

Case No. 7,263.

JENKINS v. CALVERT.

{3 Cranch, C. C. 216.}¹

Circuit Court, District of Columbia.

Dec. Term, 1827.

LANDLORD AND TENANT—FRAUDULENT REMOVAL OF GOODS—FOLLOWING BY LANDLORD—EVIDENCE OF FRAUD—RECEIPT FOR RENT OF PREVIOUS YEAR.

1. Goods fraudulently removed by the tenant, although not secretly or clandestinely, may be followed and distrained by the landlord.
2. The tenant's removal of his goods before the expiration of the term, without the knowledge or the landlord, and without paying the rent, is a fact from which the jury may infer that the removal was fraudulent as to the landlord.
3. A receipt for the last year's rent, is evidence that the rent for the preceding years has been paid.

Replevin. Mr. Key, for plaintiff [John Jenkins], prayed the court to instruct the jury, that if, &c. "the tenant removed the goods from the premises in the day-time, openly, and with the knowledge of the neighborhood, then the defendant [Edward H. Calvert] could not follow and distrain the goods, and the plaintiff is entitled to recover."

Which instruction THE COURT refused to give (MORSELL, Circuit Judge, dissenting).

Mr. Key then made the same prayer, with this addition, "unless the defendant shall prove to the satisfaction of the jury, that the removal was fraudulently intended to prevent the landlord from distraining. And the circumstance of the landlord's not being apprised of the day of such intended removal, is not a circumstance from which the jury may infer such fraud."

Which instruction THE COURT also refused to give (MORSELL, Circuit Judge, dissenting).

Mr. Key then prayed the court to instruct the jury, that if, &c. the rent of 1825 was paid, and a receipt therefor given by the landlord, they ought to presume that the rents of the preceding years were paid also, unless the defendant should show that they were not paid.

Which instruction THE COURT gave nem. con.

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