

Case No. 5,105.

FRENCH v. VENABLE.

{2 Cranch, C. C. 509.}¹

Circuit Court, District of Columbia.

Jan. 6, 1825.

ACTIONS—DISCONTINUANCE—REINSTATEMENT—ENTERING APPEARANCE ON DOCKET OUT OF COURT.

1. The court will not reinstate an action of replevin which has been discontinued, at a preceding term, for want of the appearance of the defendant, unless the omission to enter the appearance was by neglect of the clerk.

{Cited in Reiling v. Bolier, Case No. 11,671.}

2. An appearance cannot be entered upon the docket, out of court.

Mr. Hall, for defendant, moved to reinstate this action of replevin, it having been discontinued at the last term by the nonappearance of the defendant. The defendant's affidavit stated that Mr. Caldwell, ever since the death of Mr. Bates, had acted as the counsel of his executors. That the writ, in this cause, was returnable to the last term. That Mr. Caldwell was specially employed to defend it, and that the defendant was, until otherwise informed by Mr. Wallach, under a firm impression that Mr. Caldwell had entered his appearance for him. That just before the court, upon hearing that his impression was erroneous, he desired Mr. Hall to enter his appearance, and was assured that he had done so. Mr. Hall made affidavit, that after the adjournment of the court, in June, and before the expiration of the term, he called at the clerk's office, and, upon finding that no appearance had been entered for the defendant, "he ordered his appearance," "and supposed, until the beginning of this term, that it had been done."

Mr. Key, for plaintiff.

Mr. Hall, for defendant

THE COURT (THRUSTON, Circuit Judge, absent) refused to reinstate the cause, saying that an appearance could not be entered in the office; and the clerk was not bound, upon such a verbal order, to make the entry in court, at the adjourned session of the court, although it was, in law, the same term. The court has uniformly refused to reinstate such cases unless the omission to enter the appearance was by neglect of the clerk, and referred to the case of Williamson v. Bryan, at April term, 1823 [Case No. 17,751], and several other cases in this court.

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