

SMITH VS. HOWARD ET AL.

It is error to refuse to permit a defective replevin bond to be amended.

Appeal from Desha Circuit Court.

Hon. JOHN C. MURRAY, Circuit Judge.

GARLAND & RANDOLPH, for appellant.

Mr. Justice COMPTON delivered the opinion of the court.

The court below dismissed the plaintiff's action—which was replevin—on the ground that no penalty was inserted in the replevin bond, executed by the plaintiff to the sheriff as a prerequisite to the service of the writ; and rendered judgment

against the plaintiff for the value of the property replevied, with damages for the detention thereof. Pending the motion to dismiss, the plaintiff offered to amend by the insertion of a penalty, or the execution of a new bond; but the court refused to allow the amendment, and, in refusing, erred.

The practice of allowing amendments like this is well established in New York, under a statute similar in its provisions to our own. The propriety and convenience of such a practice are obvious. *Hanley vs. Bates*, 19 *Wend.* 632.

The judgment must be reversed, and the cause remanded, with instructions to the court below to permit the proposed amendment, and proceed with the trial of the case on its merits.
