

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 4: The Early National Era – Equality/Equality Under Law

Ward v. Bernard, 1 Aik. 121 (VT 1825)

Eli Bernard owed money to Hiram Ward. Vermont law entitled a creditor to have a debtor imprisoned until that debt was paid. Ward exercised that right in 1817. In 1819, the Vermont legislature passed a law declaring that Bernard could leave prison before paying his debt to Ward. When Bernard left the prison, Ward claimed that he had escaped, because the statute permitting him to leave the prison was unconstitutional, hence void. Bernard had previously given the local sheriff a bond, a sum of money that would be forfeited if he illegally left the jail. Ward sued Bernard, claiming that he should receive the bond.

The Supreme Court of Vermont declared unconstitutional the law releasing Bernard from jail. Because the law was void, Chief Justice Skinner maintained, Bernard had illegally left prison. Hence, Ward had a right to the bond. The chief judge's opinion asserted that measures conferring special benefits are not actually laws. Why did he reach that conclusion? Why did Skinner conclude that Bernard received a special benefit in this case?

CHIEF JUSTICE SKINNER

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... [T]he general assembly have all powers necessary for the legislature of a free and sovereign state. As no legislature . . . has any other than the power of making laws . . . no other than a law making power is conferred.

We are then to inquire, whether the act in question is a law. A prescribed rule of civil conduct, is the correct, and universally approved definition, of municipal law. So far as an act of the legislature is retrospective, or *ex post facto*, it is not a prescribed rule of conduct. An act conferring upon any one citizen, privileges to the prejudice of another, and which is not applicable to others, in like circumstances . . . does not enter into the idea of municipal law, having no relation to the community in general.

Ward, the plaintiff in this case, having recovered a judgment, and taken execution against Barnard the defendant, to obtain satisfaction, elected his remedy, by taking the body of the debtor; who was admitted to the liberties of the prison, on the execution of the bond here in suit. By the standing law, the departure from the liberties, without having paid the debt, or being discharged by the creditor, or taking the oath prescribed for poor debtors, constitutes a forfeiture of the bond. It was the right of Ward, the creditor, in common with other citizens, as a means of obtaining satisfaction, to hold the body of the debtor in prison-the act, therefore, discharging the body, was conferring upon this person a privilege, not extended to other citizens in like circumstances; and taking from the creditor rights, enjoyed by other citizens, in like circumstances. In this view of the subject, this act cannot be distinguished, in principle, from an act, in which the body of any other citizen, not confined, shall be exempt from arrest; or an act, forbidding a particular citizen to use, for the obtaining satisfaction of his debts, the ordinary process against the body. Though it may not be feared, that injustice would follow the exercise of such power, and although justice may, in particular cases, have been promoted, sure it is, that those equal rights, so dear and sacred in the estimation of a free and enlightened people, are not secured by a constitution, yielding to the legislature the high prerogative of imposing restraints, and conferring favours not common to all.

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