

Although the question under consideration is undecided, so far as known to me, there has a question arisen which is quite analogous, and that is whether or not a subsequent ratification of an unauthorized act of a party in signing his name to an attachment bond will remedy the defect, and have some effect as if originally authorized. This question has been decided both ways. In *Grove v. Harvey*, 12 Rob. (La.) 221, the court held that a subsequent ratification by a plaintiff of a bond given in his name without authority would not relate back and remedy the defect, and thus sustain the attachment; while in Mississippi and Arkansas a contrary doctrine is held. *Dove v. Martin*, 23 Miss. 588; *Bank v. Conrey*, 28 Miss. 667; *Mandel v. Peet*, 18 Ark. 236. We think the Louisiana case is the better reasoned, and it announces the correct rule.

The question under consideration is not free from doubt, but we conclude, the Kentucky Code having designated the persons who may make the necessary affidavit for the issuance of an attachment, the affidavit must be made by one of the persons designated, and that a subsequent ratification of the unauthorized act of an assumed agent or attorney by the plaintiff will not do, and is not a compliance with the law.

The motion of defendant to quash this attachment should be sustained; and it is so ordered.

FRAME v. SEWING-MACHINE Co.¹

(Circuit Court, E. D. Pennsylvania. June 28, 1887.)

MALICIOUS PROSECUTION—INJUNCTION—EVIDENCE.

In an action brought to recover damages for maliciously procuring an injunction, the plaintiff must prove malice and want of probable cause.

At Law. On motion to take off nonsuit.

This was an action brought to recover damages for the alleged malicious procurement of an injunction. Previously to the granting of the injunction in question, which was subsequently dissolved, similar ones had been granted in several other circuits. The plaintiff failed to show malice, and in the light of the action of the other circuit courts, the court did not consider the defendant's application without probable cause, and entered a nonsuit. A motion was subsequently made to take off the nonsuit, which the court refused.

Joseph C. Fraley, for plaintiff.

Wayne MacVeagh, for defendant.

BUTLER, J. The motion must be denied. On fuller examination, I am entirely satisfied the plaintiff has not presented a case which entitles him to recover. The burden is on him to prove *malice*, and also *want of*

¹Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

probable cause. In my judgment, he has not produced any reliable evidence of either. I have looked carefully through the case, and the impression made at the trial has deepened into conviction. I need not repeat what I then suggested in explanation of my views.

UNITED STATES v. BARNES.

Court, S. D. New York. July 16, 1887.)

1. BANKRUPTCY—CLAIMS AGAINST ESTATE—PRIORITY OF UNITED STATES—LIABILITY OF ASSIGNEE.

The priority of the United States, in cases of the bankruptcy or insolvency of their debtors, under the provisions of sections 3466 and 3467 of the Revised Statutes, extends to all classes of debts, and to all the debtor's estate which comes to the hands of his assignee. The assignee becomes a trustee for the United States, and, when he has notice of the debt due the government, he cannot escape personal liability for the amount of it, to the extent of the value of the assets coming to his hands, if he fails to provide for it before making distribution to other creditors.

2. SAME—JUDGMENT AS A DEFENSE.

The judgment of a court of competent jurisdiction, directing such distribution, will afford the assignee no justification, in such a case, where it does not appear that the United States were made a party to the proceeding in which such judgment was rendered.

3. SAME—OMISSION TO PROVE CLAIM.

The United States, by omitting to prove its claim in the bankruptcy proceedings until after such distribution is made, does not lose its right to proceed against the assignee personally. The doctrines of waiver, laches, and estoppel cannot be invoked against the sovereign.

Abram J. Rose, Asst. U. S. Atty., for plaintiffs in error.

Joseph A. Shoudy, for defendant in error.

WALLACE, J. This is a writ of error brought by the plaintiffs to review a judgment of the United States district court in favor of the defendant. The suit was brought to recover \$32,000, with interest from September 12, 1871,—moneys paid out by the defendant on that date as assignee in bankruptcy of Theodore H. Vetterlein and Bernhard P. Vetterlein, as a dividend to creditors, which moneys, upon the theory of the plaintiffs, the defendant should have retained, and applied to pay the United States as a creditor of the bankrupts having priority over all other creditors. The cause of action arises under sections 3466 and 3467 of the United States Revised Statutes. Section 3466 provides that whenever any person indebted to the United States is insolvent, the debt due to the United States shall be first satisfied, and that the priority thereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, as well as to cases in which an act of bankruptcy is committed. Section 3467 provides that every assignee or other person