which was placed in the hands of the Sheriff on the 10th of June, and the Defendant's goods in the Counties of York and Peel were seized sufficient to satisfy the *fi. fa.* On the 6th August, 1858, a *fi. fa.* was issued by the Plaintiff to the Sheriff of the County of Wellington, and upon that writ the Sheriff seized goods sufficient to satisfy the writ. In October the Plaintiff and Defendant came to an arrangement between themselves with respect to the demand, and the Sheriff of York and Peel was directed to withdraw, which he did, but exacted his fees as also his poundage. On the 5th October a written notice was given to the Sheriff of Wellington as follows:

"Toronto Township, October 5th, 1858.

To George J. Grange, Esq., Sheriff of the County of Wellington.

SIR,—You may liberate the goods and chattels of Robert Johnson, you have seized in my suit, as I have given time to his brothers, Hugh and Horatio Johnson till January, 1859.

James Brown, Plaintiff, and Hugh Johnson, Defendant." } JAMES BROWN, Plaintiff.

The Sheriff of the County of Wellington did withdraw from the possession, but also exacted his fees and poundage. The Deputy Sheriff swore that no notice was ever given to the Sheriff of Wellington, that the *fi. fa.* to that County was a second or double execution. And the Defendant's agent, when paying the amount, demanded, as appeared from his affidavit, did not—though he says he protested against the payment of the poundage—place it upon the footing of a double execution, and therefore not entitled to poundage; but put it upon the footing that because no money was made, neither Sheriff was entitled to any poundage. It seems a summons was obtained before the present one, calling on both Sheriffs to show cause why the poundage should not be refunded. The matter upon that summons was arranged in some way between the Defendant and the Sheriff of York and Peel as far as respects his claim; and was the question upon the present summons as between the defendant and the Sheriff of Wellington.

BURNS, J.—The defendant has based his whole proceedings upon the proposition, that because no money was made by either Sheriff, therefore neither of them is entitled to poundage, and he relies upon the recent case in the Common Pleas, *Walker* v. *Fairfield*, 8, U.C. C.P. 95,—to support him. That case 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. In the case cited, no money was made by the Sheriff and none ever obtained, or money's worth obtained by the Plaintiff, for the writ was set aside as irregular, and the plaintiff did not obtain the fruit of it. In this case the plaintiff has obtained the fruit of the execution in some way that he is satisfied, and therefore, so far as the Sheriff is concerned or affected, the amount has been made, and in this sense it must be understood the demand is satisfied. I think that when satisfaction is forced by means of the execution, the Sheriff is entitled to his poundage. The 3rd section of 9 Vic. cap. 56, shews that the Sheriff is entitled to poundage not to the amount of the debt, in case no sufficient property to pay it, but to the value of the property actually seized.

This case, however, is one coming under the second section of that Act, being the case of writs of execution into second counties.

Again it is contended that under that section neither Sheriff is entitled to poundage, because no money was actually levied.—The section is obscurely worded and it seems difficult to construe it properly. I can scarcely imagine the Legislature intended, where two Sheriffs were set in motion, they should each be in a worse position than if only one writ of *fi. fa.* was issued. I need, not, however, discuss the abstract question, for here there is such a priority in point of time between the different writs of *fi. fa.* in the hands of the two Sheriffs, that I should say if one of them be entitled to the poundage upon the principle before stated in case of one execution, only the Sheriff of York and Peel is the person who would be entitled to the poundage, for it seems by the facts admitted, that it was upon his writ the compromise took place.—Then the Plaintiff being satisfied, and the matter as respects the Sheriff of York and Peel being arranged, and not being called upon to express any opinion whatever, whether he could legally or not exact the poundage, the simple question is, whether the Sheriff of Wellington is entitled to poundage. I think he is not. He is entitled to the other fees and for any services that a Judge may think reasonable.

The parties do not dispute any of the charges as I understand, except the charge for poundage—and the order will be that the amount so taken shall be refunded.

CHANCERY.

(IN BANC.)

(Reported by THOMAS HODGINS, Esq., LL.B., Barrister-at-Law.)

HARRIS v. BEATTY.

Costs—Assignment for benefit of creditors—Release—Legal rights

An assignment was made for the benefit of creditors; some of the creditors signed it; others sued out attachments and placed them in the Sheriff's hands: others obtained executions and sought to enforce them against the signing and attaching creditors. The assignment was submitted to a legal tribunal and declared invalid. The signing creditors applied to have the deed upheld and the other creditors to pay their own costs

Held, that the Deed should be upheld and that the attaching creditors having sought to enforce their legal rights should have their costs, but not the execution creditors—they having sought to enforce their priority.

(20th October, 1858.)

This was a bill to declare valid certain assignments made by one G. H. Cheney to one Clarkson, for the benefit of creditors; also to declare the release to said Cheney void, by reason of his fraud in carrying away with him moneys and notes intended to be vested in the assignee; and to restrain certain of the creditors from issuing executions for the amount of their claims. Two assignments had been executed, one dated 18th September, 1857, and the other 23rd Sept., 1857—the latter the more effectually to declare the trusts, &c. Some informality had occurred in regard to the delivery of the first deed, and the matter was by consent referred to the Chief Justice of Upper Canada, who decided against the validity of the first deed. Afterwards this bill was filed, and the Court upheld the first deed by granting an injunction against the attaching and execution creditors, who then came in and executed the assignments.

G. Morphy, for plaintiffs, (representing those creditors who had not issued executions) moved in accordance with the prayer of the bill, and that the defendants, the attaching creditors, should be ordered to pay their own costs. The whole difficulty had been caused by them; and at the hearing the motion was opposed by defendants Beatty and the Bank of Upper Canada—which latter had now come in and supported the assignments.

D. B. Read, Strong, A. Crooks, Fitzgerald, Blake, and Hodgins, for several defendants.

THE CHANCELLOR.—The decree will be for carrying out the trusts of the deeds; but as to the release, that is only a question of law, for fraud may be set up against Cheney should he seek to enforce the release against his creditors. As to costs, the subsequent execution creditors were driven to their remedy at law by the conduct of the first execution creditors. It was altogether a legal question, and having sued out attachments they opposed a legal right against a legal right. The question at law it appears was submitted to a legal tribunal and was decided in favor of the attaching creditors; but other creditors come to equity to restrain them pursuing what is declared they had a right to do. The attaching creditors, except two, also come and say that the legal decision is right, but submit to the motion for an injunction. I think, therefore, the costs of these creditors should be paid out of the estate, except those of Beatty and the Bank of Upper Canada, who had obtained execution, appeared on the motion here and opposed it.

SPRAGGE, V. C., agreed with the Chancellor. If Beatty and the Bank have their costs they will have them for endeavoring to place themselves in a preferential position by reason of their executions, when others were satisfied by signing the assignment, and then coming here to uphold them—in which they have not succeeded.