

Case No. 5,429.

GILL v. PATTON.

[1 Cranch, C. C. 143.]¹

Circuit Court, District of Columbia.

Nov. Term, 1803.

DEFENCES TO AN ACTION OF COVENANT FOR RENT.

To an action of covenant for rent, the defendant cannot plead that his lessor had not paid the ground-rent, according to his covenant.

Covenant for rent. The plea was that the plaintiff had not paid the ground-rent to Alexander, the original landlord, whereby the defendant was prevented from occupying the premises for fear of being distrained for that rent. General demurrer.

Mr. Taylor, for plaintiff, cited Dawson v. Myer, 1 Strange, 712; Monk v. Cooper, 2 Strange, 703; 2 Ld. Raym. 1477; Belfour v. Weston, 1 Term R. 310; Howlet v. Strickland, Cowp. 56.

Mr. Swann, on the same side. This covenant is of no effect, because it could not support an action. Patton could not recover till he was damnified. There has been no eviction. 1 Esp. N. P. 323. The covenant pleaded in bar is to keep the premises exonerated

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from the payment of the rent due to Alexander.

Mr. Youngs, for defendant Whatever happens by the act of God or of the lessor, to prevent the occupation of the lessee, is a good bar to an action for the rent Enjoyment of the premises is the consideration of the rent. Eviction is not necessary. 4 Bac. Abr. 366. Patton was not obliged to stay until his property was seized for the rent due to Alexander. Patton's rent to Gill was £18, per annum; Gill's rent to Alexander was £135, per annum. Shep. Touch. 376. Fear of distress is as available as an actual distress. So that Gill has broken his covenant. The reason why one covenant cannot be set off against another, is because the damages may not be equal. But here the breaches are equal from the nature of the thing. *Johnson v. Carre*, 1 Lev. 152. The covenants are dependent The intention of the whole deed is to be taken into view. This plea prevents circuitry of action. As to 1 Term R. 310, the defendant enjoyed the land, although the house was burned. But here the defendant is wholly deprived of enjoyment

C. Lee, same side. The plea, is just and equitable. The two covenants made but one contract The defendant's covenant is a condition or limitation of the covenant of the defendant The defendant was to pay so long as he was permitted to enjoy. Shep. Touch. 114, tit "Condition."

Mr. Swann, in reply. It might be either a plea of entry and eviction, or of dependent covenants. Gill's covenant is not a condition precedent Patton's rent became due 1st September; Gill's on 4th September. Where the covenant goes to the destruction of the whole contract, it may be pleaded in bar. This plea goes to set up unliquidated damages against a covenant to pay a sum certain.

Judgment for the plaintiff on the demurrer, at June term, 1804.

{See Cases Nos. 5,427, 5,428, and 5,430.}

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