12 C. B. N. S. 558; *Drewe* v. *Lainson*, 11 A. & E. 529.

But this money, as before mentioned, need not be made by a sale of the debtor's goods by the sheriff: he may so make the money, but he need not actually do so: if he bring about a payment or settlement of the debt by reason of the compulsion of his seizure, *he* is held under the statute of Elizabeth to have *levied* the money; and if a statute make no difference between an actual and constructive levying of the money, he will still be entitled to his poundage in that case; but if it do make such a difference, we must of course give effect to the provision, however hard it may bear against the officer, who has practically done all or nearly all the duty, and incurred all or nearly all the responsibility to have earned his compensation.

Now our statute, after providing generally for poundage in every case in section 270, provides that in cases where a part only of the debt has been levied, the sheriff shall be entitled to his poundage on the amount so levied; which was a needless enactment, as this has always been the law; and then it provides, as before stated, that "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*, &c."

Now this enactment does in our opinion establish a distinction, which before that time did not exist, between an actual and a constructive levy, and makes a special provision for those cases in which a mere seizure is made, but which are not followed by a sale, and where no money is actually levied. When the money is actually levied the sheriff may levy his poundage: when the money is not actually levied the sheriff cannot levy or demand any poundage, although he may have seized, but he shall "receive fees only for the services actually rendered."

In the present case the sheriff seized, but he did not sell; nor did he actually levy any money: we have only, therefore, to declare that he is directly within the special provision we have just referred to, and, in the language of the act, that he "shall not receive poundage."

It is of no practical value to follow this further, and to say that the present reading of the law has probably arisen from an unintentional oversight in the work of consolidating, for we must accept the law as it stands. If it were not an intentional alteration, the legislation will no doubt, if it be thought to be expedient, amend the law.

Most of the decisions in our own courts to which we were referred were made upon the law as it stood before the consolidation, and are therefore inapplicable, as are also all of the English authorities. The other cases to which we were referred, and which have been decided since the consolidation, and when the attention of the court was called to the change which had been made in the law, have ended in the same manner as the present one, adversely to the sheriff, and therefore the rule will be discharged with costs.

Rule discharged with costs.

ELECTION CASES.

(*Reported by* ROBERT A. HARRISON, Esq., *Barrister-at-Law.*)

REG. EX REL. ROLLO v. BEARD.

Municipal Institutions Act—Disqualification of members of council—Time to which disqualification relates—Costs.

Where it was shown that the firm of which defendant was a member dealt in coal and wood, and during the year 1864 supplied large quantities of both coal and wood to the Corporation of the City of Toronto, without any arrangement as to price or terms of payment, sold in the ordinary course of business, the price of which was unpaid at the time of the election of defendant to the office of councilman for one of the wards of the city, he was *held* disqualified as being a person having by himself or partners or partner an interest in contracts with or in behalf of the corporation.

So where it was shown that for a small portion, viz., ten tons of coal, there was a tender made by the firm in 1864, which had been accepted by the corporation, and the price remained unpaid at the time of the election.

Where it was shown that the price was paid before defendant took his seat, he was still *held* to be disqualified, the disqualification having relation to the time of the election, and not merely to the time of the acceptance of office.

Parties are not to be discouraged from bringing cases of disqualification under the notice of the proper tribunals for the trial of such questions at the peril of having to lose the costs necessarily incurred, even if successful. Therefore in a case where it was quite apparent that defendant had acted in good faith, yet being held to be disqualified, costs were given against him.

[Common Law Chambers, Feb. 8, 1865.]

The relator complained that George T. Beard, of the city of Toronto, in the county of York, general merchant, had not been duly elected, and had unjustly usurped the office of councilman for the ward of St. James, in the city of Toronto, in the county of York, under the pretence of an election held on Monday and Tuesday, the 2nd and 3rd days of January last, at the Police Court, in the said ward of St. James, in the said city of Toronto; and declaring that he the said relator had an interest in the said election as a candidate, showed the following cause why the election of the said George T. Beard to the said office should be declared invalid and void. That the said George T. Beard was not at the time of the said election qualified to be a councilman and member of the corporation of the said city of Toronto, in this, that before and at the time of the said election he had, by himself, partners or partner, an interest in a contract or contracts, with or on behalf of the corporation.

The statement was sustained by the affidavit of William Hewitt, of the city of Toronto, hardware merchant, wherein he swore that he was a householder entitled to vote at the election of aldermen and councilmen for the ward of St. James, in the said city of Toronto. That as such he voted for aldermen and councilmen for the said ward at the election holden on Monday and Tuesday, the 2nd and 3rd days of January last. That George T. Beard was elected one of the councilmen for said ward at said election. That he did not vote at said election for the said George T. Beard. That the said George T. Beard was not, as deponent was informed and believed, qualified to be elected a councilman and member of the said corporation, in this, that the said George T. Beard had, as deponent was and verily believed, at the time of the election, by himself, his partners or partner, an interest in a contract or contracts with or on behalf of the corporation of the said city. That the said