.—If the claimants had had an execution in the sheriff's hands binding the goods of the company, they