

Case No. 17,907.

WISE V. DECKER.

{1. Cranch, C. C. 190.}<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1804.

USE AND OCCUPATION—SUBSTITUTED PLAINTIFF.

1. In Virginia an action for use and occupation will lie although there be a parol demise for a time and rent certain, if it be waived, and a promise to pay for the time occupied.
2. The writ is not abated by substituting the assignee as plaintiff in place of the bankrupt.

Assumpsit, for use and occupation. Plea in abatement, for variance between the writ and the amended declaration. General demurrer and joinder. The writ was sued out before the bankruptcy of McCrea. After the assignee was appointed he was admitted plaintiff, under the 13th section of the bankrupt law. The general demurrer to the plea was adjudged good, and respondeas ouster awarded. Plea, non assumpsit, and issue.

Mr. Taylor, for defendant, prayed the court to instruct the jury that if, from the evidence, they should be of opinion that the agreement was for a year certain, at a certain price, the plaintiff was not entitled to recover on either of the counts.

THE COURT instructed the jury that, if they should be of opinion, from the evidence, that there was such an agreement, but that it was afterwards waived, and that the defendant promised to pay for the time he occupied, then the evidence would support the counts.

{See Case No. 17,906.}

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