

## HALEY v. THURSTON.

An attachment is not dissolved by the filing of a petition in bankruptcy within four months after, when no assignment in bankruptcy has been made and no further proceeding had upon the petition.

A sheriff is liable for the default of his deputy in neglecting to levy an execution in his hands upon, or to make a seasonable demand upon, a receptor, for property, under a valid attachment in the suit.

CASE, against a sheriff, for the default of his deputy, who, on a writ for a valid debt, had, in 1876, attached the property of the debtor and obtained a responsible receptor, and who, within thirty days after judgment in the suit, had received an execution, with a request to levy the same upon the attached property, and did not make the levy nor a demand on the receptor. He forgot to do so, and the demand was thereby lost. Within four months after the attachment, and more than thirty days after the judgment, the debtor filed his petition in bankruptcy, upon which no further proceedings have been had. The facts not being in dispute, a verdict for the plaintiff was ordered.

*Currier and Whipple*, for the defendant.

*Hibbard*, for the plaintiff.

By the United States bankrupt law (Rev. Stats. U. S., s. 5044), it was the assignment of the bankrupt's property, and not the petition, that dissolved an attachment made within four months next preceding the commencement of the bankruptcy proceedings. There being no assignment, there was no dissolution of the attachment. At the time of the petition there was no attachment to be dissolved. It had been lost, and the receptor discharged at the end of thirty days from the judgment, and the deputy's neglect to avail himself of the attachment lien within that time fixed the defendant's liability.

ALLEN, J. The debtor, whose goods the defendant's deputy attached upon mesne process, filed his petition in bankruptcy within four months after the attachment, and no proceedings have been had upon the petition since. The mere filing of a petition in bankruptcy did not divest the debtor of his title to the property, nor dissolve attachments made upon it within four months prior to the filing. Though the assignee's title relates back to the commencement of the bankruptcy proceedings, he takes his title by virtue of an appropriate deed, and until the assignment is made no lien existing when the proceedings commenced could be dissolved. It is the assignment, and not the filing of the petition, that dissolves an

immature attachment. Rev. Stats. U. S., s. 5044; *Hampton v. Rouse*, 22 Wall. 263, 273. In this case the question of the dissolution of the attachment by the bankruptcy proceedings can have no effect, for the plaintiff's lien by attachment was lost at the end of thirty days after the judgment, and the bankrupt's petition had not then been filed. So far as the plaintiff's rights were concerned, there was no attachment to be affected by a petition in bankruptcy. The defendant's deputy, having received an execution on a judgment obtained by the plaintiff, with instructions to levy upon the property attached, neglected to do so. Having a good receipt for the property, he made no demand upon the receiptor, and took no steps whatever to have the execution satisfied. He offers no excuse for his want of diligence. The attachment lien existed at the time, and by the deputy's neglect the plaintiff has lost his remedy upon the attached property, and for this neglect the defendant is liable.

*Judgment on the verdict.*

FOSTER, J., did not sit: the others concurred.

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STATE *v.* BROWN.

The statute (G. L., c. 133, s. 7) authorizing pharmacists lawfully registered to keep spirituous liquors for compounding their medicines, does not authorize them to sell such liquors to others to be compounded with medicines.

INDICTMENT, for selling a pint of spirituous liquor to one Gilman. Marvin C. Brown, a registered pharmacist, kept a drug store at Meredith. The defendant was his assistant, and a silent partner in the concern. Gilman purchased of the defendant a package of Vegetine powder, a well-known medicinal preparation, and a pint of alcohol, which was to be added to the other material after it had been boiled, according to the directions contained in the recipe accompanying the package of Vegetine. The alcohol was an essential ingredient, and could not be added until the dry material had been boiled a considerable time and had cooled. The alcohol was intended, and was, in fact, used for no other purpose than to compound with the Vegetine in the manner described in the recipe. The seller understood that it was to be used for that purpose, and no other. The whole was included in one sale, and no separate price was made for the Vegetine and the alcohol. The court instructed the jury that these facts constituted no defence, and, the evidence being undisputed, directed the jury to return a verdict of guilty; and the respondent excepted.