

*Patterson*, contra, cited *Gray v. Bompas*, 11 C. B. N. S. 520; *Doe Thomas v. Field*, 2 Dowl. 542; *Turner v. Barnes*, 2 B. & S. 435; *Marquis of Camdeu v. Butterbury*, 5 C. B. N. S. 808.

GWYNNE, J., delivered the judgment of the court.

The avowry and cognizance here demurred to has been pleaded in pursuance of the judgment in this case, reported in 19 U. C. C. P. 196.

The mortgage is pleaded as having been executed in pursuance of the Act respecting short forms of mortgages (27 & 28 Vic. ch. 31), and it contains the clauses in the first schedule of the act, numbered respectively, 2, 4, 5, 6, 7, 8, 14, 15 and 17. The avowry avers that, in pursuance of the proviso in the mortgage, the mortgagor was possessed of the premises, and occupied and enjoyed the same as tenant of the mortgagee, and so continued to occupy and enjoy the same until and at and after the distress levied; that at the time limited in the mortgage for payment of principal and interest the mortgagor made default, but that the mortgagee did not enter by reason of such default, but permitted the said mortgagor to have, hold, occupy, possess and enjoy the same as his tenant, as aforesaid; and the mortgagee avows, and the other defendants acknowledge, the taking of the goods and chattels on the premises mortgaged, as a distress for arrears of interest on the principal sum secured by the mortgage, for two years next ensuing the date of the mortgage.

The occupation of the mortgagor, under the terms and conditions of this mortgage, constituted, in my opinion, the relation of landlord and tenant between the mortgagor and mortgagee at a fixed rent, such rent being the interest named in the mortgage as the interest accruing on the principal sum secured. That such was the intention of the parties appears to me to be the true construction to put upon the instrument as pleaded in the avowry. So long, then, as such occupation continued in accordance with the will of the mortgagee, he has, in my opinion, the right to distrain for the interest secured by the mortgage, "by way of rent reserved," and incident to that right is the right of distraining upon the property of third persons on the lands comprised in the mortgage. The authorities, which have led me to this conclusion, are collected in my former judgment in this case, to which I add *Hitchman v. Walton* (4 M. & W., p. 413). Assuming the tenancy, created by the mortgage, to have been for a determinate time, until the day named for payment of principal and interest, the continuance of the occupation of the mortgagor, by the permission of the mortgagee, constituted the mortgagor a tenant thereafter at will of the mortgagee, and such tenancy must be held to be on the terms of distress contained in the mortgage. It seems to me to be the interest of the mortgagor, as well as of the mortgagee, that this should be the construction to be put upon the instrument. In that case the statute 8th Anne, ch. 14, does not apply: *Beaven v. Delahay*, (1 H. Bl. 5), and *Knight v. Benett* (3 Bing. 361).

I am of opinion, therefore, that the demurrer to the avowry should be overruled.

*Judgment for defendant on demurrer.*

## ENGLISH REPORTS.

COOPER v. GORDON.

*Dissenters—Ministers—Dismissal of—Majority of Congregation—Rights of.*

In the absence of special usage, rules, or agreement, a Dissenting minister, appointed by his congregation, is not entitled to hold office for life or good behaviour against the will of the majority of such congregation.

[17 W. R. 908.]

The object of this suit was to obtain a declaration that the defendant, the Reverend Samuel Clarke Gordon, a Dissenting minister, had, by a resolution which had been passed by a majority of his congregation, being duly dismissed from his office, and to restrain him from continuing to act as the minister of such congregation.

Previously to the year 1707, a congregation of Protestant Dissenters, known by the name of Independents or Congregationalists, were in the practice of assembling for religious worship in a building called the Presbyterian Meeting House, in Broad-street, Reading. In the year 1707 this building became vested in certain members of the congregation, twenty in number, in trust for such congregation "during such time as the assembling of Protestant Dissenters for religious worship should be permitted at the said meeting-house."

About the year 1808, three messuages and other premises adjoining the meeting-house were purchased, the meeting house was pulled down, and a new meeting-house and vestry-room erected on the site of the old meeting-house and part of the newly-acquired premises, the remainder of which, with the exception of a house and garden, were used for the meeting-house, yard, and burial ground, and as a passage to the vestry-room. All these premises were vested in trustees upon the following trusts, as to the meeting-house, vestry-room, yard, burial-ground, and garden:—Upon trust for the use and benefit of the said society or congregation of Protestant Dissenters from the Church of England then belonging thereto, commonly called Independents, and which should from time to time resort to and frequent the said meeting-house and premises, and become members of the said society for the exercise of divine worship therein, and peaceably and quietly to permit and suffer them, and every one of them, to exercise their religion therein, and freely to enter and bury their dead therein, or in some part or parts thereof, under and subject to such orders, rules, regulations, and restrictions as had been and were or should be made and observed in the said society or other religious institutions of the like nature." And as to the house, which was the residue of the premises, "upon trust to permit and suffer the minister or pastor, for the time being, of the said society or congregation of Protestant Dissenters, called Independents, who did or should from time to time meet in the said meeting-house for the exercise of divine worship as aforesaid, to have the use and occupation of the same, or otherwise to receive and pay the rents and profits thereof to such minister or pastor, as the same should become due and payable, for so long a time as such minister or pastor should from time to time be and continue minister or pastor of the said society or congregation, and officiate