

v. *Bingham*, 12 *Cond. Chan. Rep.* 253; the personal estate should, in this instance, have been first applied. And, therefore, the sheriff here must be held to be entitled to poundage fees on the personalty, so far as it would have gone, according to its appraised value, towards the satisfaction of the sums really due; and for the residue to poundage fees upon the realty. *Clerk v. Withers*, 6 *Mod.* 299.

Whereupon it is ordered, that the petitioner William O'Hara be and he is hereby allowed poundage fees as prayed; that is to say, the amount of such fees to be estimated according to law, on the personal property taken in execution by him as aforesaid, so far as the same was adequate, according to its appraised value, to have satisfied the amount really due upon the said executions, and required to be made by them; and upon the residue thereof, which must have been satisfied out of the real estate so taken in execution, according to law as where lands are taken in execution and sold. November, 1779, ch. 25, s. 4 and 5; 1790, ch. 59; 1813, ch. 102, s. 5 and 6. And it is further ordered, that the said poundage fees are hereby allowed out of the proceeds of the sales of the property of the Cape Sable Company in preference to the claims of the plaintiffs in the said executions, and of the Cape Sable Company and its corporators. And the auditor is hereby directed to state the claim accordingly.

642 * On the 20th of April, 1829, Philip G. Lechleitner, as a claimant against the proceeds of sale in this case, by his petition, not on oath, stated, that the sheriff O'Hara had, by a special contract, agreed to accept as compensation for his services a sum about two-thirds less than his legal poundage fees. Whereupon he prayed, that O'Hara might be ordered to answer, and that the matter might be reheard. On the 21st of the same month this application was dismissed with costs.

On the 25th of April, 1829, George Neilson, administrator of James Neilson, deceased, Eli Balderson, Benjamin Welch and Hugh Mullen, creditors, who had filed their claims against the Cape Sable Company, under the decree, by their petition, not on oath, stated, that no payment had then been made to O'Hara under the order of the 15th December; that the time allowed by the notice given, as directed by the decree, for creditors to bring in their claims, expired on the 30th of December last; after which day, and before the passing of the order of the 15th of December, they had filed their claims; and, therefore, they had neither in point of law or of fact, any notice of O'Hara's petition, or any opportunity of controverting his claim; that O'Hara had entered into a special contract to accept as a compensation for his services, much less than his legal fees; and yet had, in his petition, suppressed all mention thereof; thereby leaving the Court to pre-