

March 3, 1821. II. RESOLUTION providing for jails in certain cases, for the safe custody of persons committed under the authority of the United States. (a)

Vol. i. 96.

Any state having granted and

*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That where any state or states,*

(a) The resolutions and acts of Congress relating to jails are :

Resolution of September 23, 1789, vol. i. 96. Resolution of March 3, 1821. An act for the relief of persons imprisoned for debt, Jan. 6, 1800, ch. 4. Act of May 19, 1828, ch. 68.

The cases decided within the courts of the United States on the laws of "escapes" are, A discharge from the prison rules, by the insolvent law of Virginia, although obtained by fraud, is a discharge in due course of law ; and upon such discharge, no action can be sustained upon the prison bound bond for an escape. *Simms and Wise v. Slacum*, 3 Cranch, 300 ; 1 Cond. Rep. 539.

The obligors in a bond for the prison limits, are not discharged from their liability for an escape, by the subsequent assent of the plaintiff. Such assent, to have any effect, must be given prior to the escape. *Slocum et al. v. Hathaway*, 1 Paine, 290.

The condition of a bond, that a prisoner "shall faithfully and absolutely remain within the limits of the jail, and not depart therefrom," &c. is not broken by the escape of the prisoner, while in a state of insanity. *Hazard v. Hazard et al.* 1 Paine, 295.

The liability of the sureties in a prison bounds bond, for an escape, is not co-extensive with that of the sheriff : as it regards the latter, the prisoner on the limits is supposed to be in his immediate custody, and the escape of an insane prisoner, therefore, is as much a negligent escape as any other ; and he is not allowed to excuse himself, when he might so easily collude, or be imposed upon. But there is no analogy, in these respects, between a sheriff and the sureties. *Ibid.*

Under the act of Congress of January 6, 1800, ch. 4, the sheriff of a county is bound to take a bond for the limits, as provided by the state laws, from a prisoner confined on process from the courts of the United States ; and false imprisonment would lie, on his refusal. Such a bond has, in all respects, the same incidents, and the like legal effect with a bond taken under the state laws. It is assignable ; and an assignment discharges the sheriff from liability for a subsequent escape. *The United States v. Noah*, 1 Paine, 368.

The United States are expressly named in the act, and bound by it ; and an assignment of the bond to them, when they are plaintiffs, is valid. *Ibid.*

The Secretary of the Treasury having accepted such an assignment, will be presumed to be authorized ; and the United States are bound by such acceptance. *Ibid.*

The term "process," includes executions as well as mesne process. *Ibid.*

After a prisoner has been enlarged upon a limit bond, the sheriff can confine him again only on the bail's becoming insufficient ; he cannot accept a surrender of him ; at all events, not after the assignment of the bond. *Ibid.*

If a debtor, committed to the state jail under process from the courts of the United States, escape, the marshal is not liable. *Randolph v. Donaldson*, 9 Cranch, 76 ; 3 Cond. Rep. 280.

The act of Congress has limited the responsibility of the marshal to his own acts, and the acts of his deputies. The keeper of a state jail is, neither in fact nor in law, the deputy of the marshal ; he is not appointed by, nor removable at the will of the marshal. When a prisoner is regularly committed to a state jail by the marshal, he is no longer in the custody of the marshal, or controllable by him. *Ibid.*

Under the laws of Rhode Island, a discharge according to the act for the relief of poor prisoners for debt, although obtained by fraud and perjury, is a lawful discharge, and not an escape ; and upon such a discharge, no action can be maintained upon a bond for the liberty of the prison limits. *Ammidon v. Smith et al.* 1 Wheat. 447 ; 3 Cond. Rep. 619.

At common law, it is not an escape for a jailer to allow prisoners, confined for debt, the liberty of all the apartments within the jail wall ; for confinement within the walls, is *salva et arcta custodia*. *Steere v. Field*, 2 Mason's C. C. R. 486.

It is an escape, in the jailer, to make a prisoner for debt, a turnkey ; and to intrust him with the keys of the outer doors, as well as inner doors, at all times by night and by day. *Ibid.*

If the jailer be committed to his own jail, on execution by the sheriff, and no new keeper is appointed, it is an escape of the jailer, for which the sheriff is answerable ; but it is not an escape of the other prisoners, if they are in fact kept in custody, under the authority of the jailer or his agents. *Ibid.*

In Rhode Island, the doctrine as to escapes is the same as at common law ; and the statutes giving the liberty of the limits to prisoners, on giving bonds not to escape, &c. have not altered the common law. In Rhode Island, an action of debt for an escape, is a legal remedy ; that action being incorporated into the laws, by implication, by the adoption of the laws of England. *Ibid.*

Where the conditions of a bond for the jail limits, in Rhode Island, required the party to remain a true prisoner in the custody of the keeper of the prison, and within the limits of the prison, "until he shall be lawfully discharged, without committing any manner of escape or escapes, during the time of restraint, then this obligation to be void, or else to remain in full force and virtue," *Held*, that a discharge under the insolvent laws of the state, obtained from the proper court, in pursuance of a resolution of the legislature, and discharging the party from all his debts, &c. and "from all imprisonment, arrest, and restraint of his person therefor," was a lawful discharge ; and that his going at large under it, was no breach of the condition of the bond. *Mason v. Haile*, 12 Wheat. 370 ; 6 Cond. Rep. 535.

After judgment obtained in the circuit court of the United States against the drawer of a note, a *capias ad satisfaciendum* was issued against him by the holder, and he was put in prison. Two justices of the peace ordered his discharge, claiming to proceed according to the law of Kentucky, in the case of insolvent debtors ; and the jailer permitted him to leave the prison. The jailer made himself and his securities liable for an escape, by permitting the prisoner to leave the prison. *Bank of the United States v. Tyler*, 4 Peters, 366.

The act of Congress of 1800, ch. 4, is not that by which the liberties of the jail-yard allowed to

having complied with the recommendation of Congress, in the resolution of the twenty-third day of September, one thousand seven hundred and eighty-nine, shall have withdrawn, or shall hereafter withdraw, either in whole or in part, the use of their jails for prisoners committed under the authority of the United States, the marshal in such state or states, under the direction of the judge of the district, shall be, and hereby is, authorized and required to hire a convenient place to serve as a temporary jail, and to make the necessary provision for the safe keeping of prisoners committed under the authority of the United States, until permanent provision shall be made by law for that purpose; and the said marshal shall be allowed his reasonable expenses, incurred for the above purposes, to be paid out of the treasury of the United States.

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withdrawing the use of a jail, the marshal, under direction of the judge, may hire a place, &c.

debtors imprisoned on execution issuing from the courts of the United States, are now regulated. The United States v. Knight et al., 3 Sumners' C. C. R. 358.

The act of 1828, ch. 68, has adopted the state laws on the subject of jail liberties then existing in the states, under the words "that writs of execution and other final process issued on judgment and decrees rendered in any of the courts of the United States and the proceedings thereon shall be the same, &c., as are now used in such states," &c. *Ibid.*

Action on a bond given to the United States for liberty of the jail-yard, in Portland, in the state of Maine. The condition of the bond was that J. K. and B. K. should continue true prisoners, in the custody of the jailer, within the limits of the jail-yard. It was agreed by the counsel of the plaintiff and defendant that J. K. and B. K. had remained within "the limits of the jail-yard" as established under the laws of Massachusetts of 1787, then prevailing in Maine, the limits of the jail-yard having, in October, 1798, been extended over the whole county; but had not remained within the limits established on the 28th of May, 1787, and existing when the act of Congress was passed, 4th January, 1800, authorizing persons under process from the United States, to have "the jail limits," as established by the laws of the states. *Held*, that the act of Congress of May 19, 1828, gives the debtor imprisoned under execution from the courts of the United States, at the suit of the United States, the privilege of the jail limits, in the several states, as they were fixed by laws of the several states at the date of that act. The United States v. Knight et al. 14 Peters, 301.

Whatever might be the liability of the officer who took the bond from the defendants, if the jail limits continued to be such as were established under the law of Massachusetts of 1787, the bond not having been taken under that law, and the condition being different from the requirements of those regulations, the parties to the bond, the suit being upon the bond, are bound for nothing whatever, but what is contained in the condition, whether it be or be not conformable to the law. *Ibid.*

The statute of May 19, 1828, entitled "An act to regulate process in the courts of the United States," which proposes only to regulate the mode of proceeding in civil cases, does not divest the public of any right, does not violate any principle of public policy, but on the contrary makes a provision with the policy which the government has vindicated by many acts of previous legislation, to conform to the laws of the state, in giving to persons imprisoned under execution the privilege of jail limits, embracing executions at the suit of the United States. *Ibid.*

Action for an escape against the sheriff of Madison, Mississippi, he having received into his custody as a prisoner, the defendant in an action in the circuit court of Mississippi, taken under execution, and having permitted and suffered him to escape. The declaration set out the judgment obtained by the plaintiffs against Scott, the defendant in the circuit court, the execution, the arrest of Scott, and his delivery to Long, the sheriff, who received him into his custody under the execution, and detained him, until, without leave or license of the plaintiffs in the execution, and against their will, he permitted him to escape and go at large, &c., &c. To this declaration the defendant pleaded that he does not owe the sum of money demanded in the declaration "in the manner and form as complained against him," and the jury found that the defendant Long "doth owe the debt in the declaration mentioned as therein alleged," and assessed damages for the detention thereof, at one thousand and sixteen dollars and ninety-six cents, upon which the court gave judgment for six thousand three hundred and fifty-six dollars, and one thousand and sixteen dollars and ninety-six cents damages. *Held*, that the judgment of the circuit court is correct under the provisions of the statute of Mississippi of 7th June, 1822. The jury were not required in the action to find specially that the prisoner escaped with the consent, and through the negligence of the sheriff. The plea alleged that the defendant did not owe the sum of money demanded, "in the manner and form as the plaintiff complained against him." This plea put in issue every material averment in the declaration; on this issue, on the most strict and rigid construction, the jury have expressly found all that is required to be found by the requirements of the act. Long v. Palmer et al. 16 Peters, 65.

If the sheriff suffers or permits a prisoner to escape, this, both in common parlance, and legal intendment, is an escape with the consent of the sheriff. *Ibid.*

The object of the act is to make the sheriff liable for a voluntary or negligent escape; and that this shall be found by the jury; and if this appear from the record by express finding, or by the necessary conclusion of law, it is sufficient. *Ibid.*