

26FED.CAS.—21

Case No. 15,367.

UNITED STATES v. HILLIARD.

[4 Cranch, C. C. 644.]¹

Circuit Court, District of Columbia.

Nov. Term, 1835.

FINES AND COSTS—SECURITY.

Security, by recognizance, may be taken for fine and costs, in Washington county.

This was a scire facias upon a recognizance, for a fine and costs recovered against one Noah Stinchcomb. General demurrer and joinder.

Mr. Dandridge, for the defendant, contended, that, by the common law, all security to relieve a man from prison, was void, and that there is no statute law to justify this recognizance.

Mr. Key, for the United States, submitted the question to the court without argument
CRANCH, Chief Judge. This scire facias sets out a judgment against Stinchcomb, and then says: "Whereas, a certain John Hilliard, late of said county, came personally into the said court, and undertook," for the said Noah Stinchcomb, that, if the said Noah Stinchcomb should not pay the said fine, so as aforesaid imposed upon him by the said court and also all such costs and charges as had accrued or should accrue to the said United States, in the premises, that then he, the said John Hilliard, would do the same for him: Nevertheless, the said Noah Stinchcomb, the fine, costs, and charges aforesaid, to the said United States hath not paid or satisfied; nor hath the said John Hilliard done the same for him, according to the force, form, and effect of the promise and undertaking aforesaid, as by the suggestion of the said United States, in the said court, it hath been stated." "Wherefore," &c., "to show cause why the said United States should not have execution against the said John Hilliard for the fine," &c. There is no law that forbids a plaintiff to take a new security for his debt, from his debtor in execution. The statute of 23 Hen. VI. c. 10, making void all bonds taken for ease and favor, is applicable only to sheriffs and other officers. An undertaking in court, by matter of record, is good ground for a scire facias and execution. This kind of security for fine and costs is recognized in the Maryland act of November, 1793, c. 57, § 16, and by the forms in 2 Har. Ent. 223, 224, and 617. This being the opinion of the court, the demurrer is overruled.

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