

Case No. 15,765. UNITED STATES v. MILBURN.
[4 Cranch, C. C. 478.]¹

Circuit Court, District of Columbia.

Nov. Term, 1834.

BAIL—WHO MAY TAKE RECOGNIZANCE.

1. When the marshal has arrested a person charged with a misdemeanor, he may take him

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to a justice of the peace, to give bail, by way of recognizance, for his appearance in court to answer for the offence; and the marshal is not bound to take the bail-bond himself.

2. A recognizance thus taken by the justice is valid.

Scire facias upon a recognizance taken by a justice of the peace, upon a *capias ad respondendum* for a misdemeanor in keeping a public gaming-house. Plea, *nul tiel record*, and issue.

Mr. Brent, for defendant [George Milburn], contended that the recognizance was void; that the marshal had no right to carry the defendant to a justice of the peace to give bail, but should have taken it himself, under the Maryland act of 1780 (chapter 10); and that the justice had no authority to take the recognizance.

Mr. Key, for the United States, *contra*. The act was made for the ease of the sheriff. It is only peremptory as to the amount in which the sheriff is to take the bond, when he takes it, not that he shall take it in all cases. It was to enlarge the power of the sheriff.

THE COURT ordered judgment to be entered upon the recognizance, being of opinion that the justice had power to take it.

{See Case No. 15,766.}

¹ {Reported by Hon. William Cranch, Chief Judge.}