

Case No. 5,283.

GAYLOR ET AL. V. DYER.

[5 Cranch, C. C. 461.]¹

Circuit Court, District of Columbia.

March Term, 1838.

REPLEVIN.

If the vendee of goods on a credit, upon receiving possession of them, agree in writing that they shall remain the property of the vendors until the purchase money is paid, the vendors may, before payment, maintain replevin for them as their property against the marshal, who has seized them under an execution against the vendee.

[This was an action at law by Gaylor and Spicer against Edward Dyer.] The marshal had seized an iron chest as the property of one George K. Myers, under a fieri facias against him. The plaintiffs replevied it as their property, and produced in evidence the following writing, given to them by Myers, upon his receiving from them possession of the chest: "Philadelphia, Feb. 15th, 1836. This is to certify that I have this day purchased from C. J. Gaylor & Co., one iron chest for the Union Agency of Washington City, D. C, for which I have given them three notes of one hundred dollars each, payable on the last Friday of May next ensuing, and the said chest is to remain the property of C. J. Gaylor & Co. until the said notes are paid. Geo. K. Myers, for Thos. G. Henderson, Thos. Gibbons. Witness: J. B. Pickering."

Upon the trial, THE COURT (CRANCH, Chief Judge, giving no opinion) instructed the jury, at the motion of Mr. Coxe, for the plaintiffs, that the said instrument of writing, "is evidence of a conditional sale; and that the chest therein mentioned was, under said agreement, the property of plaintiffs until the payment of the notes given by said Myers; and unless the jury shall believe, from the evidence, that said notes are paid, the plaintiffs are entitled to recover." Verdict for plaintiffs.

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