COMPANY—LIQUIDATION—COSTS OF SUCCESSFUL APPLICATION AGAINST LIQUIDATOR —COSTS, PRIORITY OF.

In re Staffordshire Gas Co., (1893) 3 Ch. 523, certain persons having succeeded in an application to be struck off the list of contributories, the liquidator, who had opposed their application, was ordered to pay their costs out of the assets of the company. The assets proved insufficient to pay both these costs and those of the liquidator. Kekewich, J., held that, except as regards the liquidator's costs of realizing the assets, the costs of the successful litigants were entitled to be first paid, and he expressed the opinion that an unsuccessful liquidator should be ordered to pay the costs of an unsuccessful litigation, irrespective of the question whether the assets were sufficient or not to recoup him.

MORTGAGE—SALE BY MORTGAGEE—MORTGAGEE, LIABILITY OF, FOR SURPLUS PROCEEDS OF SALE—FRAUD—PAYMENT OF INTEREST—STATUTE OF LIMITATIONS (21 JAC. 1, C. 16)—TRUSTEE ACT, 1888 (51 & 52 VICT., C. 59), S. 8 (54 VICT., C. 19, S. 13 (O.)).

Thorne v. *Heal*, (1893) 3 Ch. 530, was an action by a subsequent mortgagee against prior mortgagees to recover the surplus proceeds of a sale of the mortgaged property made by the first mortgagees under a power of sale. The sale took place in 1878 one Searle acting as the first mortgagees' solicitor. After the sale, Searle paid over to the first mortgagees the amount of their mortgage, and retained the balance of the proceeds by falsely representing that he was authorized to receive the same from the second mortgagee, on whose behalf he gave a receipt for the money to the first mortgagee. He continued to pay the second mortgagee interest on his mortgage from 1878 to 1891, as though it were still existing; then, having become bankrupt, it was found that he had misappropriated the surplus proceeds. The defendants claimed that under 51 & 52 Vict., c. 59, the action was barred by the Statute of Limitations, and Romer, J., so held, as the payments of interest had not kept alive the claim, because Searle could not be deemed to have made them as the agent of the first mortgagees, who were no parties or privies to his fraud, and ignorant of the payments being made, and the defendants were therefore no longer liable, notwithstanding their negligence in not seeing to the due application of the surplus proceeds.