

MITCHELL v. WILSON.

[3 Cranch, C. C. 92.]¹

Circuit Court, District of Columbia. May, 1827.

REPLEVIN—NO APPEARANCE—EXCUSE—NEGLECT
OF DEFENDANT'S
COUNSEL—DISCONTINUANCE.

1. If the defendant in replevin does not appear at the return of the writ, and the plaintiff takes no step to obtain an appearance at that term, the cause is discontinued, and the clerk will not bring it forward upon the docket of the next term, and the court will not reinstate the cause at the subsequent term, although the defendant's attorney make affidavit that he was employed by the defendant to appear for him at the preceding term, and promised and intended so to do, and thought he had done so, but finds his appearance was not entered, and presumes it was because he had forgotten to give the order to the clerk; and although the defendant make oath that, before the sitting of the last court he went to the clerk's office, and informed one of the clerks that he should defend the said suit, and that Mr. Key was his attorney.
2. After the discontinuance of the replevin, the goods are no longer in the custody of the law, and the defendant is not guilty of a contempt in taking possession of them.

Replevin for a negro woman named Mahala.

The defendant [William Wilson] did not appear 524 at the last term (to which term the writ was returnable), and the plaintiff [Thomas L. Mitchell] took no step to obtain an appearance; no continuance was entered or ordered, and the clerk did not bring the cause forward upon the docket of this term, considering it as discontinued; and of that opinion was THE COURT (THRUSTON, Circuit Judge, absent). It did not appear to be the misprision of the clerk. The court had decided the point in some previous cases.

Mr. Key moved the court to reinstate the cause and to order it to be brought forward upon the docket of the present term, and made affidavit that he was

employed by the defendant to appear for him in the suit, at the last term, and promised, and intended to do so, and thought he had done so, but finds that his appearance was not entered; and presumes it arose from his forgetting to give the order to the clerk. The defendant Wilson also made affidavit that before the sitting of the last court, he went to the clerk's office and informed one of the clerks that he should defend the said suit and that Mr. Key was his attorney.

But THE COURT (THRUSTON, Circuit Judge, absent), refused to reinstate the cause.

Mr. Coxe, for plaintiff, moved for an attachment of contempt against the defendant, for having since the last term taken possession of the replevied goods.

But THE COURT refused; being of opinion that when the action of replevin was discontinued, the goods were no longer in the custody of the law.

{For subsequent proceedings in this case, see Case No. 9,672.}

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

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