

ONEIL v. HOGAN.

[2 Cranch, C. C. 524.]¹

Circuit Court, District of Columbia. Dec. Term, 1824.

WOMEN—SERVICE OF PROCESS—NOTICE TO APPEAR—DEFAULT.

A woman, against whom a justice of the peace has issued a warrant for a small debt, and who is notified by the officer to appear before the justice at a certain time and place named in the warrant, is bound to appear and answer; and if she does not, the justice may proceed ex-parte and render judgment against her by default.

Appeal from the judgment of John Chalmers, Esq., a justice of the peace for the county of Washington, for \$20 and costs. The warrant was issued by E. Reynolds, Esq., on the 23d of June, 1823, directed to J. W. Beck, constable, commanding him to take into his custody, the body of Mary Oneil, and her safe keep, so that he should have her before a justice of the peace in and for said county, on the 25th day of June, instant, to answer to Thady Hogan in a plea of debt. "Hereof fail not, and make your return as aforesaid," &c. The constable's return was: "C. P. for trial for 10 o'clock, A. M., 26th instant, June. J. W. Beck." The following was indorsed on the warrant: "Judgment for plaintiff, \$20 debt on interest, and fifty-eight cents costs. John Chalmers. 26 June, 1823."

Mr. Ashton, for appellant, contended that the judgment below was irregular, and that the justice had not jurisdiction, because the process was *capias*, and appointed a certain day for the hearing; and by the act of congress of the 1st of March, 1823 (3 Stat. 743) no female can be arrested for a debt. It appeared in evidence that she was not arrested, but was notified, by the officer, of the time and place when and where she was to appear and answer, to wit, at the office

of Messrs. Wharton & Chalmers, two justices of the peace, at ten o'clock, A. M. Mr. Justice Wharton, being consulted by her, advised her not to attend, saying that the justice had no right to issue a *capias* against her, and that she was not bound to appear. She did not; and when the *capias* was returned, Mr. Wharton refused to act in the case; but Mr. Justice Chalmers being satisfied that the defendant was notified, gave judgment by default.

THE COURT (MORSELL, Circuit Judge, *contra*) was of opinion, that the defendant was bound to appear upon such a notice, and that the justice might give judgment by default, and affirmed the judgment, but without costs. *Quære?*

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

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