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over to John Eden and Hannah Johnson, but that Medcef Eden had become seised of an estate in fee-simple *absolute.

No opinion appears to have been directly expressed by the court, [*572 with respect to the effect of the adverse possession, upon the operation of the devise in the will of Medcef Eden, the younger. But this was a question necessarily involved in the result. And the decisions of the courts in that state are very satisfactory to show, that such an adverse possession will not there prevent the operation of a devise. The doctrine in the case of *Doe v. Thompson*, 5 Cow. 374, warrants this conclusion. And it is understood, that this precise question, arising on the construction of the statute of wills in that state, has recently been decided in the supreme court, in a case, the report of which is not to be found here.¹

We are, accordingly, of opinion, that the judgment of the circuit court in these cases must be affirmed.

Judgment affirmed.

*UNITED STATES, Plaintiffs in error, v. NICHOLAS STANSBURY and [*573 EDWARD MORGAN.

Discharge of surety.

The discharge, by the secretary of the treasury, of a principal in a bond to the United States, who is imprisoned under a *ca. sa.* issued against him, and who has assigned all his property for the use of the United States, does not impair or affect the rights of the United States to proceed against his sureties, for the amount due upon the judgment, and unpaid. p. 575.

At common law, the release of a debtor, whose person is in execution, is a release of the judgment itself; the law will not permit proceedings by a creditor, at the same time, against the person and estate of his debtor, and where an election has been made to take the person, it presumes satisfaction, if the person be voluntarily released. p. 575.

ERROR to the Circuit Court of the United States for the district of Maryland. This was an action of debt, brought in the circuit court of the United States for the district of Maryland, at May term 1825, to recover \$3067, being the debt, damages, costs and charges, contained in a certain judgment between the same parties, recovered by the United States, in the district court of Maryland, at March term 1819. The original judgment was rendered upon a joint and several bond of these defendants, given for duties, on an importation by Sheppard, and was rendered for \$3050 debt, and \$17 damages, costs and charges.

The declaration in this case was in the usual form, containing averments that the said judgment still remained in full force and effect, not in any wise annulled, reversed or vacated; that the said United States had not obtained any satisfaction of, or upon, the said judgment, and that the said defendants had not yet paid the sum of \$3067, or any part thereof; but to pay the same or any part thereof, they had, and each of them had, hitherto wholly refused, &c.

The writ in this case was served upon Stansbury and Morgan only, and

¹ *Eden v. Varick*, 7 Cow. 238; s. c. 2 Wend. 166.

² *s. p. Hunt v. United States*, 1 Gallis. 32; *United States v. Sturges*, 1 Paine 526. And

the discharge from arrest of one of two sureties in a joint and several bond, does not affect the liability of the other. *United States v. Beattie*, Gilp. 92.

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not upon Sheppard. The former appeared, and pleaded in bar of this action that they were sureties for Sheppard in the bond upon which the said judgment was recovered; that after the said judgment was recovered, and before this suit was commenced, Sheppard was taken and imprisoned by virtue of a *capias ad satisfaciendum*, issued upon said judgment, and discharged from prison by order of the secretary of the treasury, under the act of congress passed on the 6th June 1798, on condition that he should pay the costs, and assign and convey to the use of the United States, all his property, real, personal and mixed, by an instrument approved by the *574] *then district-attorney of the United States for that district; which order of the secretary was set forth literally in the plea. The plea then averred, that the said Sheppard did assign and convey all his estate, &c., by an instrument approved by the district-attorney, and did pay the costs, according to the conditions imposed by the secretary, and was thereupon voluntarily released and discharged from the said execution, by the said secretary, without the consent and against the will of them the said Stansbury and Morgan; therefore, they prayed judgment, &c. To this plea, there was a general demurrer and joinder, and judgment was rendered for the defendants, *pro formâ*, in the circuit court; upon which judgment, the United States brought a writ of error to this court.

For the United States, it was contended, that the judgment ought to be reversed, and judgment rendered for the United States.

The defendants in error claimed—1. That the discharge of Sheppard from the execution of the plaintiff, operated as a release to all the defendants. 2. That the defendants, as sureties, were exonerated by the compromise made with the principal, without their concurrence. 3. That at all events, the plaintiff cannot have judgment upon the pleadings in this cause, as the demand embraces the whole amount of the judgment in the district court.

The case was argued by *Wirt*, Attorney-General, for the United States, no counsel attending on the part of the defendants in error. The following cases were cited by Mr. *Wirt*, in the course of his argument: *Dean v. Newhall*, 8 T. R. 168; *Rowley v. Stoddard*, 7 Johns. 207; 5 Co. 86 *b*; *Foster v. Jackson*, *Ibid.* 52; *Vigers v. Aldrich*, 4 Burr. 2482; *Jaques v. Withy*, 1 T. R. 557; *Tanner v. Hague*, 7 *Ibid.* 420; *Blackburn v. Stupart*, 2 East 243; *Clark v. Clement*, 6 T. R. 526; *McLean v. Whiting*, 8 Johns. 339; *Hayling v. Mullhall*, 2 W. Bl. 1235; 2 Show. 394; 2 Ld. Raym. 1072; 5 East 147; *Hunt v. United States*, 1 Gallis. 32; 1 Saund. 330; 1 Chit. 107-8.

MARSHALL, Ch. J., delivered the opinion of the court.—This was an action of debt, on a judgment which had been rendered in favor of the United States, against Thomas Sheppard and the two defendants in error. The marshal returned, as to Sheppard, *non est inventus*. The other two defendants pleaded, that they were sureties to Sheppard, in the bond on which the *575] former judgment was rendered; that the United *States took out a *ca. sa.* on that judgment, against Sheppard, by virtue of which he was imprisoned; whereupon, William H. Crawford, the secretary of the treasury of the United States, released the said Sheppard from execution, on his paying costs, and conveying all his property, real, personal and mixed.

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to the United States; with which condition, it is admitted, Sheppard complied. The United States demurred, and the circuit court gave judgment on the demurrer, *pro formâ*, for the defendants; which judgment is now before this court on a writ of error.

It is not denied, that at common law, the release of a debtor whose person is in execution, is a release of the judgment itself. Yet the body is not satisfaction, in reality, but is held as the surest means of coercing satisfaction. The law will not permit a man to proceed, at the same time, against the person and estate of his debtor; and when the creditor has elected to take the person, it presumes satisfaction, if the person be voluntarily released. The release of the judgment is, therefore, the legal consequence of the voluntary discharge of the person by the creditor.

This being the positive operation of the common law, it may, unquestionably be changed by statute. The United States contend, that it is changed, by the act providing for the relief of persons imprisoned for debts due to the United States. That act authorizes the secretary of the treasury, on receiving a conveyance of the estate of a debtor confined in jail, at the suit of the United States, or any collateral security, to the use of the United States, to discharge such debtor from his imprisonment under such execution; and he shall not be again imprisoned 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." The sole duty of the court is, to construe this statute, according to its words and the intent of the legislature. Did congress design to discharge the sureties, or to release the judgment?

The act is "for the relief of persons imprisoned for debts due to the United States," not for the relief of their sureties; and does not contain a single expression conducing to the opinion, that the mind of the legislature was directed towards the sureties, or contemplated their discharge. The only motive for the act being to relieve debtors who surrender all their property, from the then useless punishment of imprisonment; there can be no motive for converting this act of mere humanity into the discharge of other debtors, whose condition it does not in any measure deteriorate. If the act produces this *effect, it is an effect contrary to its intention, occasioned by a technical rule, originating in remote ages; which has [*576 never been applied to a statutory discharge of the person.

But the language of the statute has guarded against this result. It has expressly declared, that the judgment shall remain good and sufficient in law. How can this court say, that it is not good, and is not sufficient? If it be good and sufficient, for what purpose is it so? Certainly, for the purpose for which it was rendered—to enable the United States to proceed regularly upon it, as upon other judgments; with the single exception made by the act itself. The voluntary discharge of a debtor, by his creditor, is a release of the judgment, because such is the law. But in this case, the legislature has altered the law. It has declared, that the discharge of a debtor, in the forms prescribed, shall amount solely to a liberation of the person—not to a release of the judgment; that shall remain good and sufficient. Were courts to say, that notwithstanding this provision, the judgment is released, it would amount to a declaration, that a technical rule of the common law, founded on a presumption growing out of the simplicity of ancient

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times, and not always consistent with the fact, is paramount to the legislative power. It would, in fact, be to repeal the statute. It would, unquestionably, be to defeat the object of the legislature; since it would be no very hardy assertion to say, that, if the discharge of the person in custody discharged the other obligors, the imprisoned debtor would never be released, while the debt remained unpaid; unless the insolvency extended to all the obligors.

The second point made by the counsel for the defendants, that the sureties are exonerated by the compromise made with the principal, without their concurrence, is the same in principle with that which has been considered. No compromise of the debt has been made; the course prescribed by the law has been pursued; the whole property of the imprisoned debtor has been surrendered, and on receiving it, his person has been discharged. The act of congress declares, that the judgment shall still remain in force. If the creditor had entered into a compromise, not prescribed by law, or had given any discharge, not directed by statute, the question might have been open for argument. But while the whole transaction is within the precise limits marked out by law, it cannot produce a result directly opposite to that intended by the statute. The only doubt which can be suggested respecting the intent of the legislature, is created by the last words of the sentence, declaring, that the judgment shall remain good and sufficient in law. They are "and may be satisfied out of any estate which may then, or at any time *577] afterwards, belong to the debtor." These words are *certainly useless; and may be supposed to indicate an idea, that it could be satisfied out of the estate of the debtor only; that as they are not required, to render that estate liable, they may be understood to limit the right of the creditor to obtain satisfaction from the estate of any other person. We do not, however, think this the correct construction. The words are considered as mere surplusage, not as limiting the rights of the United States to proceed against all those who are bound by the judgment.

We think, then, that the circuit court ought to have sustained the demurrer; and that the judgment which overrules it, ought to be reversed. But considering the plea, and the manner in which the cause has been brought up, the court will not direct an absolute judgment to be entered for the United States; but will reverse the judgment and remand the same for further proceedings, that the circuit court may give leave to the defendants to plead.

THIS cause came on &c. : On consideration whereof, it is adjudged and ordered, that the judgment of said circuit court in this cause be and the same is hereby reversed and annulled; and that the cause be remanded, that the said circuit court may give leave to the defendants to plead.