

IN RE SIMPSON.

[2 N. B. R. 47 (Quarto, 17).]¹

District Court, N. D. Illinois.

1868.

BANKRUPTCY—DISCHARGE—RELEASE FROM IMPRISONMENT.

Where a judgment in trespass for malicious imprisonment and whipping was recovered against A., who afterwards was adjudged a bankrupt, *Held*, that upon receiving his discharge he must be released from imprisonment.

The facts are, at the December term, 1866, of the superior court of Chicago, D. B. Carroll recovered a judgment in trespass (for a malicious imprisonment and whipping) for the sum of three thousand five hundred dollars. In January, 1867, a ca. sa. was issued, and March 25th, 1867, Simpson was lodged in jail. In July, 1867, he filed his petition in bankruptcy, and on January 7th, 1867, he received his discharge; Carroll paying no attention to the proceedings.

Upon the hearing on the motion for the writ of habeas corpus, Judge Drummond decided that the prisoner must be discharged, and upon the return of the sheriff to the writ the prisoner was duly discharged from custody. In reply to counsel the judge remarked that in order to have proved their judgment against the bankrupt, the judgment creditor should have had the prisoner discharged from custody upon the order of court, and then they could prove the debt. The question of jurisdiction was raised, but the judge remarked that though the state court would probably release the prisoner, it was the duty of the district court to see that he was released, and to protect him.

William H. Holden and Robert. Hervey, for petitioner.

Francis Adams, for judgment creditor.

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