

Case No. 6,876.

HUNGERFORD v. BURR.

[4 Cranch, C. C. 349.]<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1833.

REPLEVIN—PLEA OF NO RENT-ARREAR—BURDEN OF PROOF.

Upon the plea of no rent-arrear, in replevin, the whole burden of proof is on the party pleading it.

Replevin. Avowry for rent-arrear. Plea, no rent-arrear.

Mr. Wallach, for defendant [R. R. Burr], contended that the burden of proof was on the plaintiff, to show that he had paid the rent; the plea admits every thing necessary, namely, the demise, the tenancy for the time, and the amount of rent accruing for the time. 4 Starkie, Ev. 1297; Alexander v. Harris, 4 Cranch [8 U. S.] 304.

THE COURT (MORSELL, Circuit Judge, contra) was of opinion that the whole burden of proof was on the plaintiff.

MORSELL, Circuit Judge, was of opinion that the defendant must give some slight evidence of the arrears. 2 Saund. Pl. 768; 2 Esp. 669.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]