

These decisions were followed by me in *Re Erie Glass Company*, decided 27th March, 1894 (not reported), where after argument I allowed the execution creditors the costs of their judgment and the sheriff's fees up to a fixed date.

In *Smith v. Antipitzky*, 10 C. L. T. Occ. N. 368 (1890), McDougall, Co.J., in disposing of a somewhat similar question between an assignee for the benefit of creditors and a sheriff, said: "Under the provisions of this Act (R. S. O. 1887 ch. 124, sec. 9), a debtor may assign to any one; and although it is true any such assignee becomes subject to the general control of the Court, and may be removed by the Court for cause, still he is not an officer of the Court in the sense that the sheriff is, or as were the official assignees under the repealed Insolvent Act." And he held that it would therefore be unreasonable that "the execution creditor who was in possession should be compelled to withdraw and look to a stranger to realize and pay his lien." But in the case before me the liquidator is an officer of, and appointed by, the Court, as is the sheriff; and on his appointment he is directed by the 30th section of the Winding-up Act to "take into his custody or under his control all the property, effects, and choses in action to which the company is or appears to be entitled," which when read with the statutory injunction contained in sec. 17 of the Winding-up Act, "that . . . execution put in force against the estate or effects of the company after the making of the winding-up order shall be void," practically operates as ousting the sheriff's possession of the insolvent company's goods seized by him, and under a writ of execution issued out of a provincial Court, but subject to the lien protected by the latter part of sec. 66.

From the affidavit filed by the sheriff it appears that on 29th March he was advised by the solicitors for the execution creditors that a winding-up order had been made, and on 2nd April he wrote to the provisional liquidator requesting a copy of the winding-up order and intimating that, upon payment of fees, etc., and instructions from the plaintiffs' solicitors, he would be glad to hand over the goods to the representative of the liquidator. On 7th April the provisional liquidator replied that he would on 11th April "ask the direction of the Court as to what action is to be taken in regard to the same."

As there appears to have been no demand from the liquidator for the delivery over by the sheriff of the goods