

MOTT v. SMITH.

{2 Cranch, C. C. 33.}¹

Circuit Court, District of Columbia. Nov. Term, 1811.

WRIT—RETURN—COLLATERAL
ATTACK—ATTACHMENT.

In an action for a malicious attachment, the official return of the attachment is not conclusive, but may be contradicted by parol.

Case, for a malicious attachment for rent, not due, under the act of Virginia, of 29th November, 1792, p. 154, § 8; the tenant being about to remove.

Mr. Taylor, for defendant, moved the court to instruct the jury that the attachment was not laid, the return of the officer being “not executed by order of the plaintiff,” (the present defendant.)

THE COURT (CRANCH, Chief Judge, contra) decided that the return was not conclusive; but that the plaintiff (although he had produced the writ of attachment, and its return, in evidence,) might contradict the return, by parol.

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