

ROBERT GILMOR  
 vs.  
 JOHN McP. BRIEN ET AL. } MARCH TERM, 1847.

[POUNDAGE FEES OF SHERIFF.]

As a general rule, the defendant, and not the plaintiff, is answerable for poundage fees.

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 is stayed by injunction, the defendant is liable.

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.

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.

[Sundry judgments having been recovered against the defendant Brien, one at March term, 1841, five at November term 1841, and twelve at March term, 1842, writs of *feri facias* were issued upon two of them, returnable at March term, 1842, and upon the others returnable at March term, 1843. The precise date of these writs did not appear, but it was admitted in the proceedings, that the two former were issued in the winter of 1841, and the others in the winter of 1842, and 1843; and also that in virtue thereof, levies were made on certain real and personal property of the defendant, Brien, which was advertised for sale. It also appeared that at the dates of the levies, the sheriffs had in their hands for collection, certain officers' fees due by said Brien, and to satisfy them, seized other property of his, but neither the precise date of this seizure or of the levy under the writs, or a schedule of the property levied upon, were produced.]

On the 5th June, 1843, the complainant Gilmor, who held three several mortgages on the property of said Brien, dated respectively the 1st September, 1841, 22nd October, 1841, and 8th June, 1842, to secure him for moneys advanced, and responsibilities incurred for Brien, to a very large amount, filed his bill against said defendant, and the judgment creditors,