

Case No. 7,939.

KROUSE v. ROSS.

[1 Cranch, C. C. 368.]<sup>1</sup>

Circuit Court, District of Columbia.

Dec. Term, 1806.

LANDLORD AND TENANT—FIXTURES—REMOVAL.

A tenant, who has erected a wooden shed upon posts inserted two feet into the earth, has a right to remove it during the term.

Special action on the case by a landlord against his tenant for removing a wooden shed during the term, which the defendant had erected during the term upon posts inserted into the ground to the depth of two feet, and leaning against the wall of a house situated on an adjoining lot not belonging to the plaintiff.

Mr. Jones, for defendant, contended that it was a general rule that, between landlord and tenant, things annexed by the tenant to the freehold or building, and which can be removed without prejudice to the freehold or building, may be lawfully removed by the tenant during his term, and cited the testamentary law of Maryland (1798) c. 101, subc. 7; 6 Bac. Abr. 482; Bull. N. P. 34; *Lawton v. Lawton*, 3 Atk. 14; *Fitzherbert v. Shaw*, 1 H. Bl. 258; *Penton v. Robart*, 2 East, 88; *Dean v. Allalley*, 3 Esp. 11; *Ex parte Quincy*, 1 Atk. 477.

F. S. Key, contra, contended that the rule was relaxed only in three cases: 1. Where the thing fixed was once a chattel and must be used as such. 2. Where it is for the benefit of trade. 3. Where it is the manifest intention of the parties that it should not be considered as annexed to the freehold. Thus trees may be removed by a gardener or nursery-man for the benefit of trade. The cases cited are exceptions to the general rule of law.

THE COURT (DUCKETT, Circuit Judge, absent) instructed the jury that if the defendant, during his term, brought the old wooden stable, and fixed it on the lot by posts inserted in the ground and leaning against the wall of a house on an adjoining lot, not belonging to the plaintiff, and before the expiration of the term removed the stable, without injury or damage to the soil or to the other buildings of the plaintiff, either by the erecting or continuance or the removal of the stable, it was lawful for him so to do. The plaintiff became nonsuit.

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