[Constitutional Law. Practice.]

The United States v. Wilson.

An insolvent debtor who has received a certificate of discharge from arrest and imprisonment under a State insolvent law, is not entitled to be discharged from execution at the suit of the United States.

THIS cause was brought before this Court upon a certificate of a division of opinion between the Judges of the Circuit Court for the southern District of New-York. The defendant was taken on the 16th of July, 1819, in execution by the marshal, upon a judgment obtained against him at the suit of the United States, in the District Court for the southern District of New-York, and committed to the custody of the Sheriff of the city and county of New-York, under an act of the Legislature of the State of New-York, passed April, 1813,[a] and subsequently received his

a Which provides, "that it shall be the duty of the Sheriff of the several cities and counties of this State, and the duty of the keeper of the city prison of the city of New-York, to receive into their respective gaols, and safely keep, all prisoners who shall be committed to the same by virtue of any process to be issued under the authority of the United States, until they shall be discharged by the due course of the laws thereof, the United States supporting such of the said prisoners as shall be committed for offences against the said United States: *Provided always*, that persons committed in the city of New-York on civil process only, be committed to the gaol in the custody of the Sheriff of the said city; and persons

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certificate of discharge under the act of the said State, passed April, 1819, entitled, "an act for abolishing imprisonment for debt."[a] A motion was made in the Court below for the defendant's discharge from custody on the *ca. sa.* issued against him at the suit of the United States; and on the question, whether he was entitled to his discharge, the Judges were divided in opinion, and the division was thereupon certified to this Court.

Feb. 14*th.* The cause was briefly argued by the *Attorney General* for the United States,[b] and by Mr. *Wheaton*[c] for the defendant.

committed in the said city charged with any offence whatever, be committed to the gaol in the custody of the keeper of the city prison of the said city; and in case any prisoner shall escape out of the custody of any Sheriff or keeper to whom such prisoner may be committed as aforesaid, such Sheriff or keeper shall be liable to the like actions and penalties as he would have been had such prisoner been committed by virtue of any process issuing under the authority of this State; and such Sheriff or keeper into whose custody any such prisoner shall be so committed, is hereby authorized to take to his own use, such sums of money as shall be payable by the United States, for the use of the said gaols."

a Which provides, in substance, for the exemption of insolvent debtors from imprisonment, upon their making an assignment of their property for the benefit of their creditors.

b He referred to the act of Congress of June 6th, 1798, c. 66. s. 1. which provides, "that any person imprisoned upon execution issuing from any Court of the United States, for a debt due to the United States, which he shall be unable to pay, may, at any time after commitment, make application in writing to the Secretary of the Treasury, stating the circumstances of his case, and his inability to discharge the debt; and it shall, thereupon, be lawful for the said Secretary to make, or require to be made, an examination and inquiry into the circumstances of the debtor, either by the oath or affirma-

The Court directed the following certificate to be sent to the Circuit Court.

CERTIFICATE. This cause came on to be heard on the transcript of the record of the United States Court for the second circuit, and southern District of New-York, on the question on which the Judges of that Court were divided, and which was certified to this Court. On consideration whereof, this Court is of opinion, that the said Joseph Wilson, who was in execution under a judgment obtained

tion of the debtor, (which the said Secretary, or any other person by him specially appointed, are hereby authorized to administer,) or otherwise, as the said Secretary shall deem necessary and expedient, to ascertain the truth; and upon proof being made, to his satisfaction, that such debtor is unable to pay the debt for which he is imprisoned, and that he hath not concealed, or made any conveyance of his estate, in trust, for himself, or with an intent to defraud the United States, or deprive them of their legal priority, the said Secretary is hereby authorized to receive from such debtor, any deed, assignment, or conveyance, of the real or personal estate of such debtor, if any he hath, or any collateral security, to the use of the United States; and upon a compliance, by the debtor, with such terms and conditions as the said Secretary may judge reasonable and proper, under all the circumstances of the case, it shall be lawful for the said Secretary to issue his order, under his hand, to the keeper of the prison, directing him to discharge such debtor from his imprisonment under such execution, and he shall be accordingly discharged, and shall not be liable to be imprisoned again for the said debt; but the judgment shall remain good and sufficient in law, and may be satisfied out of any estate which may then, or at any time afterwards, belong to the debtor."

c He cited Sturges v. Crowninshield, 4 *Wheat. Rep.* 136. Houston v. Moore, 5 *Wheat. Rep.* 1. and referred to the Judiciary Act of 1789, c. 20. s. 34.; the Bankrupt Act of 1800, c. 173. s. 61. and the Priority Act of 1799, c. 128. s. 65.

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by the United States, is not entitled to a discharge of his person under the act of the State of New-York, entitled, "an act abolishing imprisonment for debt," passed April, 1819. All which is directed to be certified to the Circuit Court for the second circuit and southern District of New-York.[a]

a See the *United States* v. *Hoar*, 2 *Mason's Rep.* 311. where it was determined, that the local statutes of limitations of the different States do not bind the United States in suits in the national Courts, and cannot be pleaded in bar of an action by the United States against individuals. In that case it was held, that the statutes of limitation of Massachusetts did not apply even to suits by the State government in the State Courts, and that the 34th section of the Judiciary Act of 1789, c. 20. which provides, "*that the laws of the several States*, except where the constitution, treaties, or statutes of the United States shall otherwise require or provide, *shall be regarded as rules of decision in trials at common law in the Courts of the United States, in cases where they apply*," could not have meant to enlarge the construction of the statute of Massachusetts. "It is most manifest," (says Mr. Justice STORY, in delivering the judgment of the Circuit Court in the case referred to,) "that these terms give the same efficacy, and none other, to those statutes, in the federal, that they have (*proprio vigore*) in the State Courts. And yet, unless this doctrine of enlargement can be maintained, it is difficult to perceive on what ground the case of the defendant can be supported. The statutes of Massachusetts could not originally have contemplated suits by the United States, not because they were in substance enacted before the federal constitution was adopted, on which I lay no stress; but because it was not within the legitimate exercise of the powers of the State legislature. It is not to be presumed, that a State legislature mean to transcend their constitutional powers; and, therefore, however general the words may be, they are always restrained to persons and things over which the jurisdiction of the State may be rightfully exerted. And if a construction could ever be justified, which should include the *United States*, at the same time that it excluded the *State*, it is not to be presumed that Congress could intend to sanc-

tion a usurpation of power by a State, to regulate and control the rights of the United States. In the language of the act of 1789, it could not be *a case where the laws of the State could apply.* The mischiefs, too, of such a construction, would be very great. The public rights, revenue, and property, would be subject to the arbitrary limitations of the States; and the limitations are so various in these States, that the government would hold its rights by a different tenure in each." *Id.* p. 315.

[Construction of Statute.]

Greeley and others v. The United States.

Collusive captures and violations of the revenue laws, committed by a private armed vessel, are a breach of the condition of the bond given by the owners, under the Prize Act of June 26, 1812, c. 430. s. 3. If such breach appear upon demurrer, the defendants are not entitled to a hearing in equity under the Judiciary Act of 1789, c. 20. s. 26.

THIS cause came before the Court upon a certificate of a division of opinion between the Judges of the Circuit Court of Maine. It was an action of debt, originally brought in the District Court of Maine, by the United States, against the defendants in that Court, Greeley and others, upon a bond executed by them on the 17th of December, 1813, under the Prize Act of June 26th, 1812, c. 430. s. 3. as owners of the private armed vessel called the Fly, conditioned, that "the owners, officers, and crew of the said armed vessel, shall observe the laws and treaties of the Uni-