

## McCUNE v. ROGERS.

If a defendant, arrested on mesne process and carried before two justices on his application to be discharged, before any decision on the question of his discharge, withdraw his application, and, after commitment, give bail, the proceeding before the two justices will not prevent the discharge of his bail on motion made at the return term of the writ.

THE defendant was arrested on mesne process, and carried before two justices on his application to be discharged. The facts which appeared on the proceedings before the two justices are stated in the case of *Rogers v. Stevens*, reported in 45 N. H. 478, and are to be made part of this case. Since the hearing on that application, and before the return day of the writ, the defendant procured bail and was discharged from arrest. At the return term of the writ he moved that his bail be discharged and offered to submit to such examination as the court should order.

*Morrison, Stanley & Clark*, for plaintiff.

*Smith & Topliff*, for defendant.

PERLEY, C. J. The two justices, before whom the defendant's application for his discharge from arrest was heard, permitted him to withdraw the application before any decision was made on the question of his right to be discharged, and no decision or judgment was given in that proceeding. The case in this respect would seem to stand on the same footing as a nonsuit with the permission of the court in a suit at law.

In case of an arrest on mesne process by virtue of an affidavit endorsed on the writ, the statute provides, that, "at the return term of such writ, the defendant may move the court to be discharged, or that his bail or sureties may be discharged, and the court, upon satisfactory evidence that the defendant does not conceal his estate, and does not intend to leave the State, may order such discharge." Nothing done in this case on the application to the justices will prevent an application to the court for the discharge of the defendant's bail, and the court should have entertained the motion. What would have been the effect of a decision by the two justices refusing his discharge need not now be considered.

## BUXTON v. DEARBORN &amp; A.

A small piece of land, on which hay is cut for a cow kept at the house where a man lives, may be regarded as part of his homestead, though the land is separate from the house and a mile distant, provided that the house and the land together do not exceed five hundred dollars in value and the land is used in connection with the house to furnish necessary feed for the cow.

WRIT OF ENTRY for land in Francestown.

The defendants claimed title by virtue of the levy of an execution is-