

Case No. 4,432.

EMACK V. CRABB.

[5 Cranch, C. C. 611.]¹

Circuit Court, District of Columbia.

Nov. Term, 1839.

REPLEVIN—RETURN OF GOODS NOT PREVIOUSLY IN POSSESSION OF PLAINTIFF.

If the plaintiff in replevin never had previous possession of the goods replevied, the court will, of course, order them to be returned to the defendant, on motion, upon the usual security.

Replevin to get possession of goods conveyed by the defendant [Horatio N. Crabb] to the plaintiff [William Emack] by a deed of trust to sell them, in case a certain note should not be paid at maturity. The defendant now moved for a return of the goods.

Mr. May, for defendant. The plaintiff never had possession, and therefore the court will, of course, order the return; for it is only where the possession having been originally

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in the plaintiff, has been forcibly or fraudulently obtained by the defendant, that the court is authorized, by the Maryland act of 1785, c. 80, to refuse to order the return.

Mr. Hellen, contra. When the note was due and unpaid the plaintiff had a right to the possession; and the possession of the defendant then became fraudulent.

THE COURT (THRUSTON, Circuit Judge, absent) ordered the property to be returned, upon the usual security.

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