

praying among other things, for an injunction to prevent the latter from proceeding upon their judgments. Subsequently the complainant purchased up these judgments, and had them entered for his own use, and agreed to pay all legal costs arising thereon.

A petition was afterwards filed in the case by Thomas Keller and David T. Wilson, late sheriff of Washington county, for an order on the complainant (who was admitted to be in actual possession of the property, claiming to hold under the mortgages to him,) to pay them the poundage fees on said executions, and also the officers' fees above mentioned.

This petition, (which sets out the above mentioned facts and also alleges the insolvency of the defendant Brien,) having been argued before the Chancellor, he delivered his opinion as follows:]

THE CHANCELLOR :

The general rule, undoubtedly, is, that the defendant and not the plaintiff, is answerable for the poundage fees. *Howard vs. the Levy Court*, 1 *H. & J.*, 558, approved in *Gurley vs. Lee, Gill & Johns.*, 395.

In this case, Mr. Gilmor is the plaintiff, being the assignee of the judgments, and if he can be made liable for these fees, it must be because of some exception to the general rule, which general rule imposes the burden upon the opposite party. There is nothing in his agreement made at the time he purchased the judgments, which imposes this obligation upon him, as it appears by the statement and deposition of Mr. Neil, who transacted the business for him, that he bound himself, and only agreed, to pay those fees which were chargeable to the plaintiffs in the judgments, and none others.

The Court of Appeals have said, in the case of *Gurley vs. Lee*, that if an execution issues irregularly, that being the act of the plaintiff, he and not the defendant will be liable to the sheriff for his poundage fees, but in the same case it was decided, that if the execution is stayed by injunction, the defendant at law is liable. In the case under consideration, the in-