

**Case No. 2,229.**

BUSSARD v. WARNER.

[2 Cranch, C. C. 111.]<sup>1</sup>

Circuit Court, District of Columbia.

June Term, 1815.

**BAIL—INSOLVENCY OF PRINCIPAL—EXONERATION OF SURETY.**

If the principal be discharged under the insolvent act before the bail be fixed, and the bail, being taken in execution, give a note for the amount of the debt, the court, upon the return of the execution, will, on motion, order the note to be given up to be cancelled.

At law.

Mr. Wallach, for the bail, obtained a rule to show cause why the note given by the bail, who was taken on the execution, should not be given up to be cancelled, on the ground that Warner was discharged under the insolvent act before the bail was fixed. *Mannin v. Partridge*, 14 East 599; *Donnelly v. Dunn*, 2 Bos. & P. 45. Warner was discharged before judgment on the scire facias, which was more than a year ago.

Mr. Wiley and Mr. Key, for the plaintiff, contended that it was too late. The execution against the bail was returned to this term satisfied; and the court could not rescind its judgment upon the scire facias after the term at which it was rendered had expired.

THE COURT (MORSELL, Circuit Judge, doubting) ordered the note to be given up to be cancelled.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]