

*C. P. Wilson*, for claimant.

*A Monkman*, for execution creditor.

*H. M. Howell, Q. C.*, for sheriff.

(*9th August, 1890.*)

KILLAM, J.—The cases of *Lewis v. Jones*, 2 M. & W. 203; *White v. Binstead*, 13 C. B. 303; *Henderson v. Wilde*, 5 U. C. Q. B. 585; *Black v. Reynolds*, 43 U. C. Q. B. 398, show that relief can be obtained for the action of the sheriff without rescinding the interpleader order. That order protects the sheriff in respect of his acts prior to its being made, but not for acts in contravention of that order or in breach of duty under it. If the sheriff has improperly committed an act from which the execution creditor has suffered damage, the latter should have such relief as he may be entitled to, but the sheriff should not on that account lose the protection which the order gives in respect of his prior acts. If that order were rescinded he would be exposed to the risk of any action by the claimant as well as by the creditor. This might be a wholly excessive penalty for what the sheriff has done, if the claimant be entitled to the goods.

The claimant too, has to be considered. He has been deprived for some period of any right of action against the sheriff, and has been remitted to proceedings under the interpleader order. He has got ready for a trial of the issue, which was entered on and postponed. There is no reason why he should now be turned back to another mode of proceeding in order to establish his right of property.

I dismiss the application with costs, to be costs to the sheriff and claimant at the conclusion of the interpleader proceedings in any event, but I do not allow any costs of examination of Mr. Monkman on his affidavit, a wholly unnecessary proceeding.