

Case No. 5,791.

GREENWELL v. BOTELOR.

{3 Cranch, C. C. 7.}¹

Circuit Court, District of Columbia.

Dec. Term, 1826.

REPLEVIN.

In replevin, the court will, on motion, order a return of the property to the defendant, a constable, who has taken it in execution upon a judgment against a third person, unless it shall appear to the court that the possession was obtained by the defendant forcibly or fraudulently, or that the possession first being in the plaintiff, was obtained by the defendant without proper authority or right derived from the plaintiff.

{This was an action at law by John Green-well against Charles W. Botelor.}

Motion for a return of the property to the defendant, who was a constable, and had taken the goods as the property of one Joseph W. Greenwell, under a fieri facias, upon a judgment against him.

THE COURT (MORSELL, Circuit Judge, contra) ordered the property to be returned to the defendant, being satisfied by evidence that the property, at the time of the defendant's taking it, belonged to the said Joseph W. Greenwell, and not to the plaintiff, and that the possession was not first in the plaintiff, and was not obtained by the defendant forcibly or fraudulently. See Act Md. 1785, e. 80, §14.

MORSELL, Circuit Judge, thought that the act of assembly of Maryland was intended only to aid the real owner of the goods, and not an officer serving an execution.

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