

TAVENNER v. HUNTER.

[1 Hayw. & H. 81.]¹

Circuit Court, District of Columbia. April 30, 1842.

REPLEVIN—COSTODY UNDER LEVY.

A plaintiff is not entitled to recover in an action of replevin where the goods to be replevied are in the hands of defendant as an officer of the law by virtue of an attachment.

This is an action of replevin brought by [Charles H. Tavenner] the plaintiff against [Alexander Hunter] the defendant, who was marshal of the District, for the possession of a cow and calf, the property of said plaintiff. The writ was directed to the coroner of Washington county, in the District of Columbia, commanding him to replevy said cow and calf.

Brent & Brent, for plaintiff.

Clement Cox, for defendant.

The following instruction was given by THE COURT: "If the jury believe from the 725 evidence that, at the time the writ of replevin in this cause was sued out and levied on the cow and calf therein mentioned, the same were in the custody of the defendant by virtue of the levy thereon of the attachment given in evidence, then the plaintiff is not entitled to recover under the issue joined in this cause."

The following is the verdict of the jury: "The jury find for the defendant, and assess his damages at one cent. They also find the property mentioned in the replevin to be in plaintiff, and the replevin bond given by the plaintiff to be in no wise answerable to the defendant."

Judgment on the verdict for one cent damages and costs. No return of property awarded or to be awarded.

¹ [Reported by John A. Hayward, Esq., and George C. Hazleton, Esq.]

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