

Case No. 17,367.  
[5 Ben. 278.]<sup>1</sup>

IN RE WELCH.

District Court, S. D. New York.

July, 1871.

SHERIFF'S POUNDAGE—BANKRUPTCY.

Where a sheriff had levied on property of a debtor who was afterwards adjudged a bankrupt, and the sale of the property was enjoined and the property was subsequently sold by the assignee in bankruptcy for an amount less than the face of the execution in the sheriff's hands. *Held*, that the sheriff was entitled to poundage on the amount which the property brought, to be paid by the assignee out of the proceeds; and that, if the sheriff acted in good faith, he was so entitled without reference to the validity of the judgment.

In this case two executions were issued to a sheriff against the property of William Welch, one on a judgment for \$293 11, and one on a judgment for 83,265 06, under which the sheriff levied on the personal property of Welch. A petition in bankruptcy was then filed, and an injunction issued against the sheriff. On the proving of claims, the claim of the first judgment creditor was objected to and contested. The assignee sold the property for \$1,333 42. The sheriff made out a bill for full poundage on both executions, which he presented to the assignee. The question what poundage he was entitled to, was certified to the court.

[See Case No. 17,366.]

BLATCHFORD, District Judge. Poundage can be allowed only on the amount which the property brought.

As between the sheriff and the property, the sheriff has a lien on it for his poundage and fees, and is entitled to be paid out of its proceeds.

If the sheriff acted in good faith he is entitled to be paid, without reference to the validity of the judgment.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]