

It appears, however, that the witness has been discharged under the insolvent laws, and as this discharge releases him as to his future earnings, and all other acquisitions except those mentioned in the act of assembly; and as the discharge is inoperative as regards his foreign creditors, he is said to be interested in having the plaintiffs, who are foreign creditors, paid rather than the defendants, Winn and Ross, who are citizens of this state.

This presents a question of some difficulty, but I do not deem it necessary to express an opinion upon it, as I think the release which has been executed by the plaintiffs in this case, removes the objection to his competency.

The words of the release are, that the plaintiffs "do hereby release Robert B. Hancock, from all liability, or responsibility, by reason of the event of this cause."

If by reason of the evidence of this witness, a portion of the fund in question, is applied to the payment of the claims of these plaintiffs, the responsibility of the witness, as an acceptor, is discharged *pro tanto*; and if the suit fails, the same consequence would follow, to the extent of the dividend, which would be applicable to the claims, if successful. The failure, or the success, of the suit, is the event upon which the release operates. The plaintiffs say in the release, let the event of the suit be as it may, the witness shall not be prejudiced. If it succeeds, he will be entitled to a credit upon his acceptances, to the amount of the recovery, and if it fails, he is to be released to the same extent. This must be the construction of release, or else the liability of the witness would depend upon the event of the suit, in opposition to its terms, unless this is the construction of the release, it would have no operation further, than to discharge the witness from the cost of the cause, an effect much more limited than the parties could have intended, and much more restricted, than I think its terms fairly import, which are to be taken in the strongest sense against the party using them.

The question, however, which has occupied principally the attention of the council in the argument; and confessedly the