

junction was not applied for by the defendant at law, but by a mortgagee of the defendant, who asked for the protection of the court, by way of injunction to save property from seizure and sale under a great number of executions on judgments against the mortgagor, every one of which, but one, appears to be posterior in date to the two first of his mortgages, which embrace all, or a great portion of the mortgagor's property in the county, and one for very large sums of money.

The Chancellor is unable to see any thing in the circumstances of the case, which would induce him to throw this burden upon the assignee of these judgments, and to engraft another exception upon the general rule, which makes it the duty of defendants to pay the poundage fees. But even conceding, for the sake of the argument, that Mr. Gilmor is liable to the sheriffs for these fees, upon what principle is it, that an application can be made to this court, to compel the payment.

The claim of a sheriff for his poundage fees is a legal, and not an equitable claim, and if Gilmor has, by taking an assignment of the judgments, or obtaining an injunction to restrain the judgment creditors from proceeding upon their executions, made himself liable to pay the money, what is to prevent the petitioners from proceeding at law against him? The case of *Cape Sable Company*, 3 *Bland*, 630, relied upon by the council for the petitioners, decides, that the claim is a legal one and that a court of chancery will not interpose, unless the sheriff, without such interposition, is without remedy. The right of the sheriff to have recourse to this court, cannot be maintained upon the ground of lien, because, it is believed, he has no such lien, for his poundage, as will entitle him to follow the property when brought into this court for administration, and such was the opinion of the late Chancellor in the same case.

But the case of the *Cape Sable Company* in all those circumstances, which induced the Chancellor to sustain the application of the sheriff, is unlike the case under consideration. In that case the company, considered to be alone liable for the fees, was, by the decree of the court, and the sale under the