

ESTY *v.* FLANDERS & Tr.

In a process of foreign attachment, the party summoned as trustee can not be charged after execution has issued against the debtor.

FOREIGN ATTACHMENT. At the October term, 1843, judgment was rendered against the principal defendant, and execution issued against him.

The counsel for the trustee thereupon moved that the trustee be discharged, the suit between the plaintiff and principal defendant being ended.

*J. U. Parker*, for the plaintiff.

*G. Y. Sawyer*, for the trustee.

PARKER, C. J. The suit against the debtor is the foundation of the proceeding, to which the suit against the trustee is superadded. Judgment having been entered and execution issued against the debtor, there is no longer any action pending in court, and the trustee can not be held to answer further.

Under Rev. Stat, chap. 208, the proceedings against the trustee are first to be disposed of. Execution is to be issued against him for what is found in his hands, and against the debtor for the balance. The execution against the principal having been issued, no further proceedings can be had.

*Trustee discharged.*