

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

OCTOBER TERM, 1874.

EDWARD S. TORREY AND
JOSEPH TORREY,

vs.

WILLIAM H. BURNETT AND
WILLIAM S. LEONARD.

In Case.

10

Before Hon. J. D. BEDLE, Justice, with a Jury.

J. F. RANDOLPH, Esq., appearing for *plaintiffs*.

W. CHAPMAN and J. DIXON, Esqs., appearing for *defendants*.

MR. RANDOLPH opens the case and offers evidence as follows:

(Plaintiffs offer in evidence, and reads pages 16, 17, 18, and 19 of the printed book.)

(Plaintiffs also offer in evidence, and reads the printed testimony from the book of Edward S. Torrey, page 2.) 20

(Plaintiffs also offer in evidence, and reads the printed testimony of Thadeus H. Walsh, stopping on page 5, at line 35, commences at, "I paid \$280" down to the cross-examination, and then offers in evidence the cross-examination.)

(Plaintiffs also offer the deed and the diagram in evidence and rests.)

Mr. Chapman, for defence, reads the testimony from printed book of Isaac H. Tice, Leonard Seeley, William H. Burnett, William S. Leonard and Isaac H. Tice, recalled.

Adjourned for the day.

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TUESDAY, October 3.

(Defendants' counsel reads from printed book, testimony of William H. Burnett, recalled, Isaac H. Tice, recalled.)

ISAAC H. TICE, for defence, sworn, and testified as follows :

Direct examination :

I was the tenant of those premises, and put in that boiler.

Q Did you ever give up your claim to the boiler in any way to Mr. Torrey ?

A No, sir.

10 Q After you quit the premises, had you any conversation with the Messrs. Torrey, either of them, in reference to a sale of it ?

A Yes, with Joseph Torrey ; I was informed by Joseph Torrey that the New York Laminated Pipe Company was about buying the building and premises ; I told him then if they bought the premises, to sell them the boiler ; I told him how the boiler was situated, and I told him the arrangement I had made with Burnett ; I had told Burnett there was an arrangement about being made to sell the premises, and
20 he was waiting on that arrangement, that the Pipe Company was about buying the premises, and if they bought the premises, they would sell the boiler with it, and then he would get paid for his boiler.

Q Burnett and Leonard would ?

A Yes.

Q What did Mr. Torrey say to that ?

A He said, if they bought the premises, he would sell the boiler with them.

Q Was this after you left the premises ?

30 A Yes.

Q About how long after ?

A Only a little while after.

Q After the Laminated Pipe Company had moved in ?

A Yes.

Q Did Mr. Torrey make any claim to the ownership of the boiler at that time ?

A No, sir.

Q Did you see what was done in taking the boiler away subsequently, as to what walls were disturbed ?

A I couldn't say about that; when I saw the premises there was a boiler in the place of the one that was taken away; it was all bricked up.

Q Those two side walls that were built on the north and west of the boiler?

A There was three walls built; there was only one wall of the building and then there was three extra walls built.

Q Which are the walls that you built for the boiler?
[handing witness diagram.]

A (Pointing on diagram.) This (pointing) and that 10
(pointing,) and then there was a wall built right here (pointing.) (Witness points out the chimney where the old boiler stood.) This was one wall that was built, and this another one, and then there was a wall built on the outside of the chimney to separate the boiler plate on the top, which covered the boiler there.

Q Those three walls which you built, were they for any other purpose than to protect the boiler?

A That is all; they could not use the boiler without these walls, and the walls were no good without the boiler; 20
I made that opening to put the boiler there; there used to be a window in this end here (pointing); I took the window out and then arched it over and then filled it in; I decreased the size of the opening for the window, and when we put the boiler in, this here wall was all taken down, right to the bottom, except on the sides, because when we took the window out, the top part came down, and we built that all in; and then there was one of these mitred plates was built right in this wall (pointing); it had to be done that way on purpose to save one brick wall, you see, because 30
this mitred plate came on top which forms the flue for the boiler, because the smoke came all around the boiler on the outside.

Q Did the Torreys know what change you were making at that time?

A I suppose they did.

Q (By the Court.) Do you know whether they did or not?

A I could not say positive; I suppose they did, because I informed them that I was going to put the boiler in. 40

Q Did you have any conversation about how you were going to arrange the connection with the boiler?

A Certainly.

Q What did they say about it?

A They had no objections.

Q And those plates of corrugated iron; were they connections of the boiler?

A Those plates were cast iron, and I suppose were connected with the boiler; we could not use the boiler without
10 those plates; the mitred plates came with the boiler.

Cross-examination:

Q You say you never abandoned the boiler to Mr. Torrey; you left it on the place, and went off without saying anything about it?

A No, sir; I didn't go off and leave it, without saying anything about it; I said something about it to Joseph Torrey.

Q Before you went away?

A It was about along the same time.

20 Q Is this that conversation you are speaking of?

A Yes.

Q That was after you had vacated the premises?

A The Laminated Pipe Company was in there, and I was in there at the same time; they gave me permission to stay there; they didn't want to use the upper part of the building, and they told me I could stay there till they wanted it.

Q Was it before you left the building that you had this conversation with Joseph Torrey?

30 A It was along there somewhere; I can't recollect, positive.

Q You left the building in February, 1871?

A I didn't leave the building until April.

Q You left New Jersey September 1st, 1871?

A My family, I believe, moved on the 3d of September; I was here one week after that—somewhere about the 10th; it was the second Saturday of September that I left Jersey City, I can't say the date; my family moved on the third and I didn't leave till the week after.

Q You say that in this conversation with Joseph Torrey you told him that you had an arrangement with Burnett & Leonard that they should be paid out of the proceeds of the boiler; you asked him to sell the boiler for you, and he agreed to do it?

A He gave me to understand to that effect; I can't state the exact words he made use of, but that was the understanding between us, that if they took the premises that I should get paid for the boiler.

Q (By the Court.) What do you mean, if they sold the 10 premises?

A If they sold the premises I should get paid for my boiler and fixtures.

(It is admitted that they did not sell the premises.)

Q When you put the boiler in did you make any stipulations as to the right to remove it again?

A No, sir; I did not think anything about it; I thought if I put any property there it was mine, and I could remove it at any time.

Q You gave Burnett & Leonard your note? 20

A Yes, I gave them three notes.

Q You didn't pay any of them?

A No, sir.

Q You had possession under a lease of the whole of these premises?

A Yes; it was a factory.

Q (By the Court.) Your lease was for six months?

A Yes, the original lease was for six months; then it was extended by word of mouth for six months longer, and I didn't remain quite the six months. 30

Q Your lease originally was January 25th?

A That was the original lease, but I had an understanding with Mr. Torrey, when I went into the building, that I should not pay any rent till I got a cargo of timber from Virginia and ready to go to work, and it was not till along about the 21st of February that I went to work.

Q (By the Court.) I don't understand you exactly; you say you didn't leave till in April?

A That was the following April.

Q (By the Court.) And now you say you didn't remain 40 quite the six months?

A I didn't have full possession when I remained over the time; I was a tenant under suffrage under the Laminated Company.

Q Your time, over the six months, was with the Laminated Company?

A Yes.

Q This conversation with Torrey was after the end of the six months?

A It was about that time; as soon as I found out that
10 the Laminated Company was going to have the building.

Q You said you had a conversation with Joseph Torrey after you left the place; is that true or not?

A I would correct that in this way; it is to be understood, after the Laminated Pipe Company came into possession, I considered then the place was not mine; I had nothing to do with it, only as a tenant under them.

Q (By the Court.) You stated a while ago, on your direct-examination, that this conversation was after you left the premises, and after the Laminated Company had moved
20 into it; now, I would like to know whether this conversation with Torrey was while you were in the premises, or whether it was after you left?

A It was while I was in the premises, and afterwards, too; we had several conversations.

Q (By the Court.) You have given us a conversation here, we want to know when that was, whether while you were in the property or after you left—this conversation about you and Torrey talking together, and you told Torrey that if the Laminated Company bought the premises, to
30 sell your boiler, now, when was that—was that while you were in the property or after you left it?

A That was, I suppose, while I was there, after the Laminated Pipe Company came into possession; I was in the premises there till April; I suppose it was during that time?

Q (By the Court.) Do you guess it was, or do you know?

A I am not positive about it, but to the best of my recollection it was about that time.

Q Do you remember giving testimony in this matter before
40 fore a referee, in this case, a year ago?

A Yes.

Q Do you remember the conversation which you had with Joseph Torrey now, a great deal better than you remembered it at that time?

A No, sir.

Q At that time you didn't seem at all sure that Mr. Torrey agreed to do anything for you, but you say your impression was that he would sell it if he could?

A If he sold the premises he was to sell the boiler?

Q That was your impression a year ago; have you any- 10
thing more than an impression on the subject now?

A It is just the same as I have stated.

Q You have talked over the matter since?

A No, sir, I haven't talked it over with anybody; I didn't know anything about it till I was summoned to come here yesterday; I received a letter, Friday last, that I was to come down yesterday; that is all I have thought about the case; the most I have said about the case was with Walsh, yesterday, on the sidewalk, in front of the Court House. 20

Q Can you swear positively that you had any talk with Joseph Torrey before you left the place?

A Yes, before I felt the place in April.

Q Can you now swear positively that you had this talk with Joseph Torrey before you left the place; this talk about selling the boiler?

A Yes, I think I can positively.

Q (By the Court.) You said a while ago that you had several of these conversations with Torrey; you couldn't tell how long after you left the place; that was all the talk 30
you remember having with either of them?

A I don't know anything about that at all; whether that is printed right or wrong.

Q Who informed you that the Pipe Company talked of buying the building?

A Joseph Torrey.

Q That was the first information you had of that?

A Yes.

Q And it was not till he informed you of that, that you proposed to sell the boiler to them, and if he should sell the 40
building with the boiler, to get your profit out?

A Yes.

Q You are sure you left Jersey City on the second Saturday in September, 1871, and not till then?

A Yes.

Re-direct examination:

Q At the time Mr. Torrey told you the Laminated Pipe Company talked about buying the building, was the Pipe Company then in possession of the premises?

A Yes.

10 *Q* How long had they been in possession at that time?

A I couldn't tell you.

Q Was that before you had left the premises entirely?

A Yes.

Q (By the Court.) What was before you left the premises entirely?

A That Mr. Torrey informed me that the Pipe Company was to buy the building.

Q You were then occupying part of the premises upstairs, were you?

20 *A* Yes.

Q Using the machinery up there?

A No, sir; there was no machinery up there to use; I had a lot of unfinished stock on hand, and they were finishing it up by hand.

Q After you left that building, what did you do then?

A I moved my stock to a place in Lafayette.

Q Did you have any talk with Mr. Torrey while you were occupying that place at Lafayette?

30 *A* Yes; because Burnett came there to see me two or three times before I went to see Mr. Torrey about it; and I even called at the office of the Laminated Pipe Company two or three times, but I never could find anybody there.

Q During the time you were at Lafayette, had you any conversation with Mr. Torrey about the boiler?

40 *A* Every time I used to go to New York, I used to ask him how they were getting along; whether they had sold the building, or what they was going to do; whether they were going to buy it or what; I recollect nothing positive about what was said, only he told me that they hadn't done anything yet.

Q (By the Court.) Did he say that?

A Yes; he said that they hadn't sold the property.

Q At any of these interviews, did he claim to own the boiler?

A No, sir.

Q Or claim that you didn't own it?

A No, sir.

Re-cross-examination:

Q Were those talks with Mr. Torrey, while you were at Lafayette? 10

A Yes, I had the talk with him in New York while I was in Lafayette.

Q Did you make an express agreement with Mr. Walsh before you vacated that place, to leave everything there, and tell him that you didn't claim anything and didn't propose to take anything away?

A No, sir.

Q Didn't you bind yourself in writing to that effect?

A No, sir.

Q Didn't you give him a paper, giving up the premises 20 and everything there to him?

A Not as I know of; if I did, I have no recollection of it.

(Plaintiffs offer the attachment and execution and record of judgment—the proceedings in the attachment, in evidence.)

Defendants rest.

JOSEPH TORREY, for plaintiff, sworn, testifies as follows:

Direct-examination.

Q Did you ever have any such conversation with Mr. Tice, as he has just been giving? 30

A I never made any such promise; I never had anything to do with the factory; the entire management of that was under control of my brother, E. S.; anything that came up about the factory, I always referred to my brother.

Q What talk do you remember with Tice about it?

A I remember telling him that the Laminated Pipe

Company had the refusal of the building; to purchase the building in a certain time; but I never made any agreement for the purchase of the boiler of him, or gave him any such encouragement.

Q Did he propose to you to sell the boiler for him if you could at that time?

A Such a proposition was made by him.

(By the Court.) What was the proposition?

A That if the Laminated Pipe Company purchased the building, we would try to arrange with them to have them pay something for the boiler.

(By the Court.) What did you say?

A That was the idea; all the affairs connected with the factory, I had nothing to do with it; that that department I must refer everything to my brother, E. S. Torrey, who had entire charge there.

Q Did you refer him to E. S. Torrey?

A Yes.

Q When was that conversation?

20 A I couldn't tell the time.

Q Was it before or after Mr. Tice had left the property?

A It was after; he was no longer a tenant of ours; I am confident it was after he had left the property entirely; that is my impression.

Q It was after the 1st of February, 1871?

A Yes, it was after the lease was signed to the Pipe Company; do doubt of that.

Q Did Mr. Tice give up the tenancy of the place before you made the lease to the Pipe Company?

30 A Yes, he surrendered entirely.

Q How did he remain there; what tenure after the Pipe Company were in?

A Solely from suffrage from the Laminated Pipe Company.

Cross-examination.

Q Did the Laminated Pipe Company go into possession before or after the execution of the lease given to them?

A I couldn't say about that; I presume the two were identical; I think they were in at the same time the lease was executed.

Q How is it your lease to them was dated the 4th of April, and they took the factory from the 1st of February?

A I couldn't say about that.

Q If that be so, doesn't that change your views as to whether they went in before or after the execution of the lease?

A I couldn't state, positively, I think; I say I suppose the two were identical; my brother had entire charge over there, and I simply signed the lease with him.

Q Then why do you think Mr. Tice's visit to you was 10 after he had ceased to be your tenant?

A Because I never said that the Laminated Pipe Company proposed to purchase the building, unless it was after their lease was executed.

Q The matter might have been talked of before the execution of the lease?

A No, sir; we could not have presumed anything of that kind; it was after the lease was executed that that conversation was had with Mr. Tice.

Q Where was Mr. Tice employed at that time? 20

A I don't think he was employed anywhere.

Q Where was the conversation?

A In our store in New York.

Q How long after the execution of the lease to the Laminated Pipe Company?

A I couldn't say.

Q How came he to come over to New York at that time?

A He had nothing else to do; I suppose he was over to while away his time. 30

Q You told him that the Laminated Pipe Company proposed to buy the building?

A I don't know; he might have asked me on the subject.

Q After the execution of the lease to the Laminated Pipe Company was there anything which either you or he considered unsettled between you except this boiler?

A There was nothing unsettled between us, not even the boiler.

Q The status of the boiler was settled also?

A That question never came up except on that one con- 40
versation.

Q Can you explain your telling him that the Laminated Pipe Company proposed to buy the building, and his requesting you that you should sell the boiler to them also?

A It was not unsettled as far as we were concerned; that is one of the things I didn't know anything about till after he had vacated.

Q You knew he had put a boiler there?

A I had heard that he was putting a boiler in, but the details of the factory business I knew nothing about.

10 Q How did you hear that he was putting a boiler in?

A He was in the store; he said he was going to put a boiler in.

Q Talking with you about it?

A Not particularly with me—a general conversation in the store.

Q In which you took part?

A I presume so.

Q You and your brother, E. S., were in partnership?

A Yes.

20 (The Court calls counsel's attention to the printed book, page 11, at the top: "I am one of the defendants; we sold Mr. Tice a boiler September 7, 1871.")

Defendants Counsel: That is a wrong punctuation; it should be "September 7, 1871, we attached it."

EDWARD S. TORREY, for plaintiffs, sworn, testifies as follows:

Direct examination:

Q Did you have any talk at all with Mr. Tice about this boiler?

A Nothing, except at the time he was about putting it in
30 —he said he proposed putting it in.

A Did you have any talk with Mr. Tice at the end of his term, or during his term, or after he went out, about taking the boiler off his hands or selling it for him?

A No, sir; none whatever.

Q (By the Court.) From the end of the six months' lease how was Tice occupying there—after the six months' lease had expired?

A He was tenant by the month at the same rate as he occupied previously; I think that is the way it was; there was no papers; that was \$150 a month.

Q When the lease was made to the Laminated Pipe Company, then how did they get possession?

A They moved in and took possession.

Q (By the Court.) Had Tice ceased to do business?

A No, sir.

Q (By the Court.) Do you know whether they went in by Tice's consent or not?

A They did.

ADOLPH MULLER, for plaintiffs, sworn, testifies as follows:

Direct-examination.

Q Were you a workman in this factory?

A Yes; I was foreman.

Q Were you there when the boiler was taken out?

A Yes.

Q Describe how it was taken out?

A They came and broke in the door and took the front part of the wall out, and dumped the boiler over.

Q What do you mean by the front part of the wall?

A They tore down the brick works and dumped the boiler out.

Q (By the Court.) What wall did they take down?

A The front wall; that is the outside wall; and the other, connected with the building, was injured so we had to build it up again.

Q How much did they damage that wall connected with the building?

A So that we had to build it up again.

Q Did they break a hole any size in there?

A Certainly; it was cracked all over, and the furnaces inside our factory was damaged by the jar of the boiler.

Cross-examination:

Q Do you know which walls Mr. Tice built, at the time the boiler was put in there?

A No, sir.

Q The chimney was on one side of the boiler, and the wall of the building was on the other, and then there were two other walls on the other two sides?

A Yes.

Q Now, was it one of those two outside walls that they took down?

A No, sir; one of the walls forms part of the chimney and this outside wall, and one connected with the building.

Q Which way did they turn the boiler over—away from
10 the building, or away from the chimney?

A Away from the chimney.

Q And the wall that they took down was the wall opposite to the chimney?

A Yes; opposite to the chimney.

Q And which is the wall you say they cracked so that you had to take it down?

A The wall where the fire-door was in.

Q Do you mean the wall of the building?

A Against the building; connected with the building.

20 Q The wall that stood up against the building?

A Yes.

(Plaintiffs challenge the regularity of the execution sale, and there has been no proof offered that the sale was made; the sale was irregular.)

Case closed.

New Jersey Supreme Court.

HUDSON COUNTY CIRCUIT.

TORREY *et. al.*

vs.

BURNETT *et. al.*

} *In Case.*

JUDGE'S CHARGE.

10

GENTLEMEN OF THE JURY :

This suit is brought by Edward S. Torrey and Joseph Torrey against the defendants, William H. Burnett and William S. Leonard, to recover damages to the freehold to this property, which was owned by the Torreys. The injury complained of is in tearing down part of the brick walls surrounding a boiler, and taking away the boiler from the premises in question. Those acts were committed in the month of June, 1873. There is no question in the cause that the defendants took down enough of the wall to get access to the boiler, and that they took away the boiler at that time. The boiler was erected outside of the outer wall of the main building; it was erected upon a platform put on piles, the piles driven in by Tice, who was a tenant of Torreys, the plaintiffs. There had been a boiler in this building, but this boiler was put up outside of this building on this platform on piles, and enclosed with two walls, which, with the chimney-stack and the outer walls of the main building, enclosed the boiler and made a sort of boiler-room. That boiler had connection with the engine in the main building by a steam pipe, and there was also a feed-

pipe that had some connection from the building to the boiler, and that boiler was connected in some way with the chimney-stack. Mr. Torrey says, an opening was made in the chimney-stack, and the connection made from the boiler with the engine and pump, feeder, &c.; that then the one side was taken out the side of the building, that made into a sort of door or opening, through which access was had to the furnaces of the boiler. That is sufficient to show the general situation of the boiler, and how it was built there.

- 10 Now, the first question in the cause is, and it is one of law, whether a boiler erected by a tenant with connections of that character becomes necessarily so attached to the freehold as that the tenant cannot remove it during the term, or at any time. That is an important legal question. If the case rested simply upon that I should be disposed to hold that that was a fixture of such a character as that the tenant could remove it during the term; but even sup-
 20 posing it to be a fixture of that character, the next question arises as to when the tenant should remove it, if he claims it, and I shall hold in this case that, even if that was a fixture that could be removed by the tenant, that he is bound to remove it, if he claims it as against the landlord, during his term—that is, he cannot leave it after his term has ended, and go there and take it afterwards. That case, 20th Johnson, N Y., seems to hold otherwise; but in looking at that case, and also the English doctrine, I am not disposed to follow that case, but to follow what I regard the English rule; that is, that the removal must be made
 30 during the term; that is, the tenant cannot let his term pass and then claim the right to remove a fixture of that character afterwards; that it becomes attached to the freehold during the term when he puts it there, but subject to the right of removal during the term—he has the right to treat it as a chattel during the term, but if he don't exercise that right during his term he cannot do it afterwards. The Court therefore charge you, that even if that was a fixture that could be removed by the tenant, that it should have been removed by him during his term, and that he had no right to take it away after the expiration of his term,
 40 unless by the consent of the landlord during the term that

it should remain there. Now, then, there is some evidence of a conversation between Mr. Joseph Torrey and Mr. Tice, in regard to selling this property, but the evidence does not show at all that that conversation was had during the term of Mr. Tice ; it was while the Laminated Company were in possession, and while Mr. Tice was there under sufferance, as he swears, of the Laminated Company. Now the Court charge you that that conversation, the fair scope and meaning of it, is not of such a character as to show a consent on the part of the landlords that the boiler should be left there 10 after the term which Tice held under the Torreys ; the conversation is not of that character to justify you in finding to that effect. The result, therefore, of this part of the case is this, that the Court—in order that there may be a review hereafter—the Court charge you distinctly, that the plaintiffs are entitled to recover for the injury to the freehold done by taking away this boiler, and the tearing down of the wall and the injuring the premises there, and that the boiler and the walls there must be taken as a part of the freehold. The Court will allow a rule to show cause, treating 20 this very much as a ruling *pro forma*, or will sign exceptions, so that the case may be taken to the Court of Errors, if the defendants prefer that mode. This part of the case, you perceive, involves a question of law entirely ; the responsibility of that is with the Court, and the Court, therefore, charge you that the plaintiffs are entitled to recover under the facts of this case, for the injury done to the freehold, and that freehold is to be regarded as including the walls and the structure there, and the boiler and its connections. 30

That brings the case down to the question of fact as to the damages. This is not a suit by the Laminated Pipe Company, the tenant, it is a suit brought by the landlords, and is not for an injury to the immediate possession ; it is an injury to the freehold ; it is only for such an injury as is permanent ; you would not include in this suit any injury done to the tenants, by stopping their works ; these landlords have nothing to do with that ; it is only for the injury to the property, and it consists in the taking away the boiler, and the taking down of the structure enclosing, or so 40

much of it as was taken down, and any other injury done to the building there. This boiler was purchased in June 1870; it cost, I believe, \$900; it is true it was not paid for, but that don't make any difference in this case. It was taken away in June, 1873, three years afterwards. The boiler had been used a great deal during that time. The damages then would consist of the value of the boiler, as it was at the time it was taken away in the condition it was in then, and such other injury as you regard done to the structure and to the building: treating it as a trespass, and looking at the injury done to the property, supposing the boiler to be a part of it. As to allowance of interest or not, that is a matter for your judgment, but the measure of damages would be compensation for the injury to the property, supposing it to belong to the plaintiffs.

This ruling also disposes and leaves open for further consideration the question as to the attachment. There are very great irregularities there, but what may be its effect hereafter can be determined if this case comes to be re-
20 viewed.

The sum and substance of it is that the Court charge for a verdict for the plaintiffs, leaving the jury only to fix the question of damages.

Defendants' counsel prays an exception may be allowed to so much of the charge of the Court as instructs the jury that the plaintiffs are entitled to recover a verdict for damages to the freehold, and that the freehold includes the structures around the boiler, to whatever the language of the Court was on that point.

30 And it is allowed, and sealed accordingly.

J. D. BEDLE, J. S. C.

Defendants' counsel also prays an exception may be allowed to so much of the charge of the Court as instructs the jury to find for the plaintiffs, leaving to the jury only the question of damages.

And it is allowed, and sealed accordingly.

J. D. BEDLE, J. S. C.

ASSIGNMENT OF ERRORS.

Afterwards, that is to say, on the day
 (as yet of the term of February, 1875,) 10
 in the Court of Errors and Appeals, in the last resort in
 causes at law, comes the said William H. Burnett and
 William S. Leonard, by Joseph Coult, their attorney, and say
 that on the record and proceedings, aforesaid, and also in
 the matters recited and contained in the said bills of excep-
 tions, and the verdict and judgment aforesaid, there are
 manifest errors, to wit :

1st. That after the evidence was closed, the said Justice,
 before whom the issues joined in the case were tried, charged
 the jury empaneled to try the same, " That the plaintiffs in
 " said cause were entitled to recover under the facts in the
 " case, for the injury done to the freehold ; and that free-
 " hold, was to be regarded as including the walls and the
 " structure there, and the boiler and its connections."
 Whereas, the said Justice was not warranted in so charging
 the said jury, and ought not so to have done.

2d. That the said Justice in further charging and instruct- 20
 ing the said jury, said : " The sum and substance of it is,
 " that the Court charge for a verdict for the plaintiffs, leav-
 " ing the jury only to fix the question of damages."
 Whereas, the said Justice ought not so to have instructed
 and directed the said jury ; but should have allowed the
 said jury to determine, as a question of fact, whether the
 property taken was, at the taking thereof, the property of
 the plaintiffs or the property of the defendants.

ASSIGNMENT OF ERRORS

The court in its opinion on the assignment of errors... the court in its opinion on the assignment of errors... the court in its opinion on the assignment of errors...

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