

Case No. 7,551.

JOSSE v. SHULTZ.

{1 Cranch, C. C. 135.}¹

Circuit Court, District of Columbia.

Jul. Term, 1803.

REPLEVIN—PLEADING—NO RENT-ARREAR—EVIDENCE.

If the landlord take a single bill of a third person for the amount of rent due from his tenant, and give time of payment to the third person until he fail, this is good evidence to support the plea of no rent-arrear.

Replevin. Avowry, for sixty dollars, for six months' rent due on a demise, not under seal. Shultz called on Josse for the rent, and threatened distress. Josse could not raise the money, and for the express purpose of raising the money to pay the rent he offered to sell a billiard-table to Hankart for sixty dollars. Hankart agreed to take it, but not having the money offered his note to Josse, payable at thirty days. Josse agreed, provided Shultz would take the note. Shultz agreed, and Josse made a bill of sale to Hankart, who took the table to his own house. Hankart gave a single bill to Josse, for sixty dollars, payable at thirty days, due January 4-7, 1802. On the note's becoming payable, Shultz called on Hankart, who could not pay, and notice of non-payment was given to Josse afterwards, to wit, on the 9th of January. Shultz agreed to give further time on Hankart's giving to Shultz a bill of sale of the billiard-table; this was given, and was absolute in form. Shultz was, by a verbal agreement made at the time of executing the bill of sale, to be at liberty to sell the table when he pleased, or to take it away. About the 1st of February Shultz called on Hankart, and requested him to go with him to Loring, the auctioneer, and request him to sell it at auction in two or three days. He did so. Before the sale Shultz came back and countermanded the sale, and informed Hankart he had or was about distraining for the rent. In a few days after the billiard-table was seized for rent due from Hankart. The plea was, no rent arrear, and issue. The question was whether these facts are evidence tending to support the issue on the part of the defendant.

KILTY, Chief Judge. The acceptance of the note alone is not a discharge of the rent, unless it appears that the note is paid. But if the jury should be of opinion, from the evidence, that the note was held up by Shultz, and credit given on it to Hankart, either by taking an additional security on it, or from any other cause, or that by any negligence of Shultz, Josse has lost the sum intended to be secured by the note, these facts are competent evidence to the jury to

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show that there was no rent due to Shultz, and that his avowry for such rent is not supported.

MARSHALL, Circuit Judge, absent

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