

Case No. 1,157.

BEALE v. BURCHELL.

{5 , Cranch. C. 310.}<sup>1</sup>

Circuit Court, District of Columbia.

May Term, 1837.

TAXATION—COLLECTION BY DISTRESS AND SALE.

1. The corporation of Alexandria has a right to collect taxes by distress and sale; and to raise taxes for purposes and works out of the town.
2. The court will not instruct the jury that the plaintiff has a right to recover; unless all the facts necessary to entitle the plaintiff to recover, are stated in the prayer.

THE COURT (MORSELL, Circuit Judge, contra) refused to give the following instruction to the jury, which was moved by R. J. Brent, for the plaintiff, [Thomas K. Beale:]

1. That if the jury should be of opinion from the evidence, that the defendant [Edward] Burchell forcibly opened and entered the outer door of the plaintiff's house to serve the process under which he alleges to have been acting, such entry was illegal, notwithstanding he may have authority, and the plaintiff is entitled to recover a verdict in his favor.

THE COURT (nem con.) also refused to give the following instructions, which were also moved by the plaintiff's counsel:

2. That the defendant had no authority to enter and distrain, and if he did, he is a trespasser. That the corporation has no right to distrain at all, nor to raise taxes for purposes out of the town.

3. That if the jury should be satisfied by the evidence that all, or any part of the taxes for which the defendant distrained, were assessed by the corporation for a work of internal improvement beyond the town of Alexandria, then, as to those taxes, so

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assessed, the distress was irregular, and the corporation had no authority so to distrain.

4. That if the jury believe that the defendant procured the partial opening of the outer door by craft, and immediately entered with violence, injuring the wife of the plaintiff, who was holding the door, then the plaintiff is entitled to recover.

In support of his first prayer, Mr. Brent cited 2 Saund. Pl. & Ev. 691; 2 Petersd. Abr. tit. "Arrest," p. 326; *Lee v. Gansel*, 1 Cowp. 1. In support of his second prayer, he cited *Loughborough v. Blake*, 5 Wheat. [18 U. S.] 317, 4 Pet. Cond. R. 665; 2 Kent, Comm. 275, 339; 3 Wheeler, Abr. 457; *Ellis v. Marshall*, 2 Mass. 269; *Rex v. Larwood*, Comb. 316; 2 Wheeler, Abr. 470.

Verdict for the defendant

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