

Case No. 4,725.

FENDALL v. BILLY.

[1 Cranch, C. C. 87.]<sup>1</sup>

Circuit Court, District Of Columbia.

April Term, 1802.

PLEA OF "NO RENT ARREAR"—NOTICE OF SET-OFF—EVIDENCE—BOOKS OF ORIGINAL ENTRY.

1. Upon the plea of "no rent arrear," the tenant may give evidence of work done and

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goods sold and delivered to the landlord, without notice of set-off.

2. The party's own books of account are not evidence in his favor, although in the handwriting of a deceased clerk, unless they contain the first entry of the charges.

Covenant to pay rent.

On the plea of no rent arrear, Mr. Jones, for defendant [Peter Billy], offered evidence of work done, and trees sold to the plaintiff.

E. J. Lee, for plaintiff, objected to the evidence, because there had not been notice given of a set-off.,

THE COURT allowed the evidence to go the jury, on the equity of the act of Virginia (Rev. Code, 40), and on the practice of the state of Virginia.

The plaintiff offered his ledger to prove counter charges against the defendant, the entries were in the handwriting of his clerk, who was dead.

Mr. Jones, for defendant, objected, and cited Esp. Reports.

THE COURT refused to let the ledger go in evidence to the jury, it not being proved that the entries therein were the first entries. The journal also was refused for the same reason.

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