

26FED.CAS.—40

Case No. 15,485.

UNITED STATES v. JOHNSON.

{2 Cranch, C. C. 21.}¹

Circuit Court, District of Columbia.

June Term, 1811.

BURGLARY—ENTRY OF STOREHOUSE.

A storehouse, not within the curtilage, but in which the clerk of the owner usually sleeps, is, in law, the mansion-house of the owner; and burglary may be committed therein.

This was an indictment for a burglary by breaking and entering the dwelling-house of Mr. Cassin. The building which the prisoner entered was a storehouse on a lot contiguous to the house in which Mr. Cassin lived; but not in the curtilage; his storekeeper, however, usually slept in it at night.

Morsell & Van Home, for the prisoner, contended that this was not a dwelling-house; but if it was, it was the dwelling-house of the storekeeper, and should have been so charged in the indictment.

THE COURT (CRANCH, Chief Judge, absent), said that this was a dwelling-house, where a person sleeps at night, and is liable to be put in fear. The storekeeper was the servant or agent of Mr. Cassin. A person may have two dwelling-houses, in either of which burglary may be committed. 1 Hale, P. C. 556; Crown Cir. Comp. 207, 480. The sleeping in a house at night fixes its character, whether or not it be a dwelling-house; for a house which is only occupied and resided in during the day, is not considered a dwelling-house. 1 Hawk. P. C. c. 38, §§ 1020. On the contrary, if a person takes an inn of court, or a room for the purpose of lodging, burglary may be committed therein. Verdict, "Not guilty."

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