

## RINGGOLD v. ELLIOT.

{2 Cranch, C. C. 462.}<sup>1</sup>

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

## JUDGMENT—REPLEVIN—DECLARATION.

A judgment for the defendant in replevin, without a declaration, is irregular, and will, on motion, be set aside, even at a subsequent term.

[Cited in *Reiling v. Bolier*, Case No. 11,671.]

Debt on a replevin bond, executed by the defendant [William Elliot] as surety for Charles W. Patterson, in his replevin against the present plaintiff, Tench Ringgold. The judgment was rendered upon a verdict for the then defendant Ringgold, at October term, 1823.

Mr. Redin now moved the court to set aside the judgment in the case of *Patterson v. Ringgold*. There had been a rule on the plaintiff to declare, but, without any declaration being filed, the parties went to trial at the last term, and a verdict and judgment rendered for the then defendant. In the case of *Ault v. Elliot* [Case No. 655], special bail for Peter Morte, at April term, 1823, this court set aside the judgment against the principal, for irregularity (there being no declaration), although several terms had intervened. Such is also the practice in the English courts. *Barlow v. Kaye*, 4 Term R. 688. The surety in the replevin bond cannot have a writ of error to the judgment in the replevin; and the sum is too small, if he could.

Mr. Redin also produced affidavits as to merits, and misinformation and surprise of the defendant as to the action of replevin.

THE COURT, on the 1st of June, 1824, ordered the judgment to be set aside, on payment of costs.

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

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