

is made in ejectment, to insist on new plats being prepared, though his co-defendant has agreed with the plaintiff that old plats should be used in evidence, and of course their expense are part of the costs, *Norwood v. Norwood*, 3 H. & J. 57. By the Act of 1829, ch. 186, costs which in an action of ejectment are necessary as against any defendant, severing in his defence, shall be treated as costs between the plaintiff and that defendant, and all costs necessary for the trial of the action against all the defendants shall be apportioned among them equitably. But Art. 75, sec. 49¹⁸ of the Code provides only that where defendants in ejectment sever in their defences, the Court shall apportion the costs in such manner as may seem reasonable and just. In other actions, however, where there are several defendants each is answerable for the whole costs, Bull N. P. 335-6. And if one of several defendants suffer judgment by default, and another plead a plea in discharge of himself and not to the whole declaration, the former must pay costs though the plea be found against the plaintiff, Tidd Pr. 986. Sheriff's fees of course include poundage fees on executions, *Gurley v. Lee*, 11 G. & J. 395. It is well settled that if the Sheriff make a levy under an execution he is entitled to his fees, on the ground that by the seizure he has incurred a risk and responsibility for which he ought to be paid; and it is equally well settled that in general the defendant and not the plaintiff is responsible for them, except where an execution is irregularly issued and is quashed, which is the act of the plaintiff, or where the defendant is beyond the reach of process. So if the debt is compromised after a levy, the Sheriff may sell to the amount of his poundage fees; or if the execution is stayed by injunction the defendant is still liable, for the plaintiff had a right to issue the execution and the defendant ought to have availed himself sooner of his equity to stay it, and though the plaintiff's right be suspended by a *supersedeas*, yet the Sheriff may sell and bring the money into Court, retaining his fees thereout, *ibid.* and *Stewart v. Dorsey's Ex'x*, 3 H. & McH. 401; *Fisher v. Beatty*, 3 H. & McH. 148; *Howard v. Levy Court*, 1 H. & J. 558; *Gilmor v. Brien*, 1 Md. Ch. Dec. 40; *Cape Sable Co.'s case*, 3 Bl. 624. So an appeal and the filing of an appeal-bond will stay execution in part executed upon payment of the costs that have accrued to the Sheriff, Code, Art. 5, sec. 33;¹⁹ but this provision is held to be for the protection of the Sheriff, who may refuse to suspend the execution and deliver the property until the costs are paid, or he may waive his claim; but to enable the defendant to pay the costs they must be ascertained by the Sheriff and demanded, *Eakle v. Smith*, 24 Md. 339. There was in that case no demand of the costs, but the Sheriff persisted in selling lands under an execution, and a tender of the costs was therefore held to be useless. But if the execution is not complete the Sheriff cannot execute for his fees and the liability of the defendant, it seems, does not extend to his executor, *Fisher v. Beatty*, *supra*.

If some of several issues at law are found for the plaintiff, and others for the defendants, it is the uniform practice to allow full costs to the **83** plaintiff or defendant *according as the final judgment is given,

¹⁸ Code 1911, Art. 75, sec. 76.

¹⁹ Code 1911, Art. 5, sec. 55.