Statutes for Upper Canada, cap. 22, and consider them in conjunction with the tariff, to discover the rights of sheriffs as they at present stand in relation to poundage.

Sec. 270 "Upon any execution against the person, lands or goods, the sheriff may, in addition to the sum recovered by the judgment, levy the poundage fees, expenses of the execution, and interest upon the amount so recovered from the time of entering the judgment."

Sec. 271. "In case a part only be levied on any execution against goods and chattels, the sheriff shall be entitled to poundage only on the amount so levied, whatever be the sum endorsed on the writ; and in case the real or personal estate of the defendant be seized or advertised on an execution, but not sold, by reason of satisfaction having been otherwise obtained, or from some other cause, and no money be actually levied on such execution, the sheriff shall not receive poundage, but fees only, for the services actually rendered; and the court out of which the writ issued, or any judge thereof in vacation, may allow him a reasonable charge for any services rendered in respect thereof, in case no special fee be assigned in any table of costs."

Section 271 purports to be taken from 9 Vic. cap. 56, sec. 2; but, as will be seen by comparing the two sections, the construction of the latter has been very materially altered. The effect of the earlier statute is confined in its operation to cases where concurrent writs of execution, so to speak, have been issued to different counties. This is not so, however, with the later statute, which applies to any writ of execution against lands or goods, including of course the case of concurrent writs. The words "the sum made," in the tariff, might well be interpreted to mean either the sum actually made under the writ, or the sum in effect made by the pressure of the writ; but the words of the act seem to require another state of facts before poundage could be collected. Of course if a debt is paid to the sheriff before a seizure, he is without doubt entitled to his poundage, the act not affecting such a case. But if it is necessary to proceed according to the exigency of the writ, there must, in the first place, be an actual *taking* of the goods, or an advertisement of the lands, to entitle the sheriff to poundage. If the money is subsequently paid to the sheriff, there can, we apprehend, be still no question as to his rights; but if, on the contrary, the money is not so paid, and the property is not sold by reason of satisfaction being obtained *otherwise* than by a sale (as for example by a settlement of the suit between the parties, or by payment of the amount to the plaintiff or his attorney, or by the payment of the debt out of another fund, or by the money being made on another writ to a different county), *or from some other cause* (as for example, the writ or judgment being set aside), *and no money be actually levied*—it would only seem reasonable to suppose that in such cases the Legislature did *not* intend that poundage should be receivable. The sheriff would, however, be entitled to his reasonable fees for the services rendered. On the other hand it may be argued in favour of sheriffs, that where they have taken possession of property, and become responsible for it, and liable perhaps to an action of trespass for the seizure, it would be unreasonable to hold that the payment of the debt by the defendant to the plaintiff, under pressure of the execution, should deprive the sheriff of his poundage. We are not aware of any reported decision on this section of the Consolidated Statutes; but Mr. Justice Morrison, sitting in the Practice Court, in a case of *Gwynne* v. *Grand Trunk Railway*, decided in Michaelmas Term, 1862, held a sheriff not entitled to poundage where the money had not passed through his hands.

3rd. As to execution against lands.

The law under this head is, in the main, identical with that under the preceding division. There is however this difference, that there can be no actual *taking* of lands as in the case of goods and chattels. We must therefore keep in view the remarks of Burns, J., in the case of *Morris* v. *Boulton*, where he says, "Upon writs of execution against lands, as there is no taking by the Sheriff, no act done by him which can vest any property in him, and nothing which he can do to deprive the defendant of the lands before sale, his right to poundage must begin with the sale"

We must remember also that the advertisement in the Official Gazette of lands for sale under a writ of execution, is to be deemed a sufficient commencement of the execution to enable the same to be completed by a sale and conveyance of the lands, after the writ becomes returnable (Con. Stat. U.C. cap. 22, s. 268); or, in other words, that this advertisement practically amounts to the seizure of the land. (See *Doe dem. Tiffany* v. *Miller*, 5 U. C. Q. B. 426.)

With respect to poundage where several writs have been issued on the same judgment to different Sheriffs, it is admitted on all sides that only one Sheriff is under the act entitled to poundage. The decisions which we find in our own reports on this point are *Henry* v. *Commercial Bank*, 17 U. C. Q. B 104, and *Brown* v. *Johnson*, 5 U. C. L. J. 17. These cases were decided before the consolidation of the statutes, but we apprehend that the law, as far as this branch of the subject is concerned, has not been altered by the late act.

In *Henry* v. *Commercial Bank*, the plaintiff had recklessly and improperly issued three writs of execution on his judgment, to different Sheriffs, upon each of which the money was made. Two of the three Sheriffs were required to return to the defendants the amounts paid to them under the executions, which they did, retaining