

WINCHESTER, Co.J.—It appears that on 3rd April, 1903, under a writ of execution issued in Brown's action, the sheriff seized part of the personal estate of the defendants at Palmerston, at the request of plaintiff's solicitor. A bond was given by two of the directors of the defendant company for the safety of the goods seized, and thereupon the sheriff went out of possession.

Nothing further has been done in the matter owing to the liquidation of the company.

A petition for an order under the winding-up Act was duly served upon the company on 10th March, 1903, and from time to time enlarged at the request of the parties interested until 29th December, 1903, when an order for the winding-up of the company was made.

The sheriff at the time of the seizure was informed that liquidation proceedings had been taken against the company.

Counsel for the claimant contends that he is entitled to be paid at least a quantum meruit under Rule 1190, which provides that "where the personal estate, except chattels real, of the judgment debtor is seized or advertised on or under an execution, but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually made by the sheriff on or by force of such execution, the sheriff shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized, not exceeding the amount indorsed on the writ, or such less sum as the Court or a Judge may deem reasonable;" and a number of cases were cited in which the sheriff was held to be entitled to be paid certain sums for poundage; and that sec. 66 of the Winding-up Act provided for the payment of such costs.

Counsel for the liquidator contends that the sheriff made seizure after the petition for liquidation was presented, and did nothing further, and that therefore he is not entitled to make a claim.

Section 66 of the Winding-up Act provides that there shall be "no lien or privilege for the amount of any judgment debt 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, 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." Had the proceedings for the winding-up been taken by virtue of the writ in question, there can be no doubt that the costs in connection therewith would be payable out of the estate, but such was not the case—the proceedings had