

N. J. COURT OF ERRORS AND APPEALS.

ELISHA RUCKMAN,
Plaintiff in Error,

vs :

JACOB D. C. OUTWATER,
Defendant in Error:

} *Writ of Error to the
Bergen Court.*

R. R. PAULISON, *Attorney for the Pl'ff in Error.*

M. M. KNAPP, *Attorney for Defendant in Error.*

TRENTON, N. J.

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N. J. COURT OF ERRORS AND APPEALS

Part of Error to the
Superior Court

MELISSA ROOPEMAN,
Plaintiff in Error,
vs.
JACOB D. C. OUTWATER,
Defendant in Error.

E. R. PAULSON, Attorney for the Pl'tf in Error.
M. M. KNAPP, Attorney for Defendant in Error.

TRUSTEES, N. J.

NEW JERSEY COURT OF ERRORS AND APPEALS
IN THE LAST RESORT.

ELISHA RUCKMAN, <i>Plaintiff in error,</i> vs : JACOB D. C. OUTWATER, <i>Defendant in Error.</i>	}	<i>Writ of Error to the Bergen Circuit.</i>
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R. R. PAULISON, *Attorney for the Plaintiff in Error.*

M. M. KNAPP, *Attorney for the Defendant in Error.*

This was an action of assumpsit, brought by Jacob D. C. Outwater against Elisha Ruckman, in the Circuit Court of the county of Bergen.

The declaration contained a count for goods, wares, and merchandise, sold and delivered to the defendant by the plaintiff; the common money counts; interest account and account stated.

To this declaration the defendant pleaded the general issue, and plea of payment, with notice of set off.

The cause was tried as in the following bill of exceptions stated, and verdict was rendered for the plaintiff.

The following bill of exceptions was allowed and sealed :

BERGEN CIRCUIT COURT.

JACOB D. C. OUTWATER,	}	<i>In assumpsit.</i>
vs.		
ELISHA RUCKMAN.		

Be it remembered that at a term of the Circuit Court, holden at New Barbadoes, in and for the county of Bergen, on the first Tuesday of September, eighteen hundred and fifty-eight, before Elias B. D. Ogden, one of the Justices of

said Court, come the above parties, by their respective attorneys, and the jury summoned to try the cause being duly empannelled and sworn, and the plaintiff having given evidence to sustain the issue joined on his part, and having proved the account declared upon on his part.

The defendant to sustain the issue on his part, under the plea of payment and notice of set-off filed in the cause, and to sustain a charge of seventy-five loads of manure, at one dollar and a half per load, one hundred and twelve dollars and a half, part of his account claimed to be set off, against the claim of the plaintiff, offered and gave in evidence, a deed from the plaintiff to him, dated August , A. D. 1856, by which the plaintiff conveyed to him, the defendant, a farm in the township of Hackensack, in the county of Bergen, not containing any reservation or exception of manure or fixtures.

And the defendant further proved and gave in evidence that the plaintiff, by his permission, remained in possession of the farm until April 1, 1857, and that while in possession the plaintiff took and carted away thirty or forty loads of manure from the barnyard, worth seventy-five cents per load, which manure was lying in the barnyard, spread over the barnyard, and not in heaps, at the time when said farm was so sold and conveyed by the plaintiff to the defendant.

When the cause was submitted to the jury, the defendant called upon the court to charge the jury, that manure lying in the barnyard, spread over the yard, and not on heaps at the time of the sale and conveyance of the farm, if not reserved by the vendor, passed with and as part of the farm by the deed to the defendant.

And the court declined so to charge the jury, but charged relative thereto as follows:

"Fixtures cannot be removed (unless in certain excepted cases) by a seller or by a tenant, because they are connected with the realty, and their removal from it would more or less injure the property to which they are attached. This rule may support Mr. Ruckman in his claim for compensation for the trees removed and for the bee-house and the

hot-beds, because if they were fastened in the ground they could not be removed without breaking the soil in which parts of them were imbedded. But manure is of a different character, and the right of a purchaser to it must be tested by some other rule.

"The question then presents itself upon what rational ground can the purchaser of a farm for a specified price, which usually is graduated by the acres and the improvements, claim to be the owner of the manure lying in the barnyard, and theretofore made upon the premises?

"It can only be upon the principle that good husbandry should be encouraged, as promotive of the general welfare of a community.

"But does that principle cover the defendant's case? He is not a landlord and Outwater his tenant, and therefore the rights and usages controlling and applicable to that relation do not apply. If a landlord lets his farm to a large dealer in cattle, his rent may in some degree be fixed by a knowledge of the fact that the intended use of his property must of necessity create and produce a large quantity of manure which will fructify his farm; and it may be reasonable that the tenant, at the expiration of his term, should leave the manure upon the place, either for or without compensation, as the parties may stipulate, or as may be in harmony with the usages established in that community. I think that it is the practice of administrators to inventory and sell, as separate from the realty and, as part of personalty, the barnyard manure found at the stables of their intestate.

"But I am not prepared to say that a purchaser of a farm without a stipulation to that effect can, upon the principle alluded to, claim as of right the manure that had accumulated in the barnyard.

"It is true that after a vendor delivers possession of his farm to the purchaser, he cannot, without consent, come upon the place to remove his manure. By so doing he would become a trespasser. But that difficulty has not arisen here. After the exchange of deeds, Mr. Outwater remained in pos-

session of the place with the consent and at the request of Mr. Ruckman. If, therefore, he removed the manure during the continuance of his possession, he committed no technical trespass in transporting his property to another place of deposit."

To which refusal to charge and to the charge so given, the defendant, by his counsel excepted, and prays that this his bill of exceptions be sealed, and it is sealed accordingly.

(Signed) E. B. DAYTON OGDEN, *Judge*. [SEAL.]

NEW JERSEY COURT OF ERRORS AND APPEALS
IN THE LAST RESORT IN ALL CAUSES.

ELISHA RUCKMAN,	}	<i>Assignment of Errors.</i>
<i>Plaintiff in Error,</i>		
vs:		
JACOB D. C. OUTWATER,		
<i>Defendant in Error.</i>		

Afterwards, to wit, on the third Tuesday of June, in the year of our Lord, one thousand eight hundred and fifty-nine, before the Judges of the Court of Errors and Appeals, in the last resort in all causes, at Trenton, comes the said Elisha Ruckman, by Richard R. Paulison, his attorney, and says, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, to wit:

That on the trial of the said cause, when the cause was submitted to the jury, the defendant, by his counsel, called upon the court to charge the jury, that, as between the vendor and purchaser of a farm, by a deed of conveyance, not containing any reservation or exception of manure or fixtures; manure lying in the barn yard on the farm, spread over the yard, and not on heaps at the time of the sale and conveyance of the farm, and not reserved by the vendor, passed with and as part of the farm by the deed, to

the purchaser. And the judge declined so to charge, but on the contrary, charged as in the bill of exceptions stated. Therefore in that there is manifest error.

And the said Elisha Ruckman prays that the judgment aforesaid, for the error aforesaid, and for other errors in the said record and proceedings being, may be reversed, set aside, and altogether holden for naught, and that he may be restored to all things which he hath lost by the occasion of the said judgment.

R. R. PAULISON, *Attorney*,
and A. O. ZABRISKIE,
of Counsel with the Plaintiff in Error.

