court could not grant a certificate of discharge against a prohibition of the statute. Nor had the petitioner any such vested right to a discharge, at the time of filing the petition, that either its effect, or the requisites to obtain it, might not be altered by the Legislature at any time before it was granted. At the time of his application, he must show that he is within the provisions of the statutes as they then exist, and the effect of such a discharge can be no broader than the statutes then permit.

So it has been held that the provisions of the St. of 1844, *c.* 178, apply to proceedings in insolvency which were pending when it went into operation, so far as these provisions were inconsistent with previous statutes. *Eastman* v. *Hillard*, 7 Met. 420. *Eddy* v. *Ames*, 9 Met. 585.

As contended by the defendant, a discharge, when granted, takes effect, not from its date, but from the commencement of proceedings in insolvency, which is the first publication of the notice upon the warrant, and relates back to that time. *Cook* v. *Shearman*, 103 Mass. 21. *Thayer* v. *Daniels*, 110 Mass. 345. But the extent of its operation depends upon the law in force when the discharge is granted. *O'Neil* v. *Harrington*, 129 Mass. 591. *Exceptions overruled.*

MARGARETTA SCHRAMM *vs.* FREDERICK STEPHAN, JR.

Suffolk. November 16. — 17, 1882. LORD & W. ALLEN, JJ., absent.

The Gen. Sts. *c.* 72, providing for the maintenance of bastard children, does not apply to the case of a child, which is still-born, and which, if born alive, would be a bastard.

COMPLAINT under the bastardy act, Gen. Sts. *c.* 72.

At the trial in the Superior Court, before *Gardner*, J., the complainant introduced evidence tending to show that, on November 6, 1881, she was delivered of a child, which was begotten by the respondent on or about March 6, 1881; and that she never saw the child, and was unconscious at the time of the delivery. The respondent called, as a witness, the physician who

attended upon the complainant at the hospital, and he testified that she was delivered of a still-born fœtus, which the witness considered to be about eight months old; that it had been dead some days before it was born; and that his impression was that it was buried by the city of Boston.

There being no controversy as to the facts testified to, the judge ruled, as matter of law, solely on the ground that the child was still-born, that the complaint could not be maintained; and ordered a verdict of not guilty for the respondent. The complainant alleged exceptions.

H. H. Smith, for the complainant.

W. S. Frost, for the respondent.

By the Court. Our statute, as the title implies, is designed to make provision for "the maintenance of bastard children." The only order which the court can pass is that the adjudged father "shall stand charged with the maintenance thereof, with the assistance of the mother, in such manner as the court shall order; and shall give bond with sufficient sureties to perform said order, and also to indemnify and save harmless against all charges of maintenance her parents and any city or town or the State chargeable with the maintenance of such child." Gen. Sts. *c.* 72. Pub. Sts. *c.* 85. Until born, the child is not the subject of maintenance. It is clear that the statute applies only to the case of a bastard child born alive, and not to a case like the present one, of a still-born child. The only order the court can issue, applied to the last-named case, would be inoperative and absurd. *Commonwealth* v. *Cole*, 5 Mass. 517.

Exceptions overruled.