

Case No. 9,138.

MARSTELLER v. M'CLEAN.

{1 Cranch, C. C. 550.}<sup>1</sup>

Circuit Court, District of Columbia.

July Term, 1809.

PRACTICE AT LAW—RULE-DAY—PLEA OF LIMITATIONS—UNDER WHAT CONDITIONS.

The court will not permit the statute of limitations to be pleaded to an action of trespass for mesne profits after the rule-day, but upon payment of all antecedent costs and a continuance of the cause.

Trespass for mesne profits.

Mr. Taylor, counsel and attorney for defendant, made affidavit that the plea of not guilty only had been entered in the office, without his knowledge or consent; that he did not attend at the rules when the plea was put in; and that he had been instructed by his client and always intended to plead the statute of limitations. It was admitted that the defendant had only appeared to the ejectment as guardian of Kirk, but by mistake he was not named as guardian.

Mr. Taylor, now offered to file the plea of limitations.

THE COURT permitted him to file it, on payment of all antecedent costs and a continuance or postponement at the option of the plaintiff.

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