Vic. cap. 98, sec. 31, to deprive Sheriffs of poundage on writs against the person. But that act does not affect the law in this province.

2nd. As to executions against goods and chattels.

The next statute on this subject, after 2 Geo IV. cap. 1, sec. 19, was 7 Wm. IV. cap. 3, sec. 32, which applies to executions against lands and goods only. The section is as follows:

"And whereas in cases where writs of execution have been issued into several districts upon which writs property, real or personal, may have been seized or advertised, which property has afterwards not been sold on account of satisfaction having been otherwise obtained, or from some other cause, it has been doubted whether a claim to poundage may not be advanced by the Sheriff of each of such districts respectively, although no money has been actually levied by them under such writ: Be it therefore enacted, &c., That where, upon any writ of execution sued out against the estate, real or personal, of the defendant or defendants, no money shall be actually levied, no poundage shall be allowed to the Sheriff, but he shall be allowed his fees for the services which may be actually rendered by him; and it shall be in the power of the court from whence such execution shall have issued, or for any judge thereof in vacation, to allow a reasonable charge to the Sheriff for any service rendered in respect to such execution, for which no specific fee or allowance may be assigned in the table of costs."

9 Vic. cap. 56, sec. 2, repealed this section and re-enacted it in the same words, with this exception, however, that it inserted the word "such" before the word "writ;" the sentence reading "That where upon any such writ, &c.;" thus limiting the effect of the enactment, which might otherwise have had a more extended application, to cases where several writs have been issued to as many Sheriffs to compel payment of the same debt. This is at all events the view that was taken of the two acts in *Thomas* v. *Cotton*, 12 U. C. Q. B. 148, where it is stated that the effect of the latter is to "leave the claim of Sheriffs to poundage upon the footing on which it stood under the existing law, independently of the repealed clause of 7 Wm. IV.," that is to say, governed by the tariff established under the authority of 2 Geo. IV. cap. 1.

We have already seen (*Morris* v. *Boulton*) that under this tariff there must have been a taking to entitle the Sheriff to poundage; and if the money be paid before the taking or actual levy, this defeated the right to it; but if the money were forced by the act of the Sheriff, then, although it did not pass through his hands, his right to poundage was held to accrue. Thus *Thomas* v. *Cotton* was an action brought by a Sheriff to recover his fees and poundage from the defendant, an execution plaintiff. Under the *fi. fa.*, the Sheriff had seized goods sufficient to cover the claim, but afterwards withdrew from possession in obedience to a judge's order to that effect. The facts of the case showed that the defendant had obtained satisfaction of his judgment under the compulsion of the levy made under the writ. The court considered that, as the Sheriff was authorized to make the levy and had done so, and satisfaction had been obtained by means thereof, he was entitled to his poundage.

This brings us down to the time of the Common Law Procedure Act, 1856, under which our present tariff was framed. The words there used are, "Poundage on executions and on attachments in the nature of executions, where the sums made, &c."; leaving out the words "levied and," which were in the former tariff.

In *Walker* v. *Fairfield*, 8 U. C. C. P. 95, the Sheriff to whom the writ of execution was issued seized goods to an amount sufficient to satisfy the debt and costs, made an inventory and advertised the goods for sale. The sheriff held the goods for twenty-seven days, and had persons in charge. Before the time for sale the writ of *fa. fa.* was set aside, and the sheriff was ordered to withdraw from possession and re-deliver possession of the property seized by him. The master, on a reference to him of the sheriff's bill of charges, disallowed the poundage claimed, and some of the other items. On an application to the court for a revision of the taxation, Draper, C. J., C. P., after referring to the tariffs and to the judgment in the case of *Morris* v. *Boulton*, said, "Here the writ has been set aside for irregularity, but that is the plaintiff's fault. The sheriff has levied, done all prior to a sale, has incurred all responsibility; but unfortunately no money has been made, and though the case has a hard bearing on the officer, I do not see that we can help him without violating the express terms of the tariff, and allow the sheriff poundage."

Burns, J., in commenting on this case, said, "It does not decide that of necessity the word 'made' in the new tariff of fees is to be interpreted as meaning that the money must go through the sheriff's hands; for if that were so, it would always be in the power of the defendant, after his goods were levied upon, to avoid payment of the sheriff's poundage by paying over the money to the plaintiff." (*Brown* v. *Johnson*, 5 U. C. L. J. 17.) But in the case he referred to no money was made in any way, as the judgment was set aside. If the writ had had the effect of causing the defendant to pay the debt, even though no money had been made or received by the sheriff, the court would probably have decided in accordance with the view taken of the law in *Morris* v. *Boulton*. But however that may be, we must now turn to ss. 270, 271, of the Consolidated