

Case No. 6,446.

HEYER ET AL. V. WILSON.

[2 Cranch, C. C. 369.]¹

Circuit Court, District of Columbia.

April Term, 1823.

MARSHAL—NEGLIGENCE—CAPIAS AD RESPONDENDUM—AMERCEMENT.

1. If the marshal upon a capias ad respondendum be amerced debt and costs nisi, the defendant may, on or before the next term, give bail and exonerate the marshal.
2. If the bill of exchange, which was the original cause of action be lost, it is sufficient (in order to amerce the marshal in the whole amount of debt and costs, for not bringing in the defendant arrested upon a capias ad respondendum.) to tender to the marshal an assignment

of the right of action upon the bill, and that assignment may be made by the attorney and agent of the plaintiff.

{This was a suit by Heyer and Bremner against David Wilson.} The late marshal (Boyd) had been amerced damages and costs, for not bringing in the defendant whom he had arrested upon a *capias ad respondendum*. Notice having been served upon B. Wallach, the administrator of the late marshal, to show cause why the judgment should not be final.

Mr. Wallach showed for cause that no tender had been made of the original cause of action, (an accepted bill of exchange.)

Mr. Dunlop, for plaintiffs, produced the affidavit of Mr. Brent, the clerk of this court, showing that the original bill which had been filed in the suit against one Hyatt, had been sought for, but could not be found, and an assignment of the right of action signed by Mr. Key and Mr. Dunlop attorneys and agents of the plaintiffs. Whereupon the court, at the last term, ordered the judgment to be entered against the administrator of the late marshal for the full amount of debt and costs, “*nisi*,” the second day of the (then) next term (that is, the present term), according to the Maryland act of 1794, c. 54, § 2, for not bringing in the body of the defendant according to the tenor of the marshal’s return.

Upon the second day of the present term, Mr. Swann, for defendant, offered bail for the defendant, Wilson.

Mr. Dunlop, for plaintiffs, objected that it was now too late.

But THE COURT (*nem. con.*) permitted the bail to be given, and ordered the judgment to be rescinded.

¹ [Reported by Hon. William Cranch, Chief Judge.]