

## MAY ET AL. V. SHEEHY.

{4 Cranch, C. C. 135.}<sup>1</sup>

Circuit Court, District of Columbia. April Term, 1831.

LANDLORD AND TENANT—ASSIGNEE OF  
LESSEE—ACTION AGAINST—COVENANTS OF  
LEASE—WHOLE ESTATE.

1. In an action of covenant by the assignee of the lessor against the assignee of the lessee, the plaintiff may give parol evidence of an assignment by the lessee to the defendant.
2. An assignee of the lessee is not liable to the lessor upon the covenants in the lease, unless he is assignee of the whose estate of the original lessee.

This was an action of covenant, by {John E. May and others} the assignees of the lessor against {Edward Sheehy} the assignee of the lessee.

The defendant pleaded that he was not assignee of the lessee.

The plaintiffs offered parol evidence of possession by the defendant, and his payment of rent to the plaintiffs, as evidence of an assignment. 2 Phil. E. v. 88, 89; *Derisley v. Custance*, 4 Term R. 75.

Mr. Hewitt, for defendant, contends that the assignment can only be proved by deed, and the deed must be produced.

Mr. Taylor, contra. The assignment from the lessee to the defendant is a matter not within the knowledge of the plaintiffs. They are no party to it. As to them, it is *res inter alios acta*. They have no power, at common law, to call upon the defendant to produce the deed of assignment, if there was one.

THE COURT (*nem con.*) permitted the parol evidence to be given; but instructed the jury that the plaintiffs were not entitled to recover in this action unless they should be satisfied that the defendant was assignee of the whole estate of the original lessee.

Verdict for defendant.

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

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