

Case No. 8,913.

MCNEIL v. CANNON.

{1 Cranch, C. C. 127.}¹

Circuit Court, District of Columbia.

June Term, 1803.

JUDGMENT—CONFESSION—NO DECLARATION.

The court will permit a defendant to come in and confess judgment for the whole damages laid in the writ, although no declaration be filed.

Motion by the defendant to appear and confess judgment.

Mr. Simms, for plaintiff, contra. Here is no declaration; and if no declaration, then no action; and if no action, then no judgment can be given. 3 Bl. Comm. 290; Rev. Code, p. 85, §§ 33, 88.

Mr. Youngs, for defendant, cited Laws U. S. March 2, 1793, § 7 (1 Stat. 335), power of the court to make rules of practice. Confession of judgment waives all error, even the want of a declaration. Judgment may be confessed to the amount of the damages in the writ. The plaintiff cannot lay more damages in his declaration than in the writ. A confession of judgment on the writ is a confession of judgment for every thing which the plaintiff can possibly demand in this action. The act of assembly requires that the cause of action shall be indorsed on the writ. The declaration is for the benefit of the defendant, to give him notice of the nature of the demand. The defendant is not bound to require it. The act of congress (1 Stat. 266), requiring the creditor to pay for the food of his debtor, imprisoned at his suit, applies only to debtors confined on execution, and not on mesne process.

Mr. Simms, in reply. The plaintiff may recover more than the damages laid in the

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writ, if the defendant does not pray over of the writ, and plead the variance.

THE COURT permitted the defendant to be brought in and confess judgment for the amount of the damages laid in the writ.

MARSHALL, Circuit Judge, absent.

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