

Case No. 1,458.

IN RE BLACK ET AL.

[2 N. B. R. (1874) 171 (Quarto, 65).]¹

District Court, S. D. New York.

BANKRUPTCY—SUFFERING EXECUTION—PREFERENCE—SHERIFF—POUNDAGE.

Creditors taking out executions against property of debtors not having reasonable cause to believe him insolvent, such executions are valid. A sheriff is entitled to poundage on a levy at the time he makes the levy.

[In bankruptcy. In the matter of James Black and William Secor, involuntary bankrupts. Proceedings to determine the validity of certain executions and levies as against the assignee in bankruptcy.

[For decree requiring the sheriff to pay over the fund in his hands, realized on execution against the bankrupts, to the assignee, see Case No. 1,457.]

BLATCHFORD, District Judge. This case comes before the court on testimony taken by the register, under an order of reference, on the questions as to whether certain executions issued against the bankrupts and the levies thereunder are valid as against the assignee in bankruptcy, and whether such executions are liens entitled to preference in payment out of certain funds in the hands of the late sheriff of the city and county of New York. Within the principles laid down by this court in its decision in this matter, made March 10, 1868 (1 N. B. R. 81, Quarto [In re Black, Case No. 1,457]), in regard to the execution issued on the judgment recovered by Thomas P. Secor against the bankrupts, there is no room to doubt, on the evidence, that the levies under the two executions issued on the two judgments recovered by Dean and Caldwell, are void as against the assignee in bankruptcy. At the time the executions were issued the judgments were owned by and had been assigned to A. Stuart Black, and he caused the executions to be issued. The facts established which makes the levies [void] under these executions are: 1. That the judgment debtors were insolvent when the executions were issued. 2. That they suffered their property to be taken by the sheriff on these executions with an intent to give a preference to A. Stuart Black. 3. That A. Stuart Black had reasonable cause to believe at the time that the debtors were insolvent and that a fraud on the bankruptcy act was intended. As to the execution on the judgment, there is not sufficient evidence to show that the creditors had reasonable cause to believe that the debtors were insolvent. The levy under that execution was, therefore, not invalid. That execution bound the property from the time it came to the hands of the sheriff, and when the prior invalid levies are set aside it comes into full operation. I allow the sheriff's bill, as proved, at eight hundred and fifty-six dollars and forty-nine cents. On the decisions made by the state courts, the sheriff is entitled to poundage on a levy at the time he makes the levy. The order disposing of

In re BLACK et al.

the fund in the hands of the sheriff, in accordance with this decision, will be settled on notice to all parties interested.

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