

## SMITH v. HAZEL.

{3 Cranch, C. C. 55.}<sup>1</sup>

Circuit Court, District of Columbia. Dec Term, 1826.

## REPLEVIN—TITLE—MITIGATION OF DAMAGES.

In an action upon a replevin bond the defendant may, in mitigation of damages, give evidence of title in himself of the property replevied. Quære?

Debt on replevin bond {by William Smith against Zachariah Hazel}. The plaintiff in replevin was non-prossed, and the defendant had judgment for a return. The writ of retorno habendo was returned “elongata.”

Mr. Wallach, for defendant Hazel, offered to give evidence, in mitigation of damages, that the property of the goods replevied was in him; and cited *McDaniel v. Fish* [Case No. 8,744], in this court, at December term, 1818, and *Wilson v. Slye* [unreported].

THE COURT, at first, thought that the evidence was not admissible, because it was matter of defence to the original suit, of which the plaintiff in that suit might have availed himself, but did not, and that the defendant could not give evidence that the plaintiff in this suit ought not to have had judgment in the replevin; but, upon reconsideration, permitted the defendant to give the evidence, reserving a right to the plaintiff to move for a new trial, on the ground of admitting improper evidence.

Verdict for the plaintiff, \$200 damages.

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