

this subject. The opinion, therefore, of the court below on this bill of exceptions is erroneous.

On the *second* bill of exceptions, the court are of opinion, that the opinion of the court below is erroneous, this court being of opinion, that it appears by the proof stated in the case that the lessors of the plaintiff below had no title at the time of the demise laid in the declaration of ejectment, but that their title, if they had any, accrued subsequently to that time.

An ejectment is an action to try the right of possession to the land in controversy. The lease, entry and ouster, laid in the declaration, are fictitious, and substituted in the place of a real lease, actual entry and ouster. The time of the demise is matter of substance, and not form, and the plaintiff must show a title in his lessors anterior to the time of the demise, because without such title they could not make a real lease.

In an action for the mesne profits, the plaintiff can recover profits from the time of the demise, without showing title, the defendant being concluded by it; but if he claims profits prior to the time of the demise, the defendant may controvert his title.

The court will allow the plaintiff to amend his declaration at any time before verdict, by changing the time of the demise, for the attainment of justice, on such terms as will impose no hardships on the defendant.

That clause of the act of last session, (*Nov. 1809, ch. 153, s. 2.*) which has been referred to, does not extend to matters of substance, but to form.

It appearing on the record that the lessors of the plaintiff had no title to the land in question, at the time of the demise, the judgment must be reversed.

On the *third* bill of exceptions, the court are of opinion, that according to the whole proof stated in the case, the plaintiff has no right to recover, there being no title deduced from the patentee of *Lun's Lot* to *John Eager Howard*, and there being no possession proved in *Aquila Brown*, and those under whom he claims, sufficient to entitle the plaintiff to recover in ejectment without showing title.

JUDGMENT REVERSED.

1810.

Wood  
vs  
Grundy, &c.