

Case No. 6,983.

HYLTON v. BROWN.

[2 Wash. C. C. 165.]¹

Circuit Court, D. Pennsylvania.

April Term, 1808.

ACTION FOR MESNE PROFITS—WHAT CAN BE RECOVERED.

1. Action for mesne profits. The plaintiff can recover mesne profits, in the nature of damages, only from the time of the ouster laid in the declaration, having proved no title prior thereto.

[Cited in *Beverly v. Burke*, 9 Ga. 440.]

2. The value of the improvements made by the defendant; ought to be first set against the mesne profits prior to the actual ouster, and after the title of the plaintiff accrued; and the balance, only, can be properly deducted from the rents and profits to which the plaintiff is entitled.

[Cited in *Thrasher v. Tyack*, 15 Wis. 258.]

Action to recover mesne profits, from the time of the ouster, laid in the declaration, to the time when possession was delivered under the habere facias possessionem, in 1806. The defendant gave evidence of improvements made on the land by the defendant prior to the time of the demise laid, and of others subsequent to that period. Proof was given by the plaintiff of the value of the rents. The defendant held the possession some years anterior to the date of the demise.

Mr. Lewis, for plaintiff, read 3 Wells, 118.

WASHINGTON, Circuit Justice (charging jury). This is a claim for mesne profits in the nature of damages, the value of which you are to estimate. Against this demand, the value of the improvements when the plaintiff received possession, is a fair offset. But the plaintiff, having proved no title, except under the recovery in ejectment can recover damages only from the time of the demise laid in the declaration of ejectment. The value of the improvements ought first to be set against the mesne profits received by the defendant, prior to that period, and after the plaintiff's title accrued; and the balance only, if any, may properly be deducted from the rents and profits to which the plaintiff was entitled subsequent to the demise.

Verdict for upwards of 2,000 dollars.

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.]