

**Case No. 2,271.**

BYRNE v. CARPENTER.

[1 Cranch, C. C. 481.]<sup>1</sup>.

Circuit Court, District of Columbia.

June Term, 1808.

EXONERATION OF BAIL—INSOLVENCY OF PRINCIPAL.

The discharge of the principal under the insolvent act, before the return of the ca. sa., may be pleaded in bar to a scire facias against the bail.

[Cited in Channing v. Reiley, Case No. 2,596.]

[See Beers v. Haughton, Case No. 1,230; Richardson v. McIntyre, Id. 11,789; Bussard v. Warner, Id. 2,229; King v. Simm, Id. 7,805.]

At law. Scire facias. Plea, that King was discharged under the insolvent law, before the return of the capias ad satisfaciendum. General demurrer.

Mr. Youngs, for plaintiff.

The insolvent act provides that the discharge of the debtor shall not discharge any other person, from any undertaking, &c. The plaintiff has a right to have the defendant brought in, so that he may be served with notice of a petition to vacate his discharge.

Mr. Caldwell, contra.

Whatever discharges the principal from the obligation of surrendering his body, is a discharge to the bail. The bail cannot hold the principal in custody after his discharge under the insolvent act. Upon application to a judge, he is bound to discharge him. If the bail surrenders him, the court must discharge him, whether the discharge is fraudulent or not. The surrender of the principal would be nugatory, and the law will not oblige a man to do a void act. The principal, upon his discharge, may and generally does go off; and if the bail cannot hold him, it would be a hard case. Cur. adv. vult.

Judgment for the defendant, on the demurer (nem. con.).

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

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