

Case No. 8,942.

MAGEE V. CALLAN ET AL.

[4 Cranch, C. C. 251.]¹

Circuit Court, District of Columbia.

Nov. Term, 1832.

BAIL—CIVIL ACTION—JOINT AND SEPARATE—BAIL FOR ONE—AFFIDAVIT.

1. Upon attachment of the goods and effects of both and each of two joint debtors, bail must be given for both, to release the joint and separate effects.
2. Bail will not be received for one only to discharge his separate goods.
3. The court will not, upon affidavit, decide whether the effects attached are the joint or several property of the defendants.

This was an action at law by Peter Magee against James Callan and Andrew Clements.]

Attachment on warrant, under the Maryland act of 1795, c. 56, of the joint and separate effects of the defendants, for a joint debt; laid in the hands of the Chesapeake & Ohio Canal Company as garnishees.

Mr. Marbury, for Clements, one of the defendants, offered bail and an appearance for him, to discharge his separate effects.

C. Cox demanded bail for both defendants; for bail for one would discharge the joint as well as separate property attached.

THE COURT (MORSELL, Circuit Judge, contra, or at least doubting,) refused to permit one of the defendants to appear and give bail, unless bail and appearance be entered for both. The joint effects are attached to compel the appearance of both; and ought not to be given up without the appearance of both; and the defendants cannot be permitted to appear without good bail.

On the next day, Mr. Marbury offered an ex parte affidavit of Mr. J. P. Ingle, the clerk of the canal company, that the company had no joint effects of the defendants in their hands, but had the separate effects of each; and moved again to appear and give bail for Clements alone, so as to discharge his separate effects, and contended that he had a right, in this manner, to show that no joint effects were attached; and that, in an attachment against a partner for his separate debt, his share or interest in the joint effects may be attached. *Campbell v. Morris*, 3 Har & McH. 553, and *Wallace v. Patterson*, 2 Har & McH. 463.

THE COURT, however (MORSELL, Circuit Judge, absent), said that the affidavit of Mr. Ingle could not be received as sufficient evidence to the court, in this stage of the cause, that the effects in the hands of the canal company are not joint effects. The plaintiff had a right to have that question tried, either upon interrogatories, or by a jury, upon the issue of nulla bona; and this court could not, in this manner, deprive him of that right.

Bail was then given for both, and the attachment dissolved.

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