CASE 20. SEYMAN *against* GRESHAM.

Hilary Term, 44 Eliz. Roll 650.

A sheriff cannot break open doors to execute a *ca. sa.* or *fi. fa.* but he may to execute a *capias utlagatum*, and perhaps an *extendi facias;* and where he cannot break open, the party may justify shutting his doors against him, in defence of his possession and for the protection of goods lawfully in his custody. *Ante*, 759.

4 Leon. 4. 5 Co. 92. Moor, 668. Yelv. 28. March. 4. Cro. Car. 537. 1 Jones, 430. 1 Bulst. 46. Hob. 263. 2 Shower, 87. Cro. Jac. 555. 1 Roll. Rep. 132. Palmer, 52. 6 Mod. 173. Foster, C. L. ch. 8. s. 20. and see the case of *Lee* v. *Gansel*, Cowper, 1. to 8. 2 Hawk. 138. 2 Bac. Abr. 367. 4 Bac. Abr. 454.

Action upon the case; supposing, that one G. Berisford was indebted unto him by a statute staple in 200l. and that he sued execution, and the sheriffs of London, by force of that writ, impanelled a jury, to enquire what goods, &c. and that there were divers goods of the said G. Berisford in such a house in London; and that the sheriff came with the said jury, to have a view of them, and to appraise and seize them for this debt; and that the defendant, *præmissorum non ignarus*, shut the door, and disturbed him to make execution, &c. The defendant entitles himself to the possession of the house, by reason of a joint lease made unto him and one G. Berisford, and that he had it by survivorship; and that he shut the door for the salvation of his possession. The plaintiff replies, that the said G. Berisford mentioned in the bar, and he who was obliged in the statute, were all one person. And it was thereupon demurred.

The principal question was, whether this shutting of the door was a disturbance of the execution? and, whether the plaintiff might thereupon maintain this action?

And first, it was agreed by the whole Court, that upon a *capias ad satisfaciendum* the sheriff may not break open any man's house to make execution, but he is punishable for doing it: but upon a *capias utlagatum* he may well enter any man's house to apprehend him: for no place ought to protect him against the **[909]** Queen; and he, being out of the law, shall not have the protection of the law. And this case, Tanfield said, was resolved by all the Justices of the Common Pleas, in *Sir Thomas Keimie's case.* But whether he might upon a *fieri facias*, or *extendi facias*, enter the house of any to take execution of the goods, and to break the party's house to make execution, they doubted. *Vide* 18 Edw. 2. "Execution," 250. 13 Edw. 4. pl. 9. 18 Edw. 4. pl. 4. But if the door be open, there is no doubt but that the sheriff might enter to do execution; for the law gives him authority thereto, as an executor may enter to take goods left there by the testator. And for this cause Gawdy and Popham held, that the action here well lay; because by the shutting of the door the party was disturbed to have his execution.

But Fenner and Yelverton *è contra;* for the goods being in the defendant's house, who is a stranger to the execution, he is not bound to take conusance of the sheriff's intent, in coming to make execution; and his shutting the door was lawful. And although there were loss to the plaintiff, yet it is *damnum sine injuriâ.* And it appears not by what means that the goods of the conusors, which are in the defendant's house, came thither; and if they were taken by the defendant as a trespasser, the party whose goods they are, or the sheriff upon execution, may come within the house, if the door be open, to seize them, because the defendant had them by unlawful means. But if the defendant had them by lawful means, viz. by bailment or otherwise, neither the party himself nor the sheriff can come within the house to seize them; and therefore the shutting of the door is no cause of action for the plaintiff. And therefore the action lieth not, &c. *Et adjournatur.*

Note, that afterward, Mich. term, 2 Jacobi, this cause was argued again; and that Williams agreed with the opinion of Yelverton and Fenner *in omnibus;* and that the sheriff might not break any man's house to take execution, unless in the Queen's case, or for a contempt, &c. Wherefore, according to their opinions, it was adjudged for the defendant. 5 Co. 91.