

Case No. 3,412.
[7 Ben. 564.]¹

CROOK V. AUDENREID ET AL.

District Court, S. D. New York.

Jan., 1875.

ATTACHMENT—ASSIGNMENT—FREIGHT.

F., the owner of a canal-boat, brought a cargo of coal to A., the freight of which, \$158 38, was due to F. on Sept. 16th, 1869. F., having assigned the debt to C., he filed a libel against A. to recover it. Before the assignment, an attachment against the property of F. was issued out of the first district court of the city of New York, which was served on A. before the libel was filed. The plaintiff in the action in the first district court obtained judgment against F., and issued execution, and A. paid to the marshal of the first district court, the person duly authorized to collect the execution, the \$158 38. The case was heard on an admitted statement of facts: *Held*, that, as A. had admitted that the debt was due to F., it was for him to show that the attachment and execution bound the debt in his hands, and, as he had not done so, C. was entitled to a decree for the amount of the debt.

The libel in this case alleged, that one Feaney was the owner of a canal-boat, and brought a cargo of coal in her for [Lewis] Audenreid & Co., the respondents, on which the freight was \$158 38, which they had not paid, and that Feaney had assigned the claim to the libellant [John Crook], who sought to recover it in this suit. The answer set up, that, previous to the assignment by Feaney and the filing of the libel, the freight in the hands of Audenreid & Co. was attached at the suit of one Compton; that judgment was recovered in the suit, and execution issued; and that Audenreid & Co. had paid over the money. The case was submitted on the following agreed statement of facts: The defendants admit that there was due from them to the libellant's assignee, James Feaney, the sum of one hundred and fifty eight

dollars and thirty-eight cents, for freight on a cargo of coal—such sum was due on the 16th day of September, 1869. Plaintiff admits, that, on that day, an attachment issued out of the first district court of the city of New York, at the suit of one Oscar F. Compton, against the property of the said Feaney, which attachment a duly authorized marshal of said court duly served on the defendants before the commencement of this suit, upon the indebtedness so due from them to Feaney. That, thereafter, the said Feaney assigned the said claim to the plaintiff, who thereupon commenced this action. That, thereafter, the said Compton obtained judgment in the said first district court, against said James Feaney, for \$158 38, and issued execution thereon, and, on demand made under said execution, the defendants paid over to the said marshal of the first district court, the person duly authorized to collect said execution, the said sum of one hundred and fifty-eight dollars and thirty-eight cents, being the amount so due from them to the said Feaney, and so sought to be attached by said Compton.

Horace Andrews, for libellant. F. C. Bowman, for respondents.

BLATCHFORD, District Judge. As the debt to the libellant's assignor is admitted to have been due, \$158 38, September 16th, 1869, it is for the respondents to show that the attachment and execution set up bound the debt in the hands of the respondents. This they have not done, and the libellant must have a decree for \$158 38, with interest from the above date, and costs.

¹ [Reported by Robert D. Benedict, Esq., and B. Lincoln Benedict, Esq., and here reprinted by permission.]