

The object of this petition is to recover the poundage fees to which the petitioner alleges he became entitled upon levying those executions.

It is perfectly clear, that a sheriff's right to poundage fees is a claim of a legal, not an equitable character. That he has a complete remedy at law, either by action, or by selling for the amount, by virtue of the execution that has been levied is certain, and admitted on all hands. The only doubt upon the subject, at common law, is, whether the plaintiff or the defendant is liable to him for them, in all or in what cases. But this sheriff has thought proper to present his claim for poundage fees to this Court, in this case. It is, therefore, not only necessary, that he should establish his legal claim against one or other or all of these parties; but, that he should also shew why he should be indulged in bringing that legal claim here; and upon what ground or equitable bearing it is, that this Court can allow itself to entertain jurisdiction of his case.

According to the common law, sheriffs were entitled to no fees whatever for executing a *fieri facias* or any other process. *Co. Litt.* 368; 2 *Inst.* 176, 210. But, in England, by an Act of Parliament, passed in the year 1444, not applied here, some fees were allowed; 23 Hen. 6, c. 9; *Kilty Rep.* 227; and by the statutes passed in the year 1587 and 1716, not adopted here, they were allowed a certain compensation for their trouble, graduated according to the amount directed to be raised by the execution, called poundage fees from the manner in which they are estimated; being so much per pound for the first hundred pounds; and so much less for every pound above that. 29 Eliz. c. 4; *Kilty Rep.* 85; 3 Geo. 1, c. 15, s.

631 16; *Kilty Rep.* 112. These statutes do not extend *to real executions, but only to executions in personal actions; and, therefore, the sheriff is, in England, allowed no poundage fees for executing a *habere facias possessionem*. *Peacock v. Harris*, 1 *Salk.* 331. Nor do they embrace any case where money is raised by process of attachment for contempt, upon which no poundage fees can be charged. *The King v. Palmer*, 2 *East*, 411.

It would seem, that the sheriff's right to poundage fees accrues and is complete in all cases immediately that the writ is regularly executed; although no sale should be made; or the execution, because of some antecedent error should be quashed, or the suit should afterwards be compromised. *Peacock v. Harris*, 1 *Salk.* 331; *Earle v. Plummer*, 1 *Salk.* 332; *Tyson v. Paske*, 2 *Ld. Raym.* 1212; *Alchin v. Wells*, 5 *T. R.* 470; *Rawstorne v. Wilkinson*, 2 *Mau. & Sel.* 256. In strictness the sheriff should make a return of the whole sum produced by the sale, when the Court will order it to be paid over, deducting the poundage; but where the sheriff has received the poundage fees to which he was legally entitled, he will be allowed to retain them. *Com. Dig. tit. Viscount*, (*F.* 2); *Woodgate v. Knatchbull*, 2 *T. R.* 148; *Alchin v. Wells*, 5 *T. R.* 470.