

writs were dissolved, and upon the appointment of a trustee in bankruptcy the right to the immediate possession vested in the latter. There was no question of conflicting claims to be adjudicated by the district court. Nor had the sheriff the right to retain the possession of the property until his fees were paid. His claim for fees, and his lien therefor, if he has one, will be protected in the court of bankruptcy. No difficulty is presented from the fact, suggested by the petitioner, that the sheriff's costs had not been taxed, and that the district court had not the jurisdiction to tax the same. His fees were still taxable in the court in which the writs were issued, and, as allowed in that court, will be the basis of his claim in the bankruptcy court.

The pendency of the action of replevin against the sheriff on behalf of the American Type Founders' Company is not ground for holding that the portion of the property involved in that litigation shall not be delivered to the trustee. The possession which the sheriff had of that property was not for the benefit of the American Type Founders' Company, but was antagonistic to it. The intervention of bankruptcy divested the sheriff of his possession, just as it would have divested the possession of the bankrupt itself in case a like action had been commenced against the bankrupt by the same party plaintiff. The sheriff had no right to the possession of the printing press, except upon the theory that the title was in the bankrupt. The property having been once taken from his possession, upon a proper bond furnished by the American Type Founders' Company, in again securing the possession by a counterbond the sheriff asserted and relied upon the bankrupt's title. The American Type Founders' Company is not a party to the proceeding in the bankruptcy court, and its rights are in no way affected by the order upon the sheriff. It is not represented in the present proceeding. The question is purely one of the respective rights of the sheriff and of the trustee of the estate of the bankrupt. We find no error in the order of the district court, and the petition will be dismissed.

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In re DAWLEY.

(District Court, D. Vermont. June 17, 1899.)

No. 47.

**BANKRUPTCY—EXEMPTIONS—HOMESTEAD.**

Where the bankrupt had a tenement house, in which he reserved a room for the storage of certain household and personal effects, but boarded at a restaurant, and lodged in furnished rooms elsewhere, and did not keep house, and had no family using, or for which he was keeping, any of the premises, *held*, that he was not entitled, under the laws of Vermont, to claim a homestead in the tenement house.

**In Bankruptcy.** On review of decision of referee in bankruptcy.

Butler & Moloney, for petitioner.

D. P. Peabody, pro se.

**WHEELER**, District Judge. The bankrupt appears to have had a tenement house, in which he reserved a room, where he stored some

household and personal effects, but he boarded at a restaurant, and had furnished rooms elsewhere, in which he lodged. The trustee and referee have refused to set out a homestead as exempt in the tenement house, and this is a review of that proceeding. The opinion of the referee seems to well show that no part of the house was used or kept as a homestead by him, within the meaning of the statutes of the state on that subject, as construed by the supreme court of the state. Moreover, homesteads are given in this state only to housekeepers, or heads of families. The bankrupt does not appear to be either. He is a boarder, and does not keep house, and is not a housekeeper. He has no family using, or for which he is keeping, any of the premises, and is not the head of a family. Not but that a single man or woman, without relatives even, might be a housekeeper, or a head of a family, as to a homestead; but the ability to be such is not enough; the condition must exist. It did not as to the bankrupt. Decision affirmed.

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In re BINGHAM.

(District Court, D. Vermont. May 30, 1899.)

**BANKRUPTCY—SET-OFF OF CLAIMS—SUBROGATION.**

Where, at the time of the filing of a petition in bankruptcy, the bankrupt and a person indebted to him were jointly liable on a promissory note to a bank, and the bank proved its claim on the note, and thereafter the bankrupt's debtor took up the note, *held*, that the latter could not set off against his indebtedness to the estate the moiety of the note which the bankrupt should have paid, but that, on paying his debt to the trustee, he should be subrogated to the rights of the bank as to that moiety, and entitled to receive such dividends as should be declared thereon.

**In Bankruptcy.**

Henry C. Ide, for trustee in bankruptcy.  
Wendell P. Stafford, for James E. Hartshorn.

**WHEELER**, District Judge. At the time of the filing of the petition the bankrupt owed James E. Hartshorn \$110.50, Hartshorn owed the bankrupt \$554.70, and both were holden on a note of \$1,200 to a savings bank, one-half of which each ought to pay. The bank has proved its claim, and Hartshorn has taken up the note. One-half of what he paid was his own debt, and he can have no claim against the bankrupt estate growing out of that. He insists that the balance of direct claims between him and the bankrupt should be set off against what he has paid that the bankrupt ought to have paid, and that the balance should stand as a valid claim in his favor against the estate. The bankrupt was impliedly bound to save him harmless from this part of that debt, and has not done so; but the detriment has occurred since the filing of the petition, and, till that occurrence, Hartshorn had no provable claim on that account. By this bankrupt act all claims turn upon their status at the time of the filing of the petition, and decisions upon statutes having different provisions in this respect will not afford safe guides for the construc-