

Case No. 17,289.

WATSON v. SUMMERS.

[1 Cranch, C. C. 200.]¹

Circuit Court, District of Columbia.

Nov. Term, 1804.

APPEARANCE-BAIL—EFFECT OF DISCHARGE.

A discharge of the appearance-bail, arrested upon a joint ca. sa. against him and his principal, does not release the principal.

Injunction. Motion to dissolve. The equity relied upon was, that upon a joint judgment at law against Watson, and Jesse Simms his appearance-bail, Simms had been taken upon a joint ca. sa. against him and Watson, and discharged by the plaintiff at law, Summers. Injunction dissolved. See 10 Vin. Abr. 578, (new Ed.) tit. "Execution" (C. a.), which cites Higgen's Case, Cro. Jac. 320. If a man has one execution against the bail he shall never have execution after against the principal, for he has made his election by the first execution. So if the principal be in execution he cannot take the bail. See *Walker v. Alder, Styles*, 117, and *Price v. Goodrick*, Id. 387. But, says Viner, if the bail be taken in execution in B. R. and pays part, yet, if the bail be let at large, execution may be against the principal afterwards; and this is the constant practice of the court; and it seems that Higgen's Case, Cro. Jac. 320, is to be intended where the bail were in custody. *Felgate v. Mole*, 1 Sid. 107; *Clarke v. Clement*, 6 Term R. 525. One of two joint defendants discharged on ca. sa. by plaintiff, the other cannot be taken. *Hayling v. Mullhall*, 2 W. Bl. 1235; *Freeman v. Freeman*, Cro. Jac. 549. Execution

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issued against the bail, yet the plaintiff may charge the principal, unless it be shown that he was satisfied by the execution against the bail. *Whiteacres v. Hamkinson*, Cro. Car. 75. Two are jointly and severally bound, and judgment had against one. In debt against the other, he pleaded that the first being in execution on a ca. sa. the sheriff voluntarily let him go at large; but adjudged that the creditor may take out execution against the other; for execution without satisfaction is no bar, though the sheriff suffered him to escape voluntarily, so as plaintiff is entitled to an action against the sheriff. But if he let him go by license of the creditor, then the other had been discharged, and it might have been pleaded.

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