The execution produced appeared to have issued from the office of the Deputy Clerk at Niagara.

Mr. Miller contended, 1st, That it was the strict duty of the sheriff, in all cases, to pay the money levied upon an execution into the office of the clerk of the court, according to the command of the process itself, "and have those monies before," &c.; and it was his duty to return the writ to the office from whence it issued; or the sheriff may cause the money to be paid to the plaintiff's attorney.

2nd, That the sheriff should compute interest up to the time he could probably have the money paid over either to the clerk or plaintiff's attorney at a distance.

3rd, That the charge for remitting the money and the additional interest may be considered incidental expenses, and levied of a defendant.

4th, That no demand of money before suit is necessary, but if a demand of the money before this suit were necessary, the plaintiff did demand the money through the bank agent, and it was refused.

A difference of computation of interest may be found on the 80 days, from the 26th March to the 14th June, of a few pence, against the sheriff, which the plaintiff's counsel declared did not form any part of the foundation of this suit.

He knew of no case in which his propositions had been decided upon; and the one of *Gladstone et al v. French et al*, in the Common Pleas, in Hilary Term, was confined to the claim of per centage by the clerk of the court on a sum of money paid in by a sheriff, under a writ of execution.

Mr. Macdonald, in support of the application, contended that a sheriff cannot levy of the defendant's property any sum whatever for transmission of the proceeds, nor any interest beyond the day he receives it. That he is not authorised to pay money into court, and that the case alluded to in the Common Pleas, Hilary Term, does directly decide that point also; and in that case the Chief Justice referred to the decision in *Shuter v. Leonard*, 3 U. C. Rep. O S. page 314, to support his dictum.

He cited cases 8 B. & Adol. 696; 7 M. & W. 413; and 1 East. 339 (*Butler v. Butler*).

In the latter case the Court refused an application on the part of a sheriff to pay money into court.

CAMPBELL, Co. J.—In this case, I am pleased to hear the plaintiff's counsel declare that the error in computation by the sheriff of a few pence for interest could not have justified this action, and therefore I need not make any remark further as to the proper proceeding in a case where such computation may be manifestly erroneous, and the sheriff notwithstanding has returned execution satisfied in full, and insists upon such return.

It is asserted by counsel that no *express* decision has settled the duty of the sheriff upon the receipt of monies under an execution, and it would be strange if the point has not been raised long before this date, as it would be a matter of much convenience and advantage to practitioners of the law and suitors, if the duty of the sheriff required him to transmit the money either to the principal office or to the office from whence the process issued, or to the attorney, with interest up to the time of being received by the latter, and a great inconvenience and expense to the sheriff. The principles of justice and equity and common sense have probably been too plain to justify much litigation on the points. I am forcibly impressed with the view that to such causes we may attribute the absence of many reported formal decisions.

By an execution the sheriff is directed to make the debts, costs and interest, besides the expense of the process and his own fees, which are regulated by a tariff or by statute; and although he is commanded by the form of that process to "have those monies before," &c., it cannot be supposed that the officer of the court is to be the receiver and disburser of monies for suitors. The case of *Shuter et al v. Leonard*, 3 Q. B. Rep. O. S. 314, I think is in point, and does clearly decide that the payment of money into court upon an execution, in ordinary cases, is not the proper course to be pursued, and in that case the learned Chief Justice reviewed many cases applicable, some of which may be looked upon as justifying the sheriff in that course. The Chief remarks, "that the invariable usage is to pay the money to the party, and for this trouble and the responsibility of its custody, the sheriff is allowed in poundage."

It may be remarked also, that since the decision of the above case various changes in practice have been made in the province, and amongst them the provision that writs of execution may issue from the office of a deputy, and that the sheriff shall file his writ and return in the office *from which* the writ was sued out.—See Rules 101 and 103. In this case the execution was issued from the office at Niagara, and the plaintiff insisted that the chief officer at Toronto is the proper receiver of the proceeds. Such a practice as to either offices would be exceedingly inconvenient to suitors, as well as sheriffs, in the remote parts of the province; and I will be guided by the case cited in favor of "invariable usage," as being more consistent with common sense.

The dictum of Chief Justice Draper is also an indirect decision of the same point. I therefore in this case decide that it was not the sheriff's duty to pay the money levied into the principal office at Toronto, nor into that of the deputy, and that such payment would not relieve him of liability to the plaintiff.

I refer also to the case cited on the part of the sheriff, 1 East. 339.

On the second and third points raised, and which in reality are the foundation of this suit, I do not hear of any decided case; but as to the second one, it would clearly be extortion on the part of the sheriff to compel a defendant to pay interest beyond the date of satisfying the execution, for any portion of time, and it would be quite as unjust to seek the interest from the sheriff after the time he communicated to the party entitled to receive it that he had it ready to pay over. The interest accrues either upon an express contract to pay, or an implied one that the money has been used or withheld improperly by the holder; but where a sheriff promptly reports he has the money ready, and nothing is shown to prove that he used it in the mean time, it would be a great hardship to make him liable on an implied contract, as if he had used or invested, or refused to pay the amount, and this even if it should be his duty to cause the amount to be placed in the hands of the plaintiff's attorney, as to which reasonable time should be given. In this case the sheriff, living at Stratford, reported to the attorney, at St. Catherines, the money ready, on the same day he received it, and the plaintiff, on getting information four days after, added these four days' interest, and seeks to compel the sheriff to pay it. I am of opinion the sheriff is not liable, and is justified in having refused to pay a draft or sum including that interest.

On the third point, which is of more importance to sheriffs and suitors, my opinion is the defendant was not liable to the bank charges upon the draft for the money, no more than he would be liable to the expense of postage on it—nor of an agent who might come for it, nor of an express man. He could not levy any such sum of a defendant's property, and upon a large execution the sum would be very considerable. In the case hereinbefore cited of *Gladstone et al v. French et al*, the sheriff took the expense of remitting the money, but as the point was not in any manner involved in the question before the Court then, no allusion is made to its correctness or otherwise. I therefore am not aware of any decision, direct or indirect, on the point.

The poundage allowed to the sheriff could not have been established with any view to such a charge; and the varying rates of charge for transmission, according to the channel selected or necessary, would leave the sheriff exposed to risk or loss, besides the varying sums to disburse.

It is contrary to common sense and common justice that the sheriff should be compelled to pay the plaintiff or his attorney in whatever part of the province he may reside. Under such a view of the law, the sheriff at Lambton, upon a writ of execution received from Cornwall, would be obliged to pay the plaintiff or his attorney there, or be liable to an action in every case, and in the absence of bank agencies would have some trouble in remitting, and in all cases would be liable for the safe conveyance of the money.

In the case of an attorney receiving money for a client, I think his duty is at once to inform him the money is ready, and that he may draw for that amount, or it will be remitted as may be directed, or he will pay the amount on demand. A compliance on his part would be a due fulfilment of every obligation, legal or