Case No. 10,834.

PATTON ET AL. V. COOPER.

{Brunner, Col. Cas. 193;[1] Cooke, 133.}

Circuit Court, D. Tennessee. 1812.

RECOVERY IN ACTION OF EJECTMENT—DEED—EFFECT OF REGISTRATION.

1. In an action of ejectment plaintiff may recover less than he declares for, but he cannot recover more than prayed for.
2. The registration of a deed vests the legal estate in the grantee, as of the date of the deed, and relates back to that time.

The plaintiffs produced in evidence in support of their title a deed from John G. Blount and Thomas Blount to David Allison, which had been proved and registered as to John G. Blount, but not proved as to Thomas Blount. The proof and registration were after the commencement of the suit and the demises laid in the declaration.

It was objected by Dickinson & Cooke, for defendant that this deed could not be viewed as the deed of both the grantors when only proved as to one; and that therefore as the plaintiffs had brought suit for the whole of the land they ought not to recover; as, if they did recover, it could only be an undivided moiety.

It was also objected that the suit had been brought and the demises laid in the declaration long previous to the registration of the deed; and that inasmuch as no interest passed to the grantee until, registration, the plaintiffs had commenced their suit before they had any legal title.

Mr. Whiteside, for plaintiffs.

BY THE COURT. It is true this deed can only be read as the deed of John G. Blount, and that in consequence thereof the whole cannot be recovered in this action; but it is equally true that an undivided moiety may. If the plaintiff declares in ejectment for

the whole he may recover a part; or if he declares for a part he may recover less. The rule is that he may recover less though he cannot recover more than he declares for 2 Hayw. (N. C.) 150, 222; 1 Burrows, 326; Runn. Ej. 104; 1 Johns. Cas. 101.

But it is further objected that the deed has been registered since the demises laid in the declaration. To this we will reply, that although a deed does not pass the estate to the grantee until registration, yet when it is registered, it relates back to the time of the execution; and the grantee in such a case is considered as having been seized from the beginning. 2 Hayw. (N. C.) 287, 288; 1 Bac. Abr. 277, 278; Cro. Car. 217; Cro. Jac. 52; 2 Com. Dig: 65, 66. The case in 2 Show. 207, is perhaps founded upon the particular bankrupt laws of England; but be that as it may, it is a single case, and is 1338 not supported by any other decision. It is directly in opposition to the whole current of principles upon this subject. We are therefore of the opinion that the deed may be read as the deed of one of the grantors, and that the plaintiff can recover an undivided moiety.

{For other actions by same plaintiffs against different defendants, see Cases Nos. 10,831–10,833, 10,835, and 10,838.}

[1] {Reported by Albert Brunner, Esq., and here reprinted by permission.}