was maintainable for their benefit, in the name of Richard S. Hackley. At the same time, the defendant was permitted to give in evidence any discounts which he might claim against Richard S. Hackley & Co.

The second bill of exceptions stated, that the plaintiff, to support his action, gave in evidence sundry accounts *current between himself and the defendant, in which the plaintiff had credited the defendant, [*344 as being in the plaintiff's hands for collection, for the proceeds of a certain quantity of flour, which he had sold for the defendant, but had afterwards charged to the defendant several sums on account of the alleged insolvency of some of the purchasers of the said flour. It also appeared, that in the account-current, and accounts of sales, the proceeds of sale of the said flour were stated to be outstanding, subject to collection, and the plaintiff did not undertake to guaranty the debts. Whereupon, the defendant, in order to repel that evidence, offered to prove that the sums so charged to the defendant were lost by the mismanagement and misconduct of the plaintiff, in having made the sales to persons known by him to be unworthy of credit; but the court refused to permit such proof to be made to the jury in this action, being of opinion, that such misconduct was properly to be inquired into in a suit for that purpose.

This case being submitted without argument, the judgment was affirmed, with costs.

REILY, appellant, *v.* LAMAR, BEALL and SMITH, appellees.

Citizenship.—Insolvency.—Citation.

The inhabitants of the District of Columbia, by its separation from the states of Virginia and Maryland, ceased to be citizens of those states respectively.

By the insolvent law of Maryland, of the 3d of January 1800, the chancellor of Maryland could not discharge a citizen of Maryland, who resided in the District of Columbia, at the time of its separation from Maryland, unless the person had complied with all requisites of the insolvent law, so as to entitle himself to a discharge, before that separation.

Quære? Whether a person who has neglected at law to plead his discharge under an insolvent act, can avail himself of it in equity.

A citation is not necessary, when the appeal is prayed and allowed in open court.[1]

THIS was an appeal by Reily from a decree of the Circuit Court of the district of Columbia, which dismissed his bill in equity, with costs.

The defendant, Beall, some time in the year 1789 or 1790, had brought suit, in the name of Lamar, for the use of Beall, by Robert Smith, his attorney-at-law, against Reily, the appellant, upon a note for $400, and recovered judgment in the general court of Maryland.

The bill stated, that during the pendency of that suit, the complainant Reily, supposing that Smith was fully authorized to receive payment of the debt in any manuer he should think proper, sold him a tract of 4600 acres of land, in the state of Georgia, for the sum of $1533, for the express purpose of discharging that debt and some others which Reily owed in Baltimore. That in settling with Smith for the purchase-money of the land, the amount *of that debt was deducted and left in the hands of Smith, to [*345 be paid to Beall, under a promise from Smith, that he would have the

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[1] Brackett *v.* Brackett, 2 How. 238. And see United States *v.* Gomez, 1 Wall. 690.

entry made upon the records of the court, that the debt was satisfied. And after deducting also the amount of other debts which Smith undertook to pay for Reily, Smith paid him the balance by a check on the bank, being about $17. That thus the matter rested, until the year 1799 or 1800, when being called on by Beall for payment, Reilly applied to Smith, to know why the debt had not been paid, who replied, that it had been delayed, in consequence of a dispute between one John Lynn, to whom the note had been indorsed, and the said Beall, as to which of them was entitled to the money; but that it had been settled by reference, that Beall should have it; and that Reily might remain easy, for he should not be called on again for payment. That Reily informed Beall, that he had paid the amount to Smith, and that Beall had acknowledged to several persons, that he was satisfied the fact was so, and had employed counsel to bring suit against Smith for the money. That Smith had charged Reily with the said debt in his books, and that Reily had seen the entry in Smith's own handwriting, and prayed that the book might be produced.

That after the said judgment was rendered, viz., on the 3d of January 1800, the legislature of Maryland passed an insolvent law in favor of Reily and others, and on the 23d of December 1800, he conveyed all his estate to a trustee, agreeable to the law, for the use of all his creditors; and that on the 4th of April 1801, the chancellor of Maryland granted him a certificate of discharge (a copy of which was made part of the bill), whereby it was adjudged and ordered, that he should be discharged from all debts, covenants, contracts, promises and agreements, due from, or owing, or contracted by him, before the aforesaid 23d day of December 1800; provided, that any property which he had acquired, since the execution of the said deed, or should acquire by descent, or in his own right, by bequest, devise or in a course of distribution, should be liable for the payment of his said debts. That a writ of *scire facias* having issued, some time in the year 1800, to revive the said judgment, Reily instructed his attorney-at-law to plead the said discharge in bar thereof, which he neglected to do, without any default on the part of Reily. That all the property he possessed was duly delivered up
*346] to the *trustee, at the time of executing the deed of trust, and that all the property then in his possession was a devise, or the proceeds of a devise, to his wife. That execution having, upon the *scire facias* aforesaid, been awarded by the general court of Maryland, an exemplification of that judgment had been, by the said Beall, filed in the clerk's office of the circuit court of the district of Columbia, for the county of Alexandria, and execution issued thereon, with intent to levy the same upon the goods and effects held by Reily, in the right of his wife, to stay which, and all other proceedings at law, the bill prayed an injunction, &c.

Beall, in his answer, stated, that he had never received any part of the money, either from Reily or Smith, who, he admitted, was his attorney in the suit against Reily. That Smith denied that Reily had ever paid him the money, and that Beall had no knowledge, otherwise than by the information of Reily, that the same had been so paid. But that some time after the original judgment was obtained against Reily, Smith told Beall, that if he would make to him, the said Smith, a handsome discount upon the said judgment, he would pay him the money for the same, which Beall refused to do. He admitted, that for some time, he did believe, and had declared his belief,

that Reily had paid the money to Smith, and under that impression, had given instructions to an attorney, to examine into the business, and bring suit against Smith or Reily, as he should judge best; but he never positively admitted the fact to be so, nor had he intimated such an opinion, since he had seen Smith's answer. He did not admit that Reily had ever regularly and legally obtained the benefit of any insolvent law of Maryland, nor that he instructed his attorney to plead his discharge, but that, if he did, the attorney was able to pay any damages which Reily might sustain by his negligence. That the plea would be a good plea at law, and therefore, the complainant could not resort to equity for that benefit which he had lost by his negligence. He admitted, that it appeared by the proceedings, that the deed from Reily to his trustee, under the insolvent law, for the benefit of his creditors, was dated on the 23d of December 1800, and his discharge on the 4th of April 1801, during all the which time, Reily lived either in the city of Washington, or town of Alexandria, and contended that, as the court below had determined that the jurisdiction of Maryland and Virginia over the ceded territory *ceased on the 1st Monday of December 1800, the legislature or chancellor of Maryland had no power to pass such law, or give such discharge to the said Reily. He did not admit that property then held by Reily was held in right of his wife. [*347

The answer of the defendant Smith admitted that, as attorney for Beall, he brought the suit against Reily, and that he purchased of him, as he then imagined, a certain parcel of land, consisting of 4600 acres, represented by Reily to be in the state of Georgia, at the price of two shillings and six pence, current money of Maryland, per acre, amounting for the whole to the sum of $1533.33; but denied, that in making that purchase, he undertook or assumed for Reily, to pay the debt to Beall, and that Reily ever left in his hands any money for that purpose, and that he (Smith) ever promised to have an entry made on the records, that the debt was satisfied. The answer then averred, that Smith had availed himself of all the means in his power to obtain satisfactory information respecting the title, and even of the existence of the Georgia land, and that, falling in all his various attempts, he had reason to believe, and did believe, that he did not acquire any title. He denied that he ever told Reily, that the payment of the debt by him (Smith) had been delayed, in consequence of any dispute, and that he gave Reily any ground to believe or imagine, that he (Smith) intended to pay the said debt, or any part of it. That he never charged Reily, in any account against him, with the amount of any part of the debt, and that no part of the purchase-money was ever deducted to pay the debt. It averred also, that Smith, in the years 1790, 1791 and 1792, did not keep any book of money accounts whatever, except a bank-book, nor any kind of book of accounts, wherein such an entry could with propriety have been made, and that there never was in his possession, or kept by him, such a book of accounts as the said Reily had alleged. The answer did not state that Smith had in any manner, paid Reily for the lands.

The copy of the chancellor's certificate of discharge, referred to in Reily's bill, stated the date of the deed from Reily to his trustee, to be the 23d of March 1801, and not the 23d of December 1800, as alleged in the bill, and admitted in Beall's answer.

*The deed from Reily to Smith, for the Georgia lands, and also a deed of quit-claim from Cobbs (from whom Reily purchased them) to [*348

Smith, and the surveyor's plat and certificate of survey, were produced in evidence. The depositions tended to prove, that Smith had received from Georgia very favorable accounts of the Georgia land, and of the goodness of the title; and that the lands were worth a dollar per acre. That he had said, as late as June or July 1801, that at the time of his purchase from Reily, it was understood, that any debts due from Reily, which Smith should satisfy, were to be admitted as payment for the land; that believing, at that time, that he had made a valuable purchase, he did pay some debts, and offered to pay others, if the creditors would make abatements. That by the contract, he was at full liberty to settle any debt due from Reily, in the easiest and most advantageous way to himself; that he denied, that he had engaged to pay any particular debt, but that he was to discharge the purchase-money, by purchasing or satisfying claims against Reily, in any way he found best. That he offered to pay Beall, the debt Reily owed him, if Beall would allow a handsome discount, but that Beall had refused to do so, and the conversation ceased. That he had not received any satisfactory information respecting the Georgia lands, and feared, he had made an incautious purchase, and that the lands did not exist. He regretted, that he had paid anything; and said, that he had offered Reily the lands again, upon receiving what he had paid, which Reily declined. That he only wanted to be satisfied, that there was such land as he had bought of Reily, and that he had title, and the business should be settled immediately with him; but that the business between Reily and Beall was out of the question between him and Reily.

The evidence as to Beall, only went to prove that he had several times expressed a belief, that Reily had settled the debt with Smith.

At February term 1804, a preliminary question was suggested by *Mason*, for the appellees, whether a citation was not necessary, in cases of appeals, as well as in cases of writs of error, under the 22d section of the judiciary act of 1789. (1 U. S. Stat. 84.)

*349] *Marshall, Ch. J.—The question turns upon the construction of the act of March 3d, 1803. (2 U. S. Stat. 244.) The words are, "and that such appeals shall be subject to the same rules, regulations and restrictions as are prescribed in law in case of writs of error."

E. J. Lee, for the appellant.—The reason for a citation in cases of writs of error, does not apply to cases of appeal. Where the appeal is prayed and granted in the court below, the parties are bound to take notice of it.

Mason, in answer to a question from the Chief Justice, stated, that he conceived that an appeal might be allowed, at any time within five years, in the same manner as writs of error. The words of the last act of congress upon the subject are peremptory, "appeals shall be subject," &c. If there is no citation, the appeal cannot be a *supersedeas*, but perhaps, the want of a citation is not a sufficient ground to dismiss the appeal.

On a subsequent day in the same term, the Chief Justice stated it to be the opinion of the court, that the appeal having been prayed, pending the court below, a citation was not necessary; and therefore, the case was properly before the court.

Reily v. Lamar.

February 6th, 1805. The case was now argued by *E. J. Lee* and *C. Lee*, for the appellant, and by *Mason*, for the appellees.(*a*)

E. J. Lee.—If the plaintiff's attorney-at-law make a contract with the defendant, by which the plaintiff's demand is satisfied, it binds his client. So, he may leave the matter to reference, and the client will be bound by the award. The answers of Smith and Beall *are contradicted in a material point, and the rule in equity is, that if the defendant's answer is false in a material point, it shall not be taken to be true in the residue. [*350 Mr. Smith's answer states that he has availed himself of all opportunities of ascertaining the title, nay, the existence of the land. Robert Long's deposition shows this to be incorrect. Beall's answer states that he never did aver that Reily had paid the money to Smith. This is contradicted by Lloyd Beall's deposition.

Another ground of equity on the part of the appellant, is his discharge under the insolvent act of Maryland. He is not precluded from setting it up in equity, because his attorney neglected to plead it at law. No fraud is alleged or suggested in obtaining it; but it is stated, that the discharge was after the district of Columbia was separated from Maryland, and that upon that separation, Reily, living in the city of Washington, ceased to be a citizen of Maryland; and that, as the act directs that the chancellor shal be satisfied that the person applying to him for a discharge was, and is, a citizen of Maryland, and as the legislature could not authorize the discharge of a person from his debts, who should not be, at the time of the discharge, a citizen of Maryland, the discharge was not valid and regular.

But the act of Maryland was passed before the change of jurisdiction, and the discharge was only a consequence of what was begun, while the legislature had jurisdiction. By the act of cession by Maryland, and the act of acceptance by congress, it is provided, that the operation of the laws of the state should not cease or be affected by the acceptance, until the time fixed for the removal of the government, and until congress should otherwise by law provide.

The time appointed for the removal of the government was the first Monday of December 1800, but congress did not provide by law for the government of the district of Columbia, until the 27th of February 1801. The insolvent act passed on the 3d of January 1800. *On the 15th of April 1800, the chancellor passed an order that Reily give notice [*351 to his creditors to appear on the 3d of November 1800, on which day, notice having been given, the oath of an insolvent debtor was administered to Reily by the chancellor, and a trustee appointed. On the 23d of December 1800, Reily conveyed all his property to the trustee, who, on the same day, gave bond for the faithful performance of the trust, and a receipt for the effects. Thus, everything was done by Reily on his part, to entitle him to a discharge, before the operation of the law of Maryland ceased. The chan-

(*a*) *E. J. Lee*, being asked by the court for a statement of the case, agreeable to the rule of court, alleged that it was not in his power to make a statement, as it was a question as to the weight of testimony, on contradictory evidence.

Marshall, Ch. J.—The court require a statement of the case, even though the question is a question of fact; at least, the substance of the bill and answer, and the facts which are in contest, might be stated.

cellor, therefore, having the cause before him, and having once had jurisdiction, could not be deprived of it, by the separation of the territory.

If a crime has been committed within the district of Columbia, before the 27th of February 1801, it must have been punished according to the state law of that part of the district in which it was committed.

Besides, it is worth consideration, whether, as the debt was due to Beall, who always remained a citizen of Maryland, it might not be barred by an act of the legislature of Maryland, notwithstanding the debtor had ceased to be a citizen. The words of the insolvent act (November session, 1799), c. 88, passed January 3d, 1800, § 3, are—

"§ 3. And be it enacted, that no person hereinbefore mentioned shall be entitled to the benefit of any of the provisions of this act, unless the chancellor shall be satisfied, by competent testimony, that he is, and at the time of passing this act was, a citizen of the United States, and of this state, and unless, at the time of presenting his petition as aforesaid, he shall produce to the chancellor the assent in writing of so many of his creditors, as have due to them the amount of two-thirds of the debts due by him at the time of the passing of this act; provided, that foreign creditors, not residing in the United States, and not having agents or attorneys residing therein, duly empowered to act in their behalf, shall not be considered within the intent and meaning of this clause; and provided also, that the chan-
*352] cellor may, without the assent of *the creditors as aforesaid, from time to time, order to be discharged from custody, any of the said petitioners, who may be in actual confinement, in virtue of any process issued, or that may be issued, in pursuance of any debt, at this time due and owing by him, which discharge is hereby declared to be a release only of the person of such debtor, but not of his property, unless the assent in writing of two-thirds in value of the creditors as aforesaid be obtained."

It was only necessary that the chancellor should be satisfied, that Reily was a citizen of Maryland, at the time of passing the act, and at the time of his application to the chancellor for its benefit; and these facts are not denied.

Mason, contrà.—There are only two questions in this cause. 1. Has Reily any equity, on the ground of having paid the judgment? 2. Has he any equity on the ground of being released by the act of assembly?

1. It is admitted, that he has an equity, if all the facts stated in the bill are true. But the bill itself is not evidence. The answers of Smith and Beall deny all the equitable facts, and there is no evidence to prove them.

The controversy is really between Reily and Smith, for it is not alleged, that Beall has been satisfied, unless the payment to Smith is proved, and binds Beall. But as the evidence does not prove a payment to Smith, there is an end of the first point.

2. As to the discharge under the insolvent law. It is a principle, that if a man has a defence at law, and waives it, he shall, not avail himself of it in
*353] equity. This is a defence which peculiarly requires that it should have *been pleaded at law. The plea would have embraced all the facts which were necessary to show that he was regularly discharged, any of which the plaintiff might have traversed and put in issue. The bill alleges he was regularly discharged. The answer denies it, and puts him upon the

proof. How has he proved it? By the chancellor's certificate only; and that was made on the 10th of April 1801, when, according to the allegations in the bill, he was not a citizen of Maryland, but of the district of Columbia.

The bill states, that the property on which the *fieri facias* was levied, was a devise to his wife, or the proceeds thereof. The answer denies it, and there is no proof.

The bill charges that he directed his attorney-at-law to plead the discharge. The answer denies it, and there is no proof, although the attorney himself was examined as a witness for the complainant.

Having removed from the city of Washington to Alexandria, which is subject to different laws, the discharge could not avail him there. There is no evidence that Beall was a citizen of Maryland, and therefore, the argument that the legislature of Maryland might bar him from a recovery of the debt, although Reily should not appear to be a citizen, does not apply.

CHASE, J.—Would not the proper remedy be, by motion, to discharge the property taken on the *fieri facias*, if it appeared to be property which came to the wife by devise?

E. J. Lee.—Although that might be done, yet it is not the only remedy. It might be too late, on the return of the execution, when the property might be sold.

MARSHALL, Ch. J.—Could the court have gone on to decree Smith to pay the money to Reily, and dismiss *the bill as to Beall? Was the cause in such a state, that this could be done? [*334

C. Lee and *Mason* admitted, that they might.

CHASE, J.—Can an attorney-at-law, by a contract for the purchase of land to himself, bind his client?

C. Lee, in reply.—We do not contend for the principle, to that extent; but if Beall assented to the payment to the attorney, in that way, it would bind him in equity. So, if the attorney has the money of the debtor in his hands, and upon a settlement with the debtor, the attorney retains the debt of his client, and gives the debtor a check for the balance, the client is bound. If Smith did undertake to settle this debt, it binds Beall. But if not, yet Reily has a claim against Smith, and the court below ought not to have dismissed the bill as against him. There is no doubt of Reily's equity as to Smith. He does not even allege that he ever paid Reily for the lands. He has not produced the bank-book, as he was required to do, which would have shown the check of $17.

As to the discharge under the insolvent act; if it was good in Maryland, it was good in every part of the United States. That it was obtained fairly, legally and regularly, appears from the certificate itself; which is, at least, *primâ facie* evidence of those circumstances; and the contrary must be proved, if alleged. *Millar* v. *Hall*, 1 Dall. 229. The present case is stronger than that of *Millar* v. *Hall;* because here both parties were citizens of Maryland, but in that, Millar was a citizen of Pennsylvania.

There is certainly an error in the copy of the certificate of discharge, filed in this case, in stating the deed of Reily to his trustee to be dated the

23d of March, instead of the 23d of December; for the certificate of the trustee, by which he acknowledges the receipt of all the effects of Reily, is dated on the 23d of December, and so is the trustee's bond. If the deed was executed on the 23d of December, the case is clear of all doubt, for the inhabitants of that part of the district of Columbia which was ceded by
*355] Maryland, *remained citizens of Maryland, and subject to all her laws, until the 27th of February 1801, when congress first provided by law for the government of the district. (1 U. S. Stat. 130.) Resolve of Maryland, 1788; Laws of Maryland, November 1791, c. 45, § 2. (2 U. S. Stat. 103.)

The words of the insolvent act are, that the chancellor shall be satisfied that the petitioner "is and was," at the time of passing the act, a citizen of the state of Maryland. If the chancellor is satisfied that he was, at the time of passing the act, and is, at the time the petition is presented to him, a citizen of Maryland, it is sufficient. But it is not necessary in this case to confine the time to the presenting the petition: we may admit the proper time to be the date of the deed to his trustee. The discharge has relation to that time. So, in the case of bankrupts, the certificate relates to the time of doing the act of bankruptcy; although the granting of it may be deferred for a long time. The insolvent law of Maryland is to be considered as a bankrupt law. So says Judge McKean, in the case of *Millar* v. *Hall.*

The 4th article of the constitution of the United States declares, that "full faith and credit shall be given, in each state, to the public acts, records and judicial proceedings of every other state." And "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Reily being, for aught that appears to the contrary, a natural-born citizen of Maryland, could not be deprived of his right of citizenship, by the transfer of jurisdiction. He might cease to be an inhabitant, but could not cease to be a citizen.

The situation of Reily is unhappy, indeed, if he is not protected by his discharge. He cannot recall the deed which he made of all his effects, to the use of his creditors. His property is gone. And if the insolvent laws of the several states are not to be respected, perpetual imprisonment may be the consequence.

The court below ought to have continued the injunction as to all the property of Reily, except such as came to him in his own right by devise,
*356] bequest or in the course of *distribution. But if Reily has paid Smith, and that payment can be applied to Beall, then the injunction ought to be general and perpetual. At any rate, a general dissolution of the injunction was erroneous.

Mason, contrà.—If Reily has been discharged under the insolvent act, and has transferred all his estate and effects to his trustee, the court below could not have decreed Smith to pay the money to Reily. The right of action was not in him, but in the trustee.

The insolvent law, in the present case, is a special law for the benefit of certain persons by name, and Reily must show that he has complied with all the requisites of the act, in as full a manner as if he had pleaded at law.

There is no clause in the act making the chancellor's certificate *primâ*

facie evidence of a compliance with all those requisites, and there is no such rule of the common law. It is only made *primâ facie* evidence to authorize a discharge from arrest. The laws of Maryland cannot apply. The opposite counsel take that for granted, which is the point in dispute.

There is no mistake in the certificate respecting the date of the deed, but if there is, there is no evidence before the court by which it can be rectified.

Marshall, Ch. J., delivered the opinion of the court, to the following effect :—In this case, the court has attentively considered the record, proceedings and evidence. The only equity of the complainant's bill, as to Lamar and Beall, arises out of the transactions between him and the defendant, Smith, and the court is of opinion, that that equity is not supported ; and that the material allegations of the bill as to the defendant, Smith, and which are denied by his answer, are also unsupported by the evidence. Nor are the allegations of the complainant, respecting his certificate of discharge, sufficiently proved.

By the separation of the district of Columbia from *the state of Maryland, the complainant ceased to be a citizen of that state, his residence being in the city of Washington, at the time of that separation. [*357

As the complainant was entitled to a discharge, upon executing the deed of assignment of all his effects to the trustee appointed by the chancellor, his certificate would relate back to the date of the deed. It has been said, that the true date of that deed was the 23d of December 1800, and that the certificate of the chancellor, which states the date to be the 23d day of March 1801, is incorrect. But the certificate of the chancellor is the only evidence before the court as to that subject, and we must take it to be true. It is, therefore, not material to inquire, whether the inhabitants of the city of Washington ceased to be citizens of Maryland on the 27th of February 1801, or on the first Monday of December 1800, as it is not contended, that they were under the jurisdiction of Maryland, so late as the 23d of March 1801.

The complainant, therefore, not being a citizen of Maryland at the time of executing the deed, did not bring himself within the provisions of the insolvent law, under which he claims relief.

I was inclined, at first, to think, that an account might have been directed between the complainant and the defendant, Smith, but the court is of opinion, that if he has any remedy against Smith, it is at law, and not in equity. The bill must be dismissed with costs, but without prejudice.