

The company having become insolvent within the meaning of the Winding-up Act, R. S. C. ch. 129, a petition was presented to the High Court on the 29th July, 1902, on behalf of the Toronto General Trusts Corporation, executors and trustees under the will of the late Hugh Ryan, a creditor of the company, under the Act. It came on for hearing before Lount, J., in presence of counsel for the petitioners and the company. From affidavits filed it appeared that one Dunne, the secretary of the company, had obtained a judgment against the company in a New Brunswick Court for an amount exceeding \$500, upon which executions were in the hands of the appellant Tibbets, the sheriff, who was proceeding thereunder to expose for sale the lands of the company situated in his bailiwick, and that the sale was advertised to take place on the 1st August. It was sworn that there was reason to believe and apprehend that unless the order declaring the company to be insolvent was made, the sheriff would proceed with the sale on the day named. Lount, J., adjourned the petition for one week, and at the same time made an order that all proceedings in any action, suit, or proceeding against the company be stayed in the meantime. So far as Dunne, the execution creditor, was concerned, this order was *ex parte*, but the evidence shewed that he had already agreed to a postponement of the sale for one month, and had instructed the sheriff to that effect.

On the 29th July the petitioners' solicitors wrote to the sheriff advising him of the order for stay of proceedings. This letter and a letter from Dunne's solicitor dated 30th July, 1902, advising the sheriff of the pendency of the petition and instructing him to postpone the sale for a month, were received by the sheriff before the sale. On the 30th July the solicitor for the petitioners sent to the sheriff a certified copy of the order staying proceedings. The sheriff, nevertheless, on the 1st August assumed to put the lands up for sale, and after two other bids the property was knocked down to Mr. Costigan, the president of the company, bidding, as he said, on behalf of the appellant Harriet Costigan, his wife, at the sum of \$900.

On the 5th August an order was made on the petition declaring the company insolvent and liable to be wound up by the Court under the Winding-up Acts, and a further order was also made appointing James P. Langley provisional liquidator, and referring it to the Master in Ordinary to appoint a permanent liquidator or liquidators, with the usual directions. Copies of these orders were transmitted to the sheriff, who received them on or about the 7th August.