COOKE v. VOSS.

Case No. 3,179.

{1 Cranch, C. C. 25.}[1]

Circuit Court, District of Columbia. July Term, 1801.

EJECTMENT—PLEADING—PROOF.

In ejectment upon re-entry for non-payment of rent by tenant in fee, the plaintiff need not show that his own title was in fee, if he shows a possession of forty-four years; nor that there were not sufficient goods on the premises, within the first thirty days after the rent became

due, whereof distress might be made; nor that he demanded the rent on the day it became due; nor on what part of the lot the rent was demanded.

At law. The jury found a special verdict, which stated, that William Thornton Alexander and those under whom he claimed, were seized and possessed of the lot of land in the declaration mentioned for the space of about forty-four years next before the 25th December, 1794, and being so seized and possessed on the said 25th December, 1794, by deed of bargain and sale of that date, conveyed the said lot to the said Stephen Cooke, the lessor of the plaintiff, who being seized and possessed thereof on the 25th of May, 1795, by his deed of that date, conveyed the same to Edward Ramsay in fee simple, he "yielding and paying for the same on the first day of January yearly £16 Virginia currency as an annual rent to the said Stephen Cooke, his heirs and assigns. This deed contained the usual clause of distress, and re-entry, if the rent should be in arrear thirty days, and sufficient goods and chattels should not be found upon the said premises, of which distress and sale might be made to satisfy the rent. By virtue of which deed the said Edward Ramsay entered into the said lot of land, and was seized and possessed thereof. That on the 1st day of January, 1798, there were in arrear £16 for the rent which became due on the 1st day of January, 1797, and £16 for the rent which became due on the 1st day of January, 1798. That on the 31st day of January, 1798, about fifteen minutes before the setting of the sum, the said Stephen Cooke went upon the said lot and demanded payment of the rent of £16 due on the 1st day of January, 1797, and also of the rent of £16 which became due on the 1st day of January, 1798; and continued on the said lot of ground until after the setting of the sun, and no person appearing to pay the said rent, and no goods and chattels being thereon whereof distress could be made to satisfy and pay the aforesaid rents, or either of them, the said Stephen Cooke re-entered on the said lot of ground, declaring that he did so in consequence of the said rent not being paid, and there being no goods and chattels on said lot whereof distress could be made, by virtue of the clause of re-entry contained in the aforesaid deed from the said Stephen Cooke to the said Edward Ramsay. The jury did not find that a demand was made of the rents aforesaid at any time before the said 31st day of January, 1798; nor that Nicholas Voss, the defendant, to whom Ramsay had coveyed the premises, had notice of the aforesaid demand of rent and re-entry previous to the 6th day of May, 1798. The jury found that in the summer of 1798, there was a kiln of bricks on the said lot of ground to the value of three hundred dollars, the property of the said Nicholas Voss, who during the said summer erected buildings on the lot to the value of six hundred dollars. They also found the lease, entry, and ouster.

Mr. Jones and E. J. Lee, for defendant.

This is a case of forfeiture, and therefore the plaintiff must entitle himself strictly. The jury, although they find that Alexander was seized, yet do not say of what estate. The re-entry of Doctor Cooke was not lawful. He could not re-enter for the rent due 1st Jan-

uary, 1797, because it does not appeal that there were not goods enough on the premises within the first thirty days after the rent became due to satisfy it. It was too late to demand the rent of 1797 in January, 1798, for the purpose of creating a forfeiture. It ought to have been demanded in January, 1797. For the rent of 1798, the reentry on the 31st of January was too soon. The rent was payable on the 1st of January. The tenant had the whole day to pay it in. On the 31st of January, the thirty days after the rent became payable had not elapsed. The thirty days ended with the 31st of January. The demand might be made on the thirtieth day after, &c., but the re-entry could not be until after the thirty days had completely expired. The demand of the rent ought to have been made on the 1st day of January, and continued until the thirty days had expired. 4 Bac. Abr. 353. For if a sufficient distress could have been made on any one of the thirty days no re-entry could be made. The jury have not found the manner of the re-entry nor the mode of demand. The verdict does not state whether there was a mansion house on the lot, nor that the demand was made on the most public part of the lot. The demand ought to be made at the front door of the house; if there was no house it ought to be made at the most notorious part of the land. 4 Bac. Abr. 358; 1 Croke, 15. The landlord must enter the house to demand the rent, if the door be open; if there be no house, then it must be demanded at the most notorious part of the land. They cited Esp. 177, that courts lean against forfeitures.

Mr. Swann, for plaintiff.

Twenty years' possession is sufficient to support an ejectment, whether the seizin be in fee or otherwise; unless the verdict had stated it to be under a lease. The verdict does not say that the re-entry was made on the 31st, but says the demand was a quarter of an hour before sunset on the 31st, and that Dr. Cooke remained on the land until after sunset, and that afterwards he re-entered. Oates v. Brydon, 3 Burrows, 1897. It is of no consequence on what part of a lot of 40 feet by 123 the demand is made. There is no part of it on which a man may not be seen from every other part. Har. Co. Litt. 202a, note 3.

Judgment for the plaintiff.

[1] {Reported by Hon. William Cranch, Chief Judge.}