

Eng. Rep.]

BRAMBLE V. MOSS—BAINES V. LUMLEY.

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of the affidavit is evidence that such an affidavit was made, but there is no enactment which renders either the copy or the original evidence that the matters contained in it are true.

BYLES, J.—I coincide in all my Lord has said. It has been the universal practice to prove that a majority of creditors have assented, and there is an easy and inexpensive way of doing so by calling the debtor himself.

KEATING, J.—The affidavit is required to obtain registration, and the registrar is bound to register the deed on its production. He cannot inquire into its truth. None of the sections make the statements contained in the affidavit evidence. The copy is evidence that the affidavit is made and delivered to the registrar, but of nothing else.

SMITH, J.—The 192d section makes these deeds binding, provided certain conditions are fulfilled. The first of these is that a majority in number representing three-fourths in value of the creditors of the debtor whose debts amount to £10 and upwards shall assent to the deed. The fourth and fifth conditions require that the deed shall be registered and an affidavit made. The certificate and affidavit are evidence that these latter conditions have been fulfilled; they are no evidence that the first has been complied with.

Rule refused.

BAINES V. LUMLEY.

Statute of Limitations—3 & 4 Will. IV., c. 27, ss. 3, 8.

A. let land to B. by parol from year to year, reserving rent payable in March and November. The last payment of rent was in 1846; rent again became due in November, but was not paid. A. died in December of the same year, and B. retained possession. In ejectment by A.'s heir,

Held that the time under the Statute of Limitations ran from the last payment of rent, and not from the death of A., as the case fell within the 8th, and not within the 3rd section.

Semble, that if the 3rd section applied, A. was not shown to have continued in receipt of the rent till the time of her death, so as to bring the case within it.

[16 W. R., 674; April 18, 1868.]

This was an action of ejectment tried before Lush, J., at the last Durham assizes, when the verdict was entered for the defendant, with leave reserved to the plaintiffs to move to enter it for them.

The action was brought by the plaintiff, claiming through a Mrs. Kitchen, to recover land in the county of Durham which formerly belonged to her. Mrs. Kitchen lived in London, and the land in question was occupied under her by a person named Gibson, through whom the defendant claimed, on a parol tenancy from year to year, the rent becoming payable in the May and November of each year. The last payment of such rent to her that the plaintiff could prove was in March, 1864; another half-year's rent became payable to her on the 13th of November, 1846, but was never paid. Mrs. Kitchen died on the 22nd of December, 1846, and this action was commenced in October 1866. As more than twenty years have elapsed between the last payment of rent and the date of the writ, the verdict was entered for the defendant.

Stephen Temple, Q. C., now moved, pursuant to the leave reserved, to enter the verdict for the

plaintiff, and contended that the Statute of Limitations (3 & 4 Will. IV. c. 27 s. 2) only ran from the death of Mrs. Kitchen, and that, therefore, the action was not barred. The case fell within the 3rd section of the Act, which provides as to the right to bring an action "to recover any land or rent . . . that when the person claiming such land or rent shall claim the estate or interest of some deceased person, who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right be deemed to have first accrued at the time of such death." Mrs. Kitchen continued in receipt of the rent till her death within the meaning of the section, for it is not necessary that the rent should be paid with absolute punctuality.

BOVILL, C.J.—I am of opinion there should be no rule. The case is governed by sections 7 to 9 of the Act relating to tenants, and the section which more particularly refers to the case is the 8th, which is as follows:—"When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen)." In the early part of that session the word "rent" applies to a rent charge, in the latter part to rent reserved. The last time rent was paid here was in March, 1846. Mr. Temple contended that the case fell within the third section, and not within the 8th; but that is disposed of by the case of *Doe v. Angell*, 9 Q. B. 328. Lord Denman there says, p. 355, that the word "rent, in the 2nd section," is used in the sense of rent charge only, as was stated by Tindal, C.J., in the judgment in *Paget v. Foley*, 2 Bing. N.C. 679, 688, and as is expressly held by the Court of Exchequer in the case of *Grant v. Ellis*, 9 M. & W. 113. The word is used in the same sense in the 3rd, 4th, and 5th sections. In the 7th section it is used in the same sense . . . In the 8th section the same sense must be given to it in the earlier part of the section; but at the close of it the word is manifestly used in the other sense—viz., that of rent reserved." That therefore being the true construction of the Act, the case is governed by the 8th section, and not by the 3rd. But even if it were otherwise the case is not brought within the 3rd section, because it is necessary to show that the deceased continued in receipt of the rent till her death; and here the rent became due on the 13th of November, and I take it as a fact that that rent was never received.

BYLES, J., concurred.

MONTAGU SMITH, J.—What "last" happened here was the receipt of rent in March, 1846, more than twenty years before action.

KEATING, J.—I did not hear all the case; but so far as I did hear it I quite agree.