

## Opinion of the Court.

manding the marshal to seize the property of the debtors, it was for the marshal to determine for himself whether the goods seized were legally liable to seizure under the warrant, and the circuit court could afford him no protection against the consequences of an erroneous exercise of his judgment in that determination. He was liable to suit in any court of competent jurisdiction, for injuries growing out of his mistakes. The State court in which the suit for trespass was brought was such a court, and that suit was an appropriate suit. The parties bringing it were entitled to proceed with that suit in that forum. As was said in *Buck v. Colbath*, there was nothing in the mere fact that the provisional warrant issued from a federal court, "to prevent the marshal from being sued in the State court, in trespass, for his own tort, in levying it upon the property of a man against whom the writ did not run, and on property which was not liable to it. This view was reaffirmed in *Sharpe v. Doyle*, 102 U. S. 686, and was there applied to a seizure under a provisional warrant in bankruptcy like that in the present case.

We have limited our decision to the precise questions presented in this case, without attempting to define the cases in which an assignee in bankruptcy can maintain a suit under § 5129 or under § 4979, or to specify what relief by injunction can be granted to him under the bankruptcy act, in a proper case.

*The decree of the circuit court is reversed, and the cause is remanded to that court, with direction to dismiss the bill.*

SCHOTT v. HUDSON, Assignee, differs from Leroux's case, only in the following immaterial respects: The goods seized were in the hands of Max Schott, in his store at East Saginaw, Saginaw County, Michigan, and had been transferred to him by the debtors. The marshal, Matthews, assisted by John E. Wells, a deputy, seized them on March 29th, 1878. Max Schott, on the 6th of April, commenced an action of trespass in the Circuit Court for Saginaw County, Michigan, against Matthews and Wells, to recover \$25,000 damages for the acts of the de-

## Syllabus.

defendants in breaking and entering the store at East Saginaw, and taking therefrom and carrying away goods of the plaintiffs of the value of \$20,000, and converting the same to their own use, and preventing the plaintiffs from carrying on their lawful business in the store. After the defendants in the trespass suit had appeared therein by attorney, and demanded a trial, and given the like notice of defence as was given in the suit for trespass brought by J. Leroux & Co., nothing further was done in the suit. In October, 1878, Hudson (the assignee), Matthews (the marshal), and Wells filed a bill in equity, in the Circuit Court of the United States for the Eastern District of Michigan, against Max Schott, making the like allegations, *mutatis mutandis*, as to the goods taken from Max Schott, as were made in the bill filed by J. Leroux & Co., in regard to the goods taken from them, and containing a like prayer for relief and for an injunction. Like proceedings took place, except that a demurrer was embodied in the answer instead of being filed separately. The answer was of a like character, the proofs and protest were identical, and a like decree was entered, from which the defendant appealed. The same questions are involved as in *Leroux v. Hudson*, the facts are substantially the same, and the same conclusions are reached.

*The decree of the circuit court is reversed, and the cause is remanded to that court, with direction to dismiss the bill.*

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RANDALL *v.* BALTIMORE AND OHIO RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Argued November 16th, 1883.—Decided December 10th, 1883.

*Evidence—Master and Servant—Practice—Railroad—Statutes—Verdict.*

When the evidence given at the trial, with all the inferences that the jury could justifiably draw from it, is insufficient to support a verdict for the plaintiff, so that such a verdict, if returned, must be set aside, the court may direct a verdict for the defendant.