

Case No. 1,835.

BRENT et al. v. BECK.

[5 Cranch, C. C. 461.]¹

Circuit Court, District of Columbia.

March Term, 1838.

REPLEVIN—WHEN LIES—CUSTODIA LEGIS.

If a constable, having a warrant to arrest a man on a charge of forgery, seize and search his trunk, and find therein articles which he suspects were stolen, and takes them into his custody, they are not thereby in the custody of the law, but may be replevied.

[See Wood v. Weimar, 104 U. S. 792. Contra, Murphy v. Tindall, Case No. 9,952a.]

At law. This was a rule to show cause why a writ of replevin, issued in the name of W. L. Brent and Robert J. Brent, against Lambert S. Beck, should not be quashed, because the goods replevied were in the custody of the law. The defendant being a constable, and having a warrant to arrest one Henderson, upon a charge of forgery, searched his trunk, and finding therein some articles which he suspected were stolen, he took them into his custody, which custody Mr. Bradley, for defendant, contended was the custody of the law, and cited Dalt. Just. 409; 1 Chit. Cr. Law, 819, 865, 867.

THE COURT (THRUSTON, Circuit Judge, absent) stopped Mr. Brent, who was about to reply, and refused to quash the replevin. CRANCH, C. J., observed that the property did not appear to have been in the custody of the law. Mr. Beck may have done right in taking the goods, but having no warrant therefor, or to arrest Henderson for theft, his custody was not the custody of the law, so as to make it any contempt of this court, or of any court, to replevy them. Rule discharged.

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