

Case No. 16,327.

UNITED STATES v. SMITH.

{3 Cranch, C. C. 66.}¹

Circuit Court, District of Columbia.

Dec. Term, 1826.

IMPRISONMENT FOR DEBT—DISCHARGE—PAYMENT OF
POUNDAGE—AGREEMENT WITH MARSHAL.

A debtor of the United States had been discharged from custody by order of the president of the United States under the act of the 3d of March, 1817, and had entered into an agreement with the marshal for payment of his poundage fees by instalments, with a proviso that if any instalment should not be paid when due, the marshal should take out a new ca. sa. for his fees. *Held* that he could not be detained upon the new ca. ca.; and the court refused to order him to be committed.

The defendant [John K. Smith), upon being ordered by the president of the United States to be discharged from a ca. sa. issued for a debt due to the United States, and being still holden in custody by the marshal for his poundage fees, which amounted to more than \$4000, agreed with the marshal to pay those fees by instalments, and that if he should make default, the marshal should obtain a new ca. sa. and arrest him again. He made default and the marshal took out a new ca. sa. in the name of the United States for his fees. Upon this new ca. sa. he was arrested and brought into court, and prayed to be committed.

Mr. Key, for defendant, objected, that the defendant having been discharged by order of the president of the United States under the act of March 3, 1817, 3 Stat. 399, entitled "An act supplementary to an act for the relief of persons imprisoned for debts due the United States," could not be arrested again for the same cause. The marshal having relinquished the hold he had upon the person of the defendant, could only resort to his action upon the new agreement. After the principal debt has been paid this court has decided, in the case of *Causin v. Chubb* [Case No. 2,527], at December term, 1805, that the marshal cannot detain the defendant for his poundage fees.

Mr. Lear, for the marshal, contended that that was the case of a ca. sa. under the Maryland law, entered "Not called by consent," in which case the plaintiff may always have a new ca. sa.

But THE COURT (nem. con.) refused to order the defendant to be committed.

¹ [Reported by Hon. William Cranch, Chief Judge.]