

Judgment.  
Wetmore, J.

was not to allow the sheriff any costs "however proper and meritorious his conduct might have been, it being claimed that a sufficient benefit had been conferred on him by allowing him to interplead at all." Cabábe on Interpleader (2nd ed.) 113. And later on, under the English Practice, if the sheriff seized goods without authority from the execution creditor and they were claimed, and the sheriff without authority from the execution creditor to resist the claim interpleaded, and the execution creditor then withdrew, the sheriff had to pay his own costs of interpleader. Cabábe on Interpleader, p. 115. And this seems to be still the practice in Manitoba. *Blake v. Man. Milling Co.*<sup>1</sup> But by the enacting of Rules 432 and 433 of *The Judicature Ordinance*,<sup>2</sup> corresponding to marginal Rules 864 (a) and 864 (b) of *The English Rules*, a different practice prevails. Still we must not lose sight of the fact that interpleader proceedings for a sheriff originated from the cause I have stated. If that four-day provision is to be insisted on strictly, a very great hardship will frequently arise when the sheriff and the execution creditor live such a distance apart. The sheriff in such cases must exercise some discretion. I cannot see what more Mr. Elwood could have done than he did do; that is, so far as acting with promptness is concerned. Coming now to the contents of his letter of the 20th March. He most distinctly abandons in that letter the claim to the property claimed by Elliott, Thomas H. Garry & Co. and Mrs. Ekstrom and the defendant's exemptions. He does not distinctly admit or dispute the claim of the Massey-Harris Co.; he, however, abandons that conditionally, if a certain state of facts appears in the registry office, which he leaves the deputy sheriff to ascertain. On the 30th March, however, he abandons everything except the hay. Nevertheless the deputy sheriff proceeds on 2nd April to serve every person who claimed with the interpleader summons. If Mr. Elwood had not by his telegram of 30th April partly withdrawn his abandonment as to the claims put in by Ekstrom and his wife as to the hay I might have ordered the deputy sheriff to pay the interpleader costs. I think that if the deputy sheriff had not acted so quickly, that if he had waited until Monday before preparing or making his affidavit when he would have got White, Elwood & Gwillim's letter, these

<sup>1</sup> 8 Man. L. R. 427.

<sup>2</sup> C. O. 1898, c. 21.