WOOD v. FRANKLIN.

Case No. 17,946.

{3 Cranch, C. C. 115.}[1]

Circuit Court, District of Columbia. May Term, 1827.

DEBT ON REPLEVIN BOND—SUFFICIENCY OF PLEAS.

In an action of debt upon a replevin bond, setting forth the condition and averring special breaches, the plea of general performance is a bad plea; so is the plea of non damnificatus; so is the plea that the plaintiff had no property in the goods replevied; so is the plea of nul tiel record if no record is averred in the declaration; and so is a plea to the whole declaration, which is an answer to a part only.

Debt on a replevin bond given in the suit of Arguelles v. Wood {Case No. 520}. The declaration set forth the condition of the bond, and averred (1) that Mrs. Arguelles did not prosecute her writ with effect; (2) that she did not establish a lawful right to the goods replevied; (3) nor return the goods, although a return was awarded by the court; and (4) that she did not pay the damages and costs adjudged by the court.

The defendant, at the last term, had leave to amend his pleading, and now offered to plead (1) general performance; (2) as to so much of the declaration as averred that the plaintiff had recovered a judgment against Mrs. Arguelles, no such record; (3) non damnificatus; (4) that the goods were the property of Mrs. Arguelles, without this, that the plaintiff had any property in the same.

R. S. Coxe, objected to the receiving of these pleas, under the leave to amend, because they would be all bad upon demurrer. The pleas of general performance and non damnificatus are bad after assignment of special breaches. The plea of no such record is bad, because no record was averred in the declaration. The plea that the plaintiff had no property in the goods replevied is bad, because no such property was averred in the declaration; and the plea is wholly impertinent and immaterial.

The defendant also pleaded that the court did not order a return; but this plea being pleaded to the whole declaration, when it is only an answer to one of the breaches assigned, is also bad:

And of this opinion was THE COURT, who rejected the pleas (nem. con.).

The authorities cited were Cutler v. Southern, 1 Wms. Saund. 116; 2 Chit. Pl. 528, note a; Postmaster General v. Cochran, 2 Johns. 413; Brackenbury v. Pell, 12 East, 588.

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