

Case No. 2,328.

CAMAC v. ALLWINE.

[1 Wash. C. C. 466.]¹

Circuit Court, D. Pennsylvania.

Oct. Term, 1806.

EJECTION OF TENANT FOR NON-PAYMENT OF RENT—REPOSSESSION—PROCEDURE.

1. After a judgment in ejectment, upon a covenant of re-entry for nonpayment of rent, and the plaintiff in ejectment having been put into possession by an habere facias possessionem, the defendant paid the amount of the debt and the costs, and obtained a rule to show cause why the possession should not be re-delivered.
2. The court refused to interfere in this summary way, but left the defendant to his remedy on the equity side of the court; particularly, as the parties did not agree as to the amount of the rent due.

The lessee of Mr. Camac obtained a judgment in ejectment, against Allwine, upon a covenant of re-entry in a lease, for nonpayment of rent, and was regularly put into possession, under an habere facias possessionem. Hallowell, some days before, paid into court, for his client, the tenant, all the arrears of rent which he said were due with the costs; and obtained a rule to show cause, why the defendant should not have the possession restored. Gibson now showed cause, and insisted, that the defendant had no remedy, but in equity. He stated, as an additional reason against an interference in this summary way; that all the rent due had not been paid, and that the defendant, after possession delivered, had entered and violently pulled down some of the buildings. Hallowell admitted that in England, the courts do not relieve after possession delivered; that they do so after judgment. Under Stat. 44, 2, if rents be paid in six months after judgment, equity may relieve. He cited 2 Strange, 900; 8 Mod. 345; 6 Bac. Abr. 34.

THE COURT (PETERS, District Judge, absent) refused to interfere in a summary way; and said that the dispute, about what is due, would alone be conclusive, even if it were otherwise proper, to relieve in this way. Rule discharged.

¹ [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]

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