

Case No. 1,143.

{3 McLean, 302}¹

BAYLOR ET AL. V. NEFF ET AL.

Circuit Court, D. Ohio.

Dec. Term, 1843.

EJECTMENT—PRACTICE—DEATH OF LESSOR.

1. A demise in the name of a dead man will be stricken out on motion. And so, if the lessor of the plaintiff be dead, at the commencement of the suit.
2. The death of the lessor does not abate the suit. The title is supposed to be in the plaintiff.
3. A title acquired after the date of the demise, cannot sustain the action.

Mr. Douglass, for lessors of plaintiff.

Stansbury & Olds, for defendants.

OPINION OF THE COURT. This is a motion to strike out the demise in the declaration laid in the name of David Meade, Jun., of Kentucky, on the ground that the said Meade was dead at the time the suit was commenced, and when the declaration was filed. Also upon the ground that there was no subsisting title to the premises in controversy in Walker Baylor, John W. Baylor, Elijah Pritchard and David Meade, Jun., at the time of the commencement of the suit, and at the time of the service of the declaration in ejectment. A motion was also made to strike out another demise laid in the declaration, on the ground that the lessor of the plaintiff was dead at the date of the lease.

A demise laid in the name of a dead person is unsustainable. Although the lease is now a fiction, yet the party alleged to have executed it, must be in life and capable of making such a contract. The court order the demise referred to, to be stricken out.

The death of the lessor of the plaintiff will not abate the action, nor can it be pleaded *puis darrein continuance*; because the right is supposed to be in the lessee, the plaintiff; although he cannot obtain possession of the land. *Till. Eject* 320. But, it seems that a plaintiff in ejectment cannot recover on a demise from a person who is dead, at the time of action brought *See v. Greenlee, 6 Munf. 303.*

The demise laid in the name of Baylor and others must also be stricken out. A title acquired subsequently to the demise laid cannot sustain the action.

¹ [Reported by Hon. John McLean, Circuit Justice.]