

## OLIVE ET AL. V. MANDEVILLE.

[1 Cranch, C. C. 38.]<sup>2</sup>

Circuit Court, District of Columbia. Oct. Term, 1801.

PRACTICE—MOTION TO APPEAR WITHOUT BAIL  
BEFORE APPEARANCE DAY.

A motion, made before the appearance day, to appear without bail, will not be heard if the defendant be not in actual custody.

[This is an action by Olive, Colcott & Co. against Mandeville.]

The writ was returnable to this term. The appearance day of this term is the day after the rising of the court.

Motion by Mr. Jones to appear for the defendant without bail, grounded on the defendant's discharge under the bankrupt law of England.

The plaintiff's counsel, R. J. Taylor, made affidavit that the defendant's motion was made the last evening; that he is informed and believes that John Sutton will prove that the discharge was obtained by fraud; that he has called twice at the house of Sutton, and was informed that he was so ill that he could not be seen; and thereupon moved that the defendant's motion might be continued till next term. The defendant had given appearance-bail.

THE COURT would not now, in this case, the defendant not being in actual custody, hear the motion to appear without bail before the appearance day.

<sup>2</sup> [Reported by Hon. William Cranch, Chief Judge.]