

ber, 1779, ch. 25, s. 4 and 5; *Howard v. The Levy Court*, 1 *H. & J.* 566. It would seem, from what has been said in this case, to have been held to be a general rule, that the defendant was in all cases liable; yet, in a previous case, the defendant's liability appears to have been rested, in some degree, upon his promise to pay. *Stewart v. Dorsey*, 3 *H. & McH.* 401. And in another case it appears, that the sheriff brought an action of assumpsit against the plaintiff, who had sued out an attachment, \*for poundage fees which he claimed for executing the writ upon the lands and tenements of the non-resident defendant, as fees allowed by the Acts of Assembly. November, 1779, ch. 25, s. 3; 1790, ch. 59, s. 2. Upon which it was held, that they must be paid by the person who issues the attachment. *Maddox v. Cranch*, 4 *H. & McH.* 343.

The result of these adjudications I take to be, that in all cases where the sheriff has taken the property of the defendant, or his person is within reach of the ordinary modes of proceeding, the defendant shall be held liable; but where he is beyond the reach of the process of the law, the plaintiff, who proceeds against him as an absentee or non-resident, shall be liable for the poundage fees.

On applying these principles to the case under consideration, it clearly follows, that this defendant the Cape Sable Company alone is liable at law to this sheriff for his poundage fees; the complete legal right to which, to the full amount of the debt actually due, accrued by the levy he made, as specified by his return of those writs. And it is equally evident, that but for the interposition of the injunction he might have sold the property of the company, at least, to the amount of his fees; or have enforced the payment of them in like manner as other fees. It was therefore the injunction of this Court, which put a stop to all further proceedings at law, that prevented this sheriff from recovering his poundage fees by means of the executions he had levied. And it is by means of the decree of this Court, under which all the property of this body politic has been sold; and which has reduced it to the condition of a mere penniless entity, utterly destitute of pecuniary ability to pay any claim, that this petitioner seems now to stand upon the eve of being deprived of the means of recovering his fees, in any manner whatever, unless by the aid of this Court.

At common law a plaintiff might be prevented from obtaining the benefit of his judgment by a writ of error. Formerly there was always sued out along with a writ of error, a writ of super-sedeas, which directed, "that if the judgment be not executed before the writ of super-sedeas, the sheriff is to stay from executing any process of execution until the writ of error is determined." From which it appears, that if the execution had been begun before the super-sedeas was delivered, the sheriff ought to