

seemed plainly to be: the liquidator. He was, upon his appointment, to take into his custody, or under his control, all property to which the company was, or appeared to be, entitled: Winding-up Act, sec. 33.

No lien or privilege existed by reason of the sheriff's levy under execution, except, in certain circumstances, for costs: *ib.*, sec. 84.

And all remedies for enforcing any claim for, among other things, a right of property in any property in the custody of the liquidator is to be obtained in the winding-up proceedings: *ib.*, sec. 133; see also *Re J. McCarthy & Sons Co. of Prescott Limited* (1916), 38 O.L.R. 3.

When the winding-up order was made, the goods were in the custody of the sheriff, as the goods of the company; and the winding-up order superseded the execution: so that the possession of them should have passed, as it in fact did, from the one officer of the law to the other: but without in any way impairing any claims which the appellants could have made, and could now make, respecting them.

Upon an application, for that purpose, it could, speedily, be settled in what manner the several conflicting claims in respect of the goods should be tried and determined; meanwhile they were in safe custody: see *In re Plas-Yn-Mhowys Coal Co.* (1867), L.R. 4 Eq. 689; *In re Hille India Rubber Co.* (No. 2), [1897] W.N. 20; and *Palmer's Company Precedents*, vol. 2, pp. 408 et seq.

Appeals dismissed with costs, to be paid to the liquidator, in any event, when the appellants' claims to the goods are finally disposed of, or abandoned, if abandoned.

MIDELETON, J., IN CHAMBERS.

MARCH 23RD, 1918.

**RE CITY OF TORONTO AND TORONTO R.W. CO.*

Costs—Taxation—Motion to Stay Execution upon an Order not Made in an Action—Motion upon Originating Notice, not Interlocutory Motion—Rule 2.

Appeal by the Toronto Railway Company from a ruling of the Senior Taxing Officer that the costs of the Corporation of the City of Toronto of the appellants' motion (13 O.W.N. 414), which was dismissed with costs, should be taxed as costs of an originating notice and not as of an interlocutory motion.