

The 66th section of the Winding-up Act, R. S. C. ch. 129, provides that "no lien or privilege upon either the real or personal property of the company shall be created for the amount of any judgment debt or of the interest thereon by the issue or delivery to the sheriff of any writ of execution or by levying upon or seizing under such writ the effects or estate of the company . . . if before payment over to the plaintiff of the moneys actually levied, paid, or received under such writ . . . the winding-up of the business of the company has commenced; but this section shall not affect any lien or privilege for costs which the plaintiff possesses under the law of the province in which such writ was issued." This section first appeared in sec. 13 of the Insolvent Act of 1865, and was re-enacted as sec. 83 of the Canada Insolvent Act of 1875; and the decisions under that Act are therefore material.

The section of the Insolvent Act of 1865 was construed in *Re Hayden*, 29 U. C. R. 262, where it was held that a judgment creditor who had an execution in the sheriff's hands at the making of an assignment by the judgment debtor was entitled to rank for his costs of the judgment as a privileged creditor against the insolvent. In giving judgment *Morrison, J.*, said: "Before the Insolvent Acts an execution creditor when he placed his writ in the sheriff's hands had a peculiar lien on his debtor's property to the extent of his debt and costs. The Insolvent Act, by the 13th section above cited, deprived him of that lien for his judgment debt . . . but the section further provided that it should not apply to nor affect any lien or privilege for costs which the plaintiff possessed under the law of that part of the then province, in which such issued." "As a lien for such costs did exist in Upper Canada before the passing of the Act for the amount of those costs on the debtor's goods when the execution was placed in the sheriff's hands, it is only reasonable to assume and hold that such lien and the right to recover those costs in full should not be affected by the provisions of the 13th section, but that the same should be secured to the judgment debtor as a privileged claim on the assets of the estate."

A similar result was arrived at by the Judge of the County of Wentworth in *Re Fair and Burst*, 2 U. C. L. J. N. S. 216 (1866), and his decision was confirmed on appeal.