

Case No. 6,976.

HYER ET AL. V. HYATT ET AL.

[2 Cranch, C. C. 633.]<sup>1</sup>

Circuit Court, District of Columbia.

Dec. Term, 1825.

ACTION AGAINST TWO DEPENDANTS—CONFESSION OF JUDGMENT BY ONE—SETTING ASIDE FOR IRREGULARITY—CONSOLIDATION OF CASES.

In an action against two defendants, if one be taken and issue be joined, and plea waived, and judgment confessed against him after the other has been taken, and before the cause is at issue against him, the judgment may be set aside for irregularity, and the two cases consolidated, and the issues made up and set for trial.

This was a joint action against Hyatt and Wilson. Hyatt was first taken. Afterwards, upon an alias *capias*, Wilson was taken; and, while his case was standing on the imparlance-docket judgment was confessed by Hyatt, and accepted by the plaintiff, by mistake, not being aware at the time that Wilson had been taken.

Mr. Key and Mr. Dunlop, for plaintiffs, now moved that the judgment against Hyatt should be set aside for irregularity, the continuance entered up, agreeably to the act of assembly of Maryland of November, 1787 (chapter 9, § 6), and the actions consolidated and set for trial.

Mr. Jones and Mr. Lee, *contra*.

THE COURT (MORSELL, Circuit Judge, absent) granted the motion.

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