

Case No. 8,749. McDERMOTT v. YEATMAN.
[5 Pittsb. Leg. J. (O. S.) 29.]

Circuit Court, W. D. Pennsylvania.

1857.

CHATTEL DEED OF TRUST—SUBSTITUTION OF PROPERTY.

The case here referred to was McDermott v. Yeatman. This case first came up at the last term of the court. It appeared that McDermott was a trustee in a deed given on two horses, which deed had a clause providing that other horses might be substituted. Some time after the deed was made the horses mentioned therein were, by the consent of the parties interested in the deed, traded off for other horses, in accordance with the clause of substitution. The defendant, Yeatman, levied, under a magistrate's judgment, on the horses thus substituted, and McDermott replevied.

Mr. Morgan, for defendant, asked the court to instruct the jury that if the jury, from the evidence, were satisfied that the horses levied on by defendant were not the identical horses described in the deed of trust, they must find for defendant, except they should further find that there was a formal act of delivery of the horses, for the purpose of the trust, by the grantor in the deed to the trustee before the levy by Yeatman.

THE COURT gave the instruction, and the jury found for the defendant. A motion was then made for a new trial, on the ground of misdirection of the court, but the court, at the present term, has overruled the motion, and affirmed their previous decision. This decision also applies to deeds on stock in trade.