

BRYANT v. ABBOT.

No fees are chargeable by an officer for the return of an injunction in a bankrupt cause.

If an officer direct his fees to be paid into Court, it is not an effectual payment, if the money is paid into Court, with funds of the estate, without designation.

ASSUMPSIT, by a deputy marshal for the service and *return* of a writ of injunction, issued by the District Court of the United States, to stay proceedings in a suit commenced by a creditor of a bankrupt.

The defendant, the assignee of the bankrupt, denied his liability for the payment of the fees charged for the return of the process to the Clerk's office, at Portsmouth; and proved, that the deputy marshal directed him to pay his fees into Court, and that he had paid the balance of the proceeds of the estate into the hands of the clerk, and that the amount was more than enough, after paying the other fees and expenses, to pay the bill of the deputy marshal; but the whole sum was paid to the clerk without designating any part as due to the plaintiff.

BELL, J. Such an injunction is neither by its precept nor by the practice of the Court, a returnable process; and the marshal is entitled to his fees for the *service*, without showing it to be returned, but is entitled to no fees for such *return*. A payment of the funds of the estate into the Court, without designating any part as paid for the use of the marshal or his deputy, would not be a payment to the plaintiff. The funds so returned would be, of course, distributed to the bankrupt's creditors.

GRAFTON'S PETITION.

Upon the discontinuance of a highway, the original petitioners are chargeable only for such costs as are occasioned by their opposition to the discontinuance.

PETITION of the town of Grafton for the discontinuance of a highway.

 Doe v. Thompson.

The Road Commissioners reported in favor of the discontinuance, and their report was accepted.

Sargent, in behalf of the town, moved for the allowance of the whole costs of the proceedings, including the charges of the Road Commissioners and of the hearing before them, against the original petitioners, on whose application the road was laid out, and who, upon the notice ordered by the Court, had appeared and resisted the petition.

The motion was opposed by *Kittridge*, for the original petitioners.

BELL, J. The questions arising in this case were settled in the case of *Hampstead's* petition, Rockingham, December term, 1849. The original petitioners are chargeable only with the costs arising from their interference. All costs, which must be incurred whether there is an appearance to oppose the petition or not, must be borne by the town.

 DOE v. THOMPSON.

A contract to pay money on a condition, no time of payment, or of performance of the condition being mentioned, is payable, if the condition is not performed in a reasonable time.

Such contract is barred by the lapse of six years, after the expiration of a reasonable time for the payment.

An agent, to whom, as such, a contract is in terms made payable, may maintain an action upon it in his own name.

Where tenants of mortgaged property are chargeable with the costs of a suit upon the mortgage, they must pay in proportion to the value of their respective interests, of which the consideration paid by each is evidence.

THE action was founded upon the two following agreements in writing:

“ 19 November, 1831.

For value received, I promise William Doe to pay him twenty-five dollars, on condition that no arrangement is effected, by