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precedents of that character. But this seems to be unnecessary and is very onerous. If the court appears to have had jurisdiction, and to have granted the discharge, any mere error in the course of its proceedings would not avail to defeat the discharge. If, therefore, the proceedings were set forth in detail, according to the precedents, it would seem that most of the averments could not be traversed, as it would only lead to an immaterial issue. We are of opinion that in this class of cases it is only necessary to set forth enough to show that the court had jurisdiction of the case, and granted the discharge. So are the cases in New-York of pleading a discharge under the insolvent law of that State. 1 *Johns. R.* 91, *Service vs. Heermance*; 20 *Johns.* 208, *Roosevelt vs. Kellogg*. If there is any matter which renders the discharge invalid, or takes the case out of its operation, the plaintiff may set it forth in the replication. Most of the objections to the plea in this case are, therefore, not well taken. But there is one which is fatal to the plea as it stands. In order to give the district court jurisdiction, the petitioner must be a resident of the district where the petition is filed, and this plea contains no averment that the defendant was, at the time, a resident in the southern district of New-York. The allegation that he filed his petition by the name of Joseph Brown Ball, of the city of New-York, is not enough. The petition might have been so filed and the defendant been a resident elsewhere. The plea fails, therefore, of showing any jurisdiction in the district court. 1 *Cowen's R.* 316, *Wyman vs. Mitchell*.

The plaintiff is, therefore, entitled to judgment on the demurrer, as the case now stands, but the defendant may amend on payment of costs.

 TOWLE vs. ROBINSON & a.

It is no defence to an action by a deputy sheriff, founded upon a receipt taken by him for property attached, that, after judgment against the debtor, and a de-

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mand of the property, the debtor was declared a bankrupt ; even if the petition in bankruptcy was filed before judgment was rendered.

ASSUMPSIT, on a promise in writing, signed by the defendants, to deliver to the plaintiff, a deputy sheriff, certain articles of personal property attached as the property of Nathan B. Folsom, and deposited by him in the hands of the defendants. The case was submitted on a statement of facts.

On the 5th of October, A. D. 1840, the plaintiff attached the property in question as the property of N. B. Folsom, upon a writ, and on the 22d the defendants receipted for it, promising to deliver it to the plaintiff, on demand, or pay the sum of \$500. Judgment was obtained September term, A. D. 1842, and execution issued September 16th, and was delivered to the plaintiff, who, on the next day, demanded the property attached of the defendants. They did not deliver it, and this suit was commenced on the 19th, and service made the same day upon the defendants. On the 18th of November, A. D. 1842, Folsom made a mortgage of real estate to the defendants, to indemnify them for signing the receipt. On the 10th of August, A. D. 1842, Folsom filed a petition to be declared bankrupt. On the 25th of October, A. D. 1842, he was decreed bankrupt, and has since received his discharge. The defendants contended that by such discharge the plaintiff and Folsom were divested of all the interest and property which either of them had in the goods attached, at the time Folsom filed his plea in bankruptcy.

Emery, for the plaintiff.

Odell, for the defendant.

PARKER, C. J. It may be true that Folsom and the plaintiff are divested of all title to the goods which were attached. If the attachment was dissolved when the receipt of the defendants was executed, the property may have passed to the assignee, discharged from the lien of the attachment. But it will by no means follow that the contract of the defendants, upon which this action is founded, is discharged also. It was founded upon a sufficient

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consideration when it was executed, viz., the delivery of the property to the defendants. That consideration has not failed. That contract is not discharged or affected by the bankruptcy of Folsom. The plaintiff's right of action was perfect before Folsom was declared a bankrupt. The security was perfected, therefore, and the case raises no question whether an attachment is dissolved by a petition and decree of bankruptcy.

Judgment for the plaintiff.

STEVENS vs. THOMPSON.

A plea of matter arising since the last continuance, is a matter of right, and the court cannot refuse to receive it, nor require cost to be paid as terms of a leave to plead it.

But if the defendant neglect to plead it at the next term after it arises, the court may, in its discretion, permit him to plead it at a subsequent term, and may, in such case, require the payment of costs.

Where the plea is regularly filed, whether the plaintiff is entitled to judgment for his costs up to the time of filing it, in case the defendant maintains his defence, *quære?*

ASSUMPSIT. The action was commenced February 4th, 1839, and founded upon an account annexed to the writ, amounting to \$245.76.

The plea was the general issue, with a set-off, amounting to \$275.50, consisting of the defendant's account against the plaintiff. The action was committed to an auditor, who made report to the court at the September term, 1841, and stated the accounts between the parties, shewing a balance due the plaintiff of \$67.51.

At the February term of the court, 1844, the defendant offered his plea of a discharge in bankruptcy, since the last continuance, in bar of the farther maintenance of the suit. The plaintiff objected to the reception of the plea, except upon the payment of the costs up to the time of filing the plea. The court thereupon ruled that said plea be not received, except upon the terms aforesaid; to which the defendant excepted.