

nothing in the petitioner's case which can entitle him to relief upon any such grounds as against the parties to this suit who are the plaintiffs in the executions.

But there are other kinds of executions which go against the person, or do not direct the property of the defendant to be taken and converted into money, on obeying which the sheriff becomes entitled to poundage fees. On taking the defendant into custody under a *capias ad satisfaciendum*, the sheriff becomes entitled to poundage fees on the whole amount. *Peacock v. Harris*, 1 Salk. 331. And so, too, on executing a *levari facias*, an *elegit*, or a *liberate*, by virtue of which the property is not sold, but specifically delivered to the plaintiff in satisfaction of his claim. *Tyson v. Paske*, 2 Ld. Raym. 1212. In all these cases, as well as in all those where the execution, after it has been regularly levied, but, before a sale, has been countermanded; or has been quashed on account of some previous error in the proceedings; or the suit has

**633** \* been compromised, it has been made a question whether the plaintiff or the defendant was liable to the sheriff for his poundage fees.

The English statute which allows these fees says nothing which indicates an intention of the Legislature to impose a liability for them upon either the plaintiff or the defendant. It might be supposed, that in all cases where the amount of the plaintiff's claim was to be raised by a sale of the defendant's property, that the poundage fees should be included; and, consequently, that the defendant should be liable for them. And, that in all other cases where the plaintiff obtained satisfaction by having the defendant's body taken into custody; or by obtaining a delivery of his property, as no money passed through the sheriff's hands, from which he might deduct and retain his fees, the plaintiff should be held liable for them. But no such distinction has ever been made or recognized in any of the adjudged cases. On the contrary, it is said that in actions on simple contract, and judgments for a debt certain, the expenses of levying must be paid by the plaintiff, and not by the defendant. But if the judgment be for a penalty, the plaintiff has a right to receive the whole of his debt, independent of the expenses of the execution; and, in those cases, the defendant is liable for the whole amount of the poundage fees. *Woodgate v. Knatchbull*, 2 T. R. 157.

It would seem, that in England sheriffs had taken advantage of the general phraseology of this statute of 1587, and charged poundage fees for the whole amount specified in the writ, in all cases, although there was, in truth, no more than a small balance due. To remedy this grievance, another statute was passed in the year 1716, requiring the sum really due in all cases to be endorsed on the back of the writ, on which amount, and no more,