HALLER v. BEALL.

Case No. 5,957.

{2 Cranch, C. C. 227.}[1]

Circuit Court, District of Columbia. April Term, 1821.

REPLEVIN—PRACTICE—SURETY—MOTION TO QUASH WRIT AFTER ISSUE JOINED.

1. After issue joined in replevin, it is too late to move to quash the writ.

2. Semble, that the act of Maryland which requires two sureties in replevin bonds is directory only, and that the writ is not void, if there be only one surety.

Mr. Marbury, for defendant, after issue joined, and the jury was about to be sworn, moved the court to quash the writ of replevin, because the clerk had taken the bond with one surety only. The statute of 11 Geo. II. c. 19, § 23, requires two sureties in all cases of replevin of goods distrained for rent; and the act of Maryland of 1790, c. 53, § 12, provides that "before any clerk shall issue a writ of replevin in virtue of this act, the plaintiff or plaintiffs shall enter into bond, with, two sufficient sureties, in double the value of the property, to be replevied in the same manner as in other cases of replevin." And such has always been the practice in the courts of Maryland, as well as in this court.

THE COURT said it was now too late to move to quash the writ; and that they were inclined to think that the statute of Maryland was directory only, and that the writ was not void merely on that account. See the case of Orr v. Ingle {Case No. 10,588}.

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