

C. L. Cham.] GRANT V. CORP. OF HAMILTON—AUBURN BANK V. HEMMINGWAY. [C. L. Cham.

at all to be paid for services in respect of which no fee was fixed by any statute or tariff, his claim was very excessive; that it was unnecessary to fix the amount of rate to be collected on such execution from each rate-payer.

RICHARDS, C. J.—I am of opinion that the sheriff is entitled to poundage when he makes the money on a *fi. fa.* against a corporation, though he may have levied a rate to collect the money; I therefore come to the conclusion, that I ought to allow the sheriff for the services rendered by him in taking the steps he did for the purpose of making the money on the writs.

I am not prepared to say that he ought not to have prepared the copies of the assessment rolls, and fixed the amount to be collected from each rate-payer under each execution. I think the most reasonable view of the statute is, that he should prepare the rolls in striking the rate. There is no doubt he ought to have prepared the precepts referred to in the statute. As to the amount charged as paid for preparing the rolls and fixing the amount to be levied under each writ, the amount seems large, but there is nothing to contradict the statement in the affidavits filed that such amount has been paid and is reasonable for the services rendered.

I have given the subject my best consideration, and have come to the conclusion, that the fairest way to dispose of the matter will be to consider that the poundage is to be considered the proper remuneration to the sheriff for all the services he renders in collecting the money, except such services are otherwise allowed him in his tariff of fees.

In that view, he ought to be allowed the \$216 30 for filing the writs, &c. Then I allow the \$880.91 paid for preparing the copies of the rolls, fixing the amount to be levied from each rate-payer under each writ, the precepts, &c. This latter sum I take from \$4805.96, the whole amount the sheriff would have been entitled to receive for poundage if he had made the money. This leaves \$3925 05 for the poundage. Now what proportion should be abated from this for the services remaining to be performed by the sheriff and his officers in collecting the money? In fixing a compensation for what has been done, I do not think I should only give the sheriff the mere clerk's wages he may have paid out. The preliminary work done, no doubt, involved a great deal of care and anxiety, but the work remaining to be done is also of a troublesome and anxious character. All that has been done has not in any way made the sheriff liable to any action for mistakes in the amount to be levied, or for alleged acts of the persons serving under his precepts, or for loss of money after it was paid, or anything of that sort, so that he has escaped, by the settlement of these demands, a very hazardous and irksome part of his duty. As already intimated, he has been obliged to be very careful to see that all the steps he took, up to the time of the settlement were correct, for when he took them there was no certainty that he would not have been obliged to have completed the work which he had begun, and if the beginning was wrong, he would be certain to be involved in trouble. On the whole, then, I think, as to

the remaining portion of the poundage, if it is divided, and one half deducted for the work remaining to be done, and the other half given to the sheriff to compensate him for what he has done, it will be the most equitable mode of adjusting the matter.

I may add, I have consulted several of my brother judges before arriving at a conclusion as to the amount that should be allowed the sheriff.

The result on the whole will be as follows:—

Amount of levy on the writs, as to which there is no dispute	\$216 30
Amount paid for preparing rolls	880 91
Am't of poundage claimed..	\$4805 96
Deduct am't paid as above..	880 91
	\$3925 05
One-half of above.....	\$1962 52
	1962 5

Allowed sheriff for all services rendered \$3059 7 1/2

Taking this as the data, there will be no difficulty in fixing the amount to be allowed to the sheriff in the particular suit in which the application is made.

THE AUBURN EXCHANGE BANK VS. HEMMINGWAY ET AL.

Sheriff—Claim to goods seized—Interpleader—Settlement between execution creditor and claimant after interpleader—Right of sheriff to poundage or other compensation or costs.

A sheriff, on 31st August, 1865, received a writ of execution against the goods of defendants for a large amount, made a seizure and advertized a sale for 13th September following; but, in consequence of a verbal claim made by the solicitor of a bank, postponed the sale, and afterwards, on 23rd September, having received a written notice of claim, applied for and obtained an interpleader order, dated 1st October, directing him to sell in ten days if the amount of the execution were not paid or security given, but he neglected to take any proceeding towards doing so till 4th November, when the requisite bond was given and all his fees to that date paid. On 22nd November the matter was compromised by the payment of a considerable sum of money to plaintiffs, less, however, than the amount of the execution. *Held*, that the sheriff was not entitled, as against the execution creditors, to poundage or other compensation in lieu of poundage, or to the costs of the interpleader proceedings.

[Chambers, 2nd Feb., 1866]

Robert A. Harrison obtained a summons, calling on the plaintiffs to shew cause why they should not be ordered to pay him poundage on the sum of \$14,500, the appraised value of goods seized under the writ of execution in the cause, or why the plaintiffs should not pay the sheriff all fees for services actually rendered under the execution, and also a reasonable sum to be allowed by the presiding judge in Chambers for any services rendered for which no official fee was assigned, and all costs incurred by the sheriff in consequence of the adverse claim of the Ontario Bank, the plaintiffs and the Ontario Bank having compromised the matter, by which plaintiffs realized \$10,000, owing to pressure by the sheriff, and on grounds disclosed in affidavits and papers filed.

The *fi. fa.* was placed in the sheriff's hands on the 31st August, under which he immediately