

POUNDAGE FEES—Continued.

2. If an execution issue irregularly, that being the act of the plaintiff, he, and not the defendant, will be liable to the sheriff for poundage fees, but if an execution be stayed by injunction, the defendant is liable. *Ib.*
3. The claim of a sheriff for poundage fees is a legal, and not an equitable, claim, and its payment must be enforced by a proceeding at law. *Ib.*
4. An agreement by an assignee of certain judgments, to pay all legal costs arising thereon, was held not to impose an obligation on him to pay poundage fees. *Ib.*

PRACTICE IN CHANCERY.

1. The enrollment of a decree obtained by surprise, may be vacated either upon a bill or petition. *Barry vs. Barry*, 20.
2. Where a case is set down for hearing on bill and answer, all the averments of the latter, whether responsive or not, to the allegations of the bill, are taken to be true. *Wheeler's Estate*, 80.
3. The case of a mortgage forms an exception to the general rule, that a party shall not be allowed to sue at law and in equity for the same debt, and a mortgagee may pursue all his remedies at once, yet he is under no obligation to do so. *Brown vs. Stewart*, 87.
4. When a motion to dissolve an injunction is heard on bill and answer, so much of the bill as is not denied by the answer, is taken for true; and if any one of its material allegations remains unanswered, the injunction will be continued till the final hearing. *Ib.*
5. Allowing a demurrer to a whole bill, in strictness, puts it out of court, and no subsequent proceedings can be taken in the cause. Yet the court has sometimes permitted an amendment of the bill to be made. *Cullison vs. Bossom*, 95.
6. Where the material allegations of the bill are denied by the answer, the motion to dissolve must prevail, unless the bill can be supported by testimony taken under the act of 1835, ch. 380, sec. 8. *Washington University of Baltimore vs. Green*, 97.
7. All averments of the bill not denied by the answer, must, upon all questions relating to the injunction, be regarded as true. *Ib.*
8. After the injunction was dissolved, the defendant filed a *petition*, stating that the complainants, in pursuance of the injunction, had taken possession of the property, to which the defendant yielded, and praying that an order may be passed restoring the possession to the defendant.

HELD—

- That, if the defendant has surrendered a possession previously held by him, he has done that which the Court, by its injunction, did not command him to do, and for which he has no right to ask for redress at its hands, and that the petition should be dismissed. *Ib.*
9. An injunction can only be dissolved by positive contradictory averments in the answer, and an answer founded upon hearsay is not sufficient to remove the complainant's equity, though, resting upon information derived from others, it denies the facts out of which that equity arose. *Doub vs. Barnes*, 127.