

3FED.CAS.—72

Case No. 1,774.

BRADLEY ET AL. V. CONNER.

{5 Cranch, C. C. 615.}<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1839.<sup>2</sup>

TAXATION—COLLECTION—SALE FOR NONPAYMENT—LANDLORD AND  
TENANT—RECOVERY OF POSSESSION.

1. A tax-sale of part of a lot in the city of Washington in December, 1835, was held to be void, because the number of the lot, of which the premises in dispute were a part, was not mentioned nor stated in the advertisement of the sale, as required by the charter of Washington of 1820, § 10, and the act of 26th of May, 1824 [4 Stat. 75]

{See note at end of case.}

{See *Raymond v. Longworth*, Case No. 11,595; *Brettaugh v. Coal & Iron Co.*, Id. 1,846.]

2. If there be a lease for years, with right of reentry for non-payment of rent, and six months' rent be in arrear, and no sufficient personal property on the premises to countervail the rent arrear, the lessor may, under the statute of 4 Geo. II. c. 28, which is in force in the county of Washington, recover in ejectment, as if he had made a strict demand of the rent, and had entered.

3. But the lessor cannot recover while the lease is in full force; and it is in full force, unless forfeited by the right of reentry, and the proceeding to serve a declaration in ejectment according to the provisions of that statute; six months' rent being arrear and not sufficient goods on the premises to countervail the rent.

{See note at end of case.}

At law. Ejectment [by Henry Bradley and wife's lessee against Mary Ann Conner] for "a certain piece or parcel of ground in the city of Washington and county aforesaid, and being part of square numbered 906 upon the plan of the said city, beginning for the said part thirty four feet north from the south west corner of the said square, at the intersection of L street south, and 7th street east, and running thence on the line of said 7th street east, thirty five feet north; thence east thirty feet; thence south thirty five feet; thence west thirty feet to the beginning." On the trial of the cause, it appeared that William Prout, being seized in fee of the premises, on the 20th of February, 1807, demised the same to Joseph B. Parsons for ninety nine years, renewable forever, at the annual rent of \$35, clear of all taxes, etc., with leave to purchase the fee simple upon payment of \$198.87, with a clause of reentry for non-payment of rent. Parsons entered under the lease, and continued in possession, paying the rent and the taxes, until his death in 1813, leaving a widow, who remained in possession, and several children, of whom the defendant is one. The widow continued in possession until the death of Mr. Prout in 1823, having previously paid him \$100 on account of the purchase of the fee simple. Some time after his death she abandoned the possession of the premises to the defendant, who took possession thereof, claiming to hold the leasehold estate, with the knowledge and consent of the widow and

BRADLEY et al. v. CONNER.

the other children of Parsons, and paying the rent and taxes. In 1831, by a partition among the children of Mr. Prout, the premises were assigned to Mary Bradley, one of the lessors of the plaintiff, to whom the defendant thereafter paid the rent, but neglected to pay the taxes to the collector, for the years 1831, 1832, 1833 and 1834, amounting to \$44.13, and suffered the premises to be sold for that amount, and the expenses of sale by the collector, to one Addison Nailor, who obtained a certificate of purchase, which, he assigned to the defendant; but the assignment was afterwards cancelled, and after the expiration of the time for redemption, the said Nailor conveyed the premises to the defendant in fee

simple, who thence-forth claimed to hold the same as a fee simple estate in her own right, and adversely to the lessors of the plaintiff. At the time of the commencement of this suit, more than six month's rent was in arrear, and no sufficient goods were on the premises to counter vail the rent arrear. In the collector's advertisement of 1 the sale of the property for the non payment of the taxes, it is described thus: "To whom assessed. Parsons, Joseph B.; heirs of; square 906; part, and imp. Beginning thirty four feet from the south-west corner of said square, running thence north," etc., as before stated.

Mr. Bradley, for plaintiff. Brent & Brent, for defendant.

THE COURT refused to instruct the jury, at the prayer of the defendant, that the plaintiff could not recover upon the evidence given on his part; and at the prayer of the plaintiff instructed the jury, "that if they should be of opinion from the evidence aforesaid, that the heirs of the said Joseph B. Parsons, in the said advertisement named, were not at the time of the publication of the said advertisement the true and actual lawful owners of the premises advertised in their name as aforesaid; that the said square No. 906 had before that time been divided into lots and that the number of the lot, of which the said premises were a part, was not mentioned or stated in the said advertisement, then the said tax sale of the said ! premises, was void, and the aforesaid deed from the mayor of the city of Washington to the said Addison Nailor, furnishes no ground for defence in this action."

Verdict and judgment for the plaintiff.

[NOTE. Reversed by the supreme court because of plaintiffs' failure to make a proper common law demand of the rent, or to comply with the provisions of the statute of 4 Geo. II. c. 28, relative to proof that no distress had been made. The substance of the reasons for reversal are given by Mr. Justice Daniel, as follows: "It is a settled rule at the common law that, where a reentry is claimed on the ground of forfeiture for nonpayment of rent, there must be proof of a demand of the precise sum due, at a convenient time before sunset on the day when the rent is due, upon the land, in the most notorious place of it, even though there be no person on the land to pay. 1 Saund. 287, note 16, in which are cited 1 Leon. 305; Cro. Eliz. 209; Plowd. 172b; 10 Coke. 129; Co. Litt. 201b; 4 Leon. 117; 7 Term R. 117; and numerous other authorities. See, also, upon the same point, Doe v. Paul, 3 Car. & P. 613, 14 E. C. L. 483, and Roe v. Davis, 7 East, 363. In this case no proof is adduced or even pretended of a compliance with any one of the requisites just enumerated. But this suit is said not to be prosecuted upon rules of practice at the common law, but under the authority of the statute of 4 Geo. II. c. 28, which is in force in Washington county. \* \* \* In Doe v. Lewis, 1 Burrows, 019, 620, the court say that this statute prescribes a method of proceeding in ejectment in two cases, viz.: one in case of judgment against the casual ejector; the other in case of its coming to trial. In the former an affidavit must be made in the court where the suit is depending that half a year's rent was due before the declaration was served, and that no sufficient distress was to be found on the premises countervailing the arrears then due, and that the lessor had power to reenter; in the latter (that of a trial) the same things must be proved upon the trial. Therefore it is held that this statute does not extend to cases where there is a sufficient distress upon the premises, and consequently in such cases the lessor must proceed at common law as before the statute. To the same effect is the decision in Doe ex dem. Forster v. Wandlass, 7 Term R.117. It has been expressly ruled that under the statute of 4 Geo. II. there must be proof that on some day or period between the time at which the rent fell due and the

BRADLEY et al. v. CONNER.

day of the demise there was not a sufficient distress on the premises (Doe ex dem. Smelt v. Fuchau, 15 East, 286); and, further, that evidence must be adduced showing an examination of every part of the premises. \* \* \* 2 Brod. & B. 514, 6 E. C. L. 253. The proofs by the plaintiff in ejectment fall short of the requirements of the statute in the following particulars, viz.: In failing to show that any examination had been made to ascertain what amount of personal property was upon the premises at any time, or that there was any one day or period of time between the accrual of the rent for six months and the date of either demise at which there was a deficiency of personal property on the premises countervailing (to adopt the language of the courts) the arrears then due." Connor v. Bradley, 1' How. (42 U. S.) 211.]

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

<sup>2</sup> [Reversed by the supreme court in Connor v. Bradley, 1 How. (42 U. S.) 211.]