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therefrom. A state of facts might exist rendering it proper to inquire into and determine the effect of the agreement, and how far it should be considered as an estoppel upon her.

But such facts do not exist here. It does not appear that the husband violated the agreement in any particular. It was made upon a valuable consideration, and there is nothing in the case to show why, in addition to the benefits it gave her, she should receive an additional benefit from his estate. We are asked, in substance, to permit her to receive a sum of money from his estate, when she has expressly agreed, for a valuable consideration, that she will make no claim against his property, and when she shows no reason why we should sanction her departure from her agreement.

We are therefore of opinion that the Judge of Probate erred in making her an allowance.

Decree reversed.

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Upon a complaint for stealing, a prisoner was ordered by a magistrate to recognize for his appearance at the Court of Common Pleas, in the sum of four hundred dollars, with two sureties in the sum of two hundred dollars each. He recognized in the sum of four hundred dollars with ten sureties in the sum of forty dollars each, of whom the defendant was one. Upon *scire facias* against the defendant it was *held*, that the order of the magistrate was not complied with, and that the sureties were not bound.

SCIRE FACIAS. On the 24th day of July, 1850, Prelate M. Robinson, having been arrested upon a complaint against him for larceny, was brought before Calvin Burnap, a Justice of the Peace for this county, and was ordered to recognize in the sum of four hundred dollars, with two sufficient sureties in the sum of two hundred dollars each, for his appearance at the Court of Common Pleas for this county, to be held on the second Tuesday of September next ensuing. Robinson recognized as principal in the sum of four hundred dollars, and the defendant with

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nine other persons recognized as his sureties in the sum of forty dollars each. The defendant demurred to the *scire facias*, alleging that the matters contained therein were not sufficient in law to authorize the State to have an execution against him for the sum of forty dollars, and the State joined in the demurrer.

Wheeler, County Solicitor, for the State.

Faulkner, for the defendant.

I. There is a material and fatal variance between the order of the Justice, admitting the principal to bail, and the recognizance of the bail as recited in the record. *Dillingham v. The United States*, 2 Wash. C. C. 422.

The order of Court upon which the recognizance purports to be founded was, that the principal should recognize in the sum of four hundred dollars, with *two* sufficient sureties in the sum of two hundred dollars each, and should stand committed until he complied with the order. Now, one would suppose, either that he recognized according to the order, or was committed. But it certainly could not be in compliance with this order, that the defendant recognized with nine other persons in the sum of forty dollars each.

II. It is not averred that the default of the principal appears of record. *Dillingham v. The United States*, *supra*; *The State v. Chesley*, 4 N. H. Rep. 366; *The People v. Van Eps*, 4 Wend. 387.

GILCHRIST, C. J. The order of the magistrate in this case having been, that Robinson should recognize in the sum of four hundred dollars, with two sureties in the sum of two hundred dollars each, he gave his own recognizance, but furnished ten sureties in the sum of forty dollars each.

Upon what ground can any one of these sureties be holden? They are liable, in any case, only upon the ground that they have entered into a recognizance ordered by a tribunal having authority to act in the premises. If this be a compliance with the order of the magistrate, it would be difficult to say where the

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line should be drawn. It would seem, in any case, to be sufficient if the prisoner furnished sufficient sureties for his appearance, whether they were holden for the sum, or in the manner specified in the order of the magistrate. If any attention whatever is to be paid to the terms of the order, these sureties cannot be holden; for they do not come at all within it. It is sufficient that they have not recognized according to the order, and a compliance with the order is the only ground upon which the validity of the recognizance can be placed. They must be considered as having entered into no recognizance as ordered by the magistrate, and that is a sufficient answer to this process.

Judgment for the defendant.

 SCOVELL AND WIFE v. HOLBROOK.

Where a debtor gave a jail bond, dated December 10th, 1849, conditioned to take the oath or affirmation prescribed by law for the relief of poor debtors, within one year from the date of the same, or in default thereof surrender himself to prison as prescribed by law — *Held*, that in computing the time within which the debtor should take the oath, the day of the date of the bond should be excluded; that the year commenced on the 11th of December, 1849, and terminated on the night of the 10th of December, 1850; and that the taking of the oath on the 11th of December, 1850, was not a compliance with the condition of the bond.

If the creditor and his attorney appear on the 11th to oppose the taking of the oath, the condition of the bond is not thereby waived or changed, and their appearance does not take away the plaintiff's remedy on the bond for the breach of the condition in not taking the oath within the year.

In order to comply with the terms of the statute, providing that the debtor, in case he does not take the oath within the year, shall, on the next day after the expiration of the year, surrender himself to the keeper of the jail, and remain at said jail from twelve o'clock noon, till three o'clock in the afternoon, the debtor must make known to the jailor the purpose for which he is at the jail, and must remain at the jail during the full time from twelve o'clock till three.

DEBT, on a jail bond, dated December 10th, 1849, given to the plaintiffs by one John N. Hodskins, as principal, and the