

STATE OF NEW-JERSEY.

IN THE COURT
OF
ERRORS AND APPEALS.

THE AMERICAN PRINT WORKS,

vs.

CORNELIUS W. LAWRENCE.

A. C. M. PENNINGTON, *for Plaintiffs.*
BENJAMIN WILLIAMSON, *for Defendant.*

CASE.

NEW-YORK:
ISAREL SACKETT, BOOK AND JOB PRINTER,
No. 53 NASSAU STREET, NEAR MAIDEN LANE.

1851.

STATE OF NEW-JERSEY.

IN THE COURT

ERRORS AND APPEALS.

THE AMERICAN PRINT WORKS,

CORNELIUS W. LAWRENCE.

A. C. M. PENNINGTON, for Plaintiff.

BENJAMIN WILLIAMSON, for Defendant.

CASE.

NEW-YORK.

ISAAC SECKETT BOOK AND JOB PRINTER.

No. 23 NASSAU STREET, NEAR MARKET PLACE.

1851.

IN THE COURT

Errors and Appeals

OF THE

State of New-Jersey.

THE AMERICAN PRINT WORKS,

vs.

CORNELIUS W. LAWRENCE.

Writ of Error to the Supreme Court.

NEW-JERSEY, ss.:—*The State of New-Jersey* to the Justices
of the SUPREME COURT of Judicature of
the State of New-Jersey, GREETING: Be-
cause in the record and proceedings and
also in the giving of judgment, in a certain
cause, in our said Court before you, be-

[L. s.]

tween The American Print Works, plaintiff's, and Corne-
lius W. Lawrence, defendant, in a plea of trespass, mani-
fest error hath intervened, to the great damage of the said
plaintiff's, as by their complaint we are informed, WE, be-
ing willing, that the error, if any there be, should in due
manner be corrected, and full and speedy justice done to
the parties aforesaid in this behalf, do command you, that
if judgment be thereupon given, then, without delay, you
distinctly and openly send, under your seal, the record and
proceedings aforesaid, with all things touching the same,
to our COURT OF ERRORS AND APPEALS in the last re-
sort in all causes of law, to be holden at Trenton, on the
third Tuesday of January, in the year of our Lord one

4 thousand eight hundred and fifty-one; that the record and proceedings aforesaid being inspected, we may cause to be done therefor for correcting that error, what of right and according to the laws of the State of New-Jersey, ought to be done.

Witness, the Honorable OLIVER S. HALSTED, our Chancellor, at Trenton aforesaid, on the twenty-first day of October, in the year of Lord one thousand eight hundred and fifty.

J. VANARSDALE, *Clerk.*

A. C. M. PENNINGTON, *Att'y.*

5 Presented in open Court, and ordered to be returned according to law.

HENRY W. GREEN, *Ch. Just.*

Answer of Supreme Court.

The answer of the Justices of the Supreme Court of New-Jersey within named. The record and proceedings whereof mention is within made, with all things touching the same, we do certify to the Court of Errors and Appeals, in a certain Schedule to this writ annexed, as within we are commanded.

HENRY W. GREEN, [L. s.]

6 As yet, of the Term of April, in the year of our Lord one thousand eight hundred and forty-seven.

STATE OF NEW JERSEY.

Witness, HENRY W. GREEN, Esquire, *Chief Justice.*

J. WILSON, *Clerk.*

Essex County, ss.:—The American Print Works put in their place Alexander C. M. Pennington, their Attorney, against Cornelius W. Lawrence, of a plea of trespass.

7 *Essex County, ss.:*—Cornelius W. Lawrence puts in his place Benjamin Williamson, his Attorney, at the suit of the American Print works, of a plea of trespass.

Essex County, ss.:—Cornelius W. Lawrence, the defendant in this suit, was summoned to answer the American Print Works, the plaintiffs therein, of a plea of trespass, and thereupon the said plaintiffs, by Alexander C. M.

Pennington, their Attorney, complain, for that the said defendant, on the seventeenth day of December, in the year one thousand eight hundred and thirty-five, at New-York, to wit, at Newark, in the said County of Essex, with force and arms, &c., did blow up by gunpowder, burn and destroy divers goods, wares and merchandizes of the said plaintiffs, to wit, eight hundred cases prints, seventy thousand pieces prints, fifty cases drillings, one thousand pieces drillings, and a large quantity of prints, drillings and other dry goods, wares and merchandizes of great value, to wit, of the value of two hundred thousand dollars, there then being at New-York, to wit, at Newark aforesaid, whereby the said goods, wares and merchandizes, being of the value aforesaid, then and there became, and were wholly lost to the said plaintiffs at New-York, to wit, at Newark aforesaid, to the damage of the said plaintiffs of two hundred thousand dollars, and therefore they bring suit, &c.

Plea of the General Issue.

And the said defendant, by B. Williamson, his Attorney, comes and defends the force and injury, when, &c., and says, that he is not guilty of the trespass above laid to his charge, in manner and form as the said plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the country, &c.

(First Special Plea.)

And for further plea in this behalf, by leave of the Court here, for that purpose first had and obtained, according to the form of the statute in such case made and provided, the said defendant, as to the blowing up by gunpowder, burning and destroying the said goods, wares and merchandizes, in the said declaration mentioned, says, that the said plaintiff his action thereof against him, ought not to have or maintain, because he says, that at the time of the committing the said supposed trespass in the said plaintiffs' declaration mentioned, by him, the said defendant, to wit: on the seventeenth day of December, in the

year one thousand eight hundred and thirty-five, the citizens of the City of New-York, in the State of New-York, were, and for a long time previous thereto, to wit, from the year sixteen hundred and eighty-six, had been a body politic and corporate, by the name and style of "The Mayor, Aldermen and Commonalty of the City of New-York," and from thence hitherto have continued and remained, and still continue and remain such body politic and corporate as aforesaid, by the name and style aforesaid.

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And the said defendant further says, that there have been at all times, from the year last aforesaid, until and at the time of the committing of the said supposed trespass, certain municipal officers and magistrates in the said City of New-York, called the Mayor and the Aldermen, charged and invested with judicial, administrative and executive powers and duties, for the government of the said City, and the protection of the citizens and inhabitants thereof, and the estate and property therein.

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And the defendant further says, that heretofore, to wit : On the 9th day of April, in the year 1813, the people of the State of New-York, by their Legislature, did pass an act, among other things regulating the destruction of buildings in the said City of New-York, whenever such destruction should become necessary, to prevent the spread of a conflagration in the said City, and to save other buildings and property therein from taking fire, and being consumed thereby, entitled "An Act to reduce several laws relating particularly to the City of New-York into one Act," in which said Act it was provided and enacted, that when any buildings in the City of New-York should be on fire, it should be lawful for the Mayor, or in his absence, the Recorder of the City, with the consent and concurrence of any two of the Aldermen thereof, or for any three of the Aldermen, to direct and order the same, or any other building which they should deem hazardous and likely to take fire, or to convey the fire to other buildings, to be pulled down or destroyed. And that, upon the application of any person interested in such buildings so pulled down or destroyed, to the Mayor or

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Recorder, or any two Aldermen, it should be their duty to issue a precept for a Jury to inquire of, and assess the damages which the owners of such building, and all persons having an estate or interest therein, have sustained by the pulling down or destroying thereof. And after providing the manner of conducting, executing and returning of the said inquiry and assessment, and the confirmation thereof, the Act aforesaid further enacts, that the sums so assessed by the said Jury shall be paid by the said Mayor, Aldermen and Commonalty," to the respective persons in whose favor the Jury shall have assessed the same, in full satisfaction of all demands of such persons, respectively, by reason of the pulling down or destroying such building. And the said defendant says, that the said provisions of the aforesaid Act, from thence hitherto, have remained and still remain in full force and effect, and unrepealed.

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And that the said defendant further says, that at the time of committing of the said supposed trespass in the said plaintiffs' declaration mentioned by him, the said defendant, to wit: On the seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-five, the said City of New-York, in the said plaintiffs' declaration mentioned, and in which the said supposed trespass is therein alleged to have been committed by the said defendant, was densely populated, and compactly and closely built up with stores, dwelling-houses and other buildings, near to and adjoining each other, which were then used and occupied by the respective owners or tenants thereof for the residence of their families, the storing of goods, wares and merchandizes, and for other lawful purposes. And this defendant further saith, that on the day and year last aforesaid, and before the committing of the said supposed trespass in the said plaintiffs' declaration mentioned, a fire had broken out in the said City, and for sometime had been, and was then raging with great violence, and had burnt down and destroyed a great number of the said stores, dwelling-houses and other buildings, and threatened destruction to the said City, or to a great part thereof, and had actually communicated, and

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set fire to a large number of said stores, to wit: to sixteen stores, including stores known and distinguished as number forty-four and number forty-six, situated on a public street in the said City, called Exchange Place, in each and all of which said last mentioned stores, the said conflagration, at the time of the committing of the said supposed trespass, was raging with great violence, and threatened the destruction of adjoining buildings, and of a very large and valuable part of the said City. And the said defendant further says, that near to and in the vicinity of the said stores, so as aforesaid on fire, there were certain other buildings commonly called stores, known as numbers 48, 50 and 52, on the said street called Exchange Place, which, from their relative position in regard to the said stores so as aforesaid on fire, were peculiarly exposed to the danger of being set on fire, and were likely and liable, at any moment, to be ignited, and thereby to extend and communicate the fire to other and numerous and valuable buildings and stores, and to cause the total destruction thereof, with their contents, and to cause the destruction by the said conflagration of a large and valuable portion of the said City, and of the dwelling-houses and other buildings therein.

And the said defendant avers, that but for the acts and conduct of the said defendant, hereinafter mentioned, the said stores, above particularly mentioned or referred to, as peculiarly exposed to danger, would inevitably and within a few moments have taken fire from the said stores or buildings then already on fire as aforesaid, and would have communicated the fire to other stores and buildings in the vicinity thereof, and would thereby have been the means of consuming and destroying by fire, many valuable stores and buildings, and of consuming and destroying by fire a very large and valuable portion of the said City, and of the stores and dwellings therein, together with the goods, wares and merchandizes and other property in such stores, dwelling-houses and building there being.

And the said defendant further says, that he was, at the time last aforesaid, and for a long time previous thereto, has been and still is a resident and citizen of the said City of New-York, in the State of New-York, and the owner of

valuable buildings and property, real and personal, in the said City, and was present at and during the time of the aforesaid fire, and as such resident citizen and owner, aiding, advising and assisting in preventing the spread of the said fire, and in the protection of the buildings and property in the said City from destruction thereby; and this defendant being so present at the said fire, had reason to believe and did believe, that the said stores or buildings so hereinbefore particularly mentioned or referred to, as peculiarly exposed to the said fire, would immediately and inevitably take fire and be burned up, with their contents, notwithstanding every effort that was or could be made to save the same from destruction, and would communicate the flames to adjoining buildings and cause the destruction of a large part of the said City as aforesaid, unless the said stores or buildings were immediately and without loss of time destroyed, by blowing up the same with gunpowder or in some other way, instantly demolishing the same, so as to prevent the further extension of the said conflagration.

And the said defendant further says, that to prevent the further spreading of the said conflagration, and the destruction of a large portion of the aforesaid City, and of the buildings and property therein as aforesaid, the immediate destruction of the said stores or buildings, Numbers 48 and 52, so herein particularly referred to as aforesaid, without waiting to remove thereout the goods, wares and merchandizes, if any, then being therein, was absolutely necessary, and without such immediate destruction of the said stores or buildings, the said fire and conflagration could not and would not have been arrested, but would have extended itself and have consumed and destroyed a large and valuable portion of the said City as aforesaid; and for this reason and with this purpose and intent, and for none other, the said defendant, on the day and year aforesaid, did advise, cause and procure the said stores or buildings, Numbers 48 and 52, to be blown up with gunpowder and destroyed, thereby necessarily and unavoidably destroying the said store or building, No. 50, as it was lawful for him to do for the cause aforesaid.

28 And the said defendant further says, that on the day and year last aforesaid, at the place aforesaid, he was the Mayor of the said City of New-York, and that Edward Taylor and Egbert Benson, also citizens of the said City, were then respectively Aldermen of said City, and that they, the said defendant, being such Mayor, and the said Edward Taylor and Egbert Benson, being such Aldermen, were and each of them was present when the buildings aforesaid were on fire as aforesaid, and did deem the said stores or buildings, Numbers 48 and 52, hazardous and likely to take fire, and to convey the fire to other buildings.

29 And the said defendant, and the said Edward Taylor and Egbert Benson, Aldermen as aforesaid, in accordance with the aforesaid Act of the Legislature of the State of New-York, regulating the destruction of buildings in the said City, deemed hazardous and likely to take fire as aforesaid, when such destruction was necessary as aforesaid, consented and concurred together in advising, causing, and procuring the blowing up and destruction of the said stores or buildings, Numbers 48 and 52.

30 And the said defendant further says, the said goods, wares and merchandizes in the introductory part of this plea mentioned, were in the aforesaid buildings or stores, Numbers 48, 50 and 52, so as aforesaid blown up with gunpowder and destroyed as aforesaid, at the said time when the said defendant advised, caused and procured the same to be blown up and destroyed as aforesaid, whereby the said goods, wares and merchandizes were also consumed, blown up and destroyed.

31 And the said defendant further says, that at the time of the blowing up and destruction of the said last mentioned buildings or stores, the said goods, wares and merchandizes could not have been removed or saved before the said stores or buildings would have taken fire, and endangered and communicated the flames to other buildings, and thereby consumed a great and valuable portion of the aforesaid City, and of the buildings and property of the citizens or inhabitants thereof. Wherefore, the said defendant says, that for the cause aforesaid, and in the

manner and on the day and year aforesaid, and to prevent the spreading of the said conflagration, and to save a large and valuable portion of the aforesaid City, and the buildings and property of the citizens therein, from being burned up and destroyed, he did necessarily (doing as little injury or damage as it was possible for him to do,) blow up by gunpowder, burn and destroy the said stores or buildings, Numbers 48, 50 and 52, and in so doing, did necessarily and unavoidably blow up by gunpowder, burn and destroy the said goods, wares and merchandizes, in the introductory part of this plea and in the said plaintiffs' declaration mentioned, as it was lawful and necessary for him to do for the cause aforesaid, to wit, on the day and year, and at the place aforesaid, which is the same supposed trespass in the introductory part of this plea mentioned, and whereof the said plaintiffs have above thereof complained against the said defendant, and this he is ready to verify. Wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

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Second Special Plea. And the said City

And for further plea in this behalf, by like leave of the Court here for that purpose first had and obtained, according to the form of the Statute in such case made and provided, the said defendant, as to the blowing up by gunpowder, burning and destroying the said goods, wares and merchandizes, in the said declaration mentioned, says, that the said plaintiffs, their action thereof against him, ought not to have or maintain, because he says, that at the time of committing of the said supposed trespass, in the said plaintiffs' declaration mentioned by them, the said defendant, to wit: On the seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-five, the said City of New-York, in the said plaintiffs' declaration mentioned, and in which the said supposed trespass is therein alleged to have been committed by the said defendant, was densely populated, and compactly and closely built up with stores, dwelling-houses and other buildings,

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near to and adjoining each other, which were then used and occupied by the respective owners or tenants thereof, for the residence of their families, in storing of goods, wares and merchandizes, and for other lawful purposes. And this defendant further saith, that on the day and year last aforesaid, and before the committing of the said supposed trespass, in the said plaintiffs' declaration mentioned, a fire had broken out in the said City, and for some time had been and was then raging with great violence, and had burnt down and destroyed a great number of the said stores, dwelling-houses and other buildings, and threatened destruction to the said City, or to a great part thereof, and had actually communicated and set fire to a large number of said stores, to wit: To sixteen stores, including stores known and distinguished as Number forty-four and Number forty-six, situated on a public street in the said City, called Exchange Place, in each and all of which said last mentioned stores the said conflagration, at the time of the committing of the said supposed trespass, was raging with great violence, and threatened the destruction of adjoining buildings and of a very large and valuable part of the said City. And the said defendant further says, that near to and in the vicinity of the said stores, so as aforesaid on fire, there were certain other buildings commonly called stores, known as Numbers 48, 50 and 52, on the said street called Exchange Place, which, from their relative position in regard to the said stores so as aforesaid on fire, were peculiarly exposed to the danger of being set on fire, and were likely and liable at any moment to be ignited, and thereby to extend and communicate the fire to other, and numerous and valuable buildings and stores, and cause the total destruction thereof, with their contents, and to cause the destruction by the said conflagration of a large and valuable portion of the said City, and of the dwelling-houses and other buildings therein.

And the said defendant avers, that ^{but} for the acts and conduct of the said defendant, hereinafter mentioned, the said stores above particularly mentioned or referred to as peculiarly exposed to danger, would inevitably and within a few moments have taken fire from the said stores or build-

ings then already on fire as aforesaid, and would have communicated the fire to other stores and buildings in the vicinity thereof, and would thereby have been the means of consuming and destroying by fire many valuable stores and buildings, and of consuming and destroying by fire a very large and valuable portion of the said City, and of the stores and dwellings therein, together with the goods, wares and merchandizes, and other property in such stores, dwelling-houses and buildings there being.

And the said defendant further says, that he was, at the time last aforesaid, and for a long time previous thereto, had been and still is a resident and citizen of the said City of New-York, in the State of New-York, and the owner of valuable buildings and property, real and personal, in the said City, and was present at and during the time of the aforesaid fire, and as such resident citizen and owner, aiding, advising and assisting in preventing the spread of the said fire, and in the protection of the buildings and property in the said City from destruction thereby, and this defendant being so present at the said fire, had reason to believe and did believe, that the said stores or buildings so hereinbefore particularly mentioned or referred to, as peculiarly exposed to the said fire, would immediately and inevitably take fire and be burned up, with their contents, notwithstanding every effort that was or could be made to save the same from destruction, and would communicate the flames to adjoining buildings and cause the destruction of a large part of the said City as aforesaid, unless the said stores or buildings were immediately and without loss of time destroyed, by blowing up the same with gunpowder, or in some other way instantly demolishing the same, so as to prevent the further extension of the said conflagration.

And the said defendant further says, that to prevent the further spreading of the said conflagration, and the destruction of a large portion of the aforesaid City, and of the buildings and property therein as aforesaid, the immediate destruction of the said stores or buildings, numbers 48 and 52, so herein particularly referred to as aforesaid, without waiting to remove thereout the goods, wares and merchan-

dizes, if any, then being therein, was absolutely necessary, and without such immediate destruction of the said stores, or buildings, the said fire and conflagration could not, and would not have been arrested, but would have extended itself, and consumed and destroyed a large and valuable portion of the said City as aforesaid: and for this reason, and with this purpose and intent, and for none other, the said defendant, on the day and year aforesaid, did advise, cause and procure the said stores or buildings, Nos. 48
 44 and 52, to be blown up with gunpowder and destroyed, thereby, necessarily and unavoidably destroying the said store or building No. 50, as it was lawful for him to do, for the cause aforesaid.

And the said defendant further says, that the said goods, wares and merchandizes, in the introductory part of this plea mentioned, were in the aforesaid buildings or stores, numbers 48, 50 and 52, so as aforesaid blown up with gunpowder, and destroyed as aforesaid, at the said time when the said defendant advised, caused, and procured
 45 the same to be blown up and destroyed as aforesaid, whereby the said goods, wares, and merchandizes were also consumed, blown up and destroyed. And the said defendant further says, that at the time of the blowing up and destruction of the said last mentioned buildings or stores, the said goods, wares and merchandizes could not have been removed or saved, before the said stores or buildings would have taken fire, and endangered and communicated the flames to other buildings, and thereby consumed a great and valuable portion of the aforesaid
 46 City, and of the buildings and property of the citizens or inhabitants thereof. Wherefore the said defendant says, that for the cause aforesaid, and in the manner and on the day and year aforesaid, and to prevent the spreading of the said conflagration, and to save a large and valuable portion of the aforesaid City, and the buildings and property of the citizens therein from being burned up and destroyed, he did necessarily (doing as little injury or damage as it was possible for him to do) blow up by gunpowder, burn and destroy the said stores or buildings, Nos. 48, 50 and
 47 52, and, in so doing, did necessarily and unavoidably blow

up by gunpowder, burn and destroy the said goods, wares and merchandizes, in the introductory part of this plea, and in the said plaintiffs' declaration mentioned, as it was lawful and necessary for him to do, for the cause aforesaid, to wit, on the day and year, and at the place aforesaid, which is the same supposed trespass, in the introductory part of this plea mentioned, and whereof the said plaintiffs have above thereof complained against the said defendant, and this he is ready to verify: wherefore, he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

(Similiter to plea of the general issue.)

And the said plaintiffs, as to the plea of the said defendant by him firstly above pleaded, wherein he puts himself upon the country, doth the like.

(Replication to first special plea.)

And the said plaintiffs, as to the plea of the said defendant by him secondly above pleaded, say, that they, the said plaintiffs, ought not to be barred from having or maintaining their aforesaid action against the said defendant, by reason of any thing by the said defendant in that plea alleged, because they, the said plaintiffs, say, that the said plaintiffs had not any estate or interest in the said buildings or stores, in the said plea mentioned, as having been blown up by gunpowder, burned and destroyed by the said defendant, at the time the same were so blown up by gunpowder, burned and destroyed as aforesaid; and that to prevent the further spreading of the said conflagration in that plea mentioned, and the destruction of a large portion of the aforesaid City, and of the buildings and property therein as aforesaid, the immediate destruction of the goods, wares and merchandizes, in the said plaintiffs' declaration mentioned, was not absolutely necessary, nor would it have been impossible, without such immediate destruction of the said goods, wares and merchandizes, to have arrested the said fire and conflagration, and of this they put themselves upon the country.

(Replication to second special plea.)

51 And the said plaintiffs, as to the plea of the said defendant by him thirdly above pleaded, say, that they, the said plaintiffs, ought not to be barred from having or maintaining their aforesaid action against the said defendant, by reason of any thing by the said defendant in that plea alleged, because they, the said plaintiffs, say, that to prevent the further spreading of the said conflagration in that plea mentioned, and the destruction of a large portion of the aforesaid City, and the buildings and property therein as aforesaid, the immediate destruction of the goods, wares and merchandizes, in the said plaintiffs' 52 declaration mentioned, was not absolutely necessary, nor would it have been impossible, without such immediate destruction of the said goods, wares and merchandizes, to have arrested the said fire and conflagration, and of this they put themselves upon the country.

(Demurrer to replication to first special plea.)

53 And the said defendant saith, that the said replication of the said plaintiffs to the said second plea of him, the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant; and that the said defendant is not bound by the law of the land to answer the same, and this, the said defendant, is ready to verify: wherefore, for want of sufficient replication in this behalf, the said defendant prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

54 And the said defendant, according to the form of the Statute in such case made and provided, states and shows to the Court here, the following causes of demurrer in law to the said replication of the said plaintiffs, to the said second plea of the said defendant; that is to say: 1. That the said plaintiffs, in and by their said replication, say, that as to the plea of the defendant, by him secondly above pleaded, they, the said plaintiffs, ought not to be barred from having or maintaining their aforesaid action against the said defen-

dant, by reason of anything by the said defendant in that plea alleged, because they, the said plaintiffs, had not any estate or interest in the said stores or buildings, in the said plea mentioned, as having been blown up by gunpowder, burned and destroyed by the said defendant, at the time the same was so blown up by gunpowder, burned and destroyed as aforesaid; Whereas, the said defendant has not, in and by his said second plea, or in any part thereof, affirmed or leged that the said plaintiffs had any estate or interest in the said buildings or stores, or in any or either of them, at the time of blowing up by gunpowder, burning and destroying the same, as in and by the said second plea of the said defendant is mentioned and set forth, so that, in this respect, the said plaintiffs, in and by his said replication to the said second plea, hath denied a fact not alleged in the said plea, and in so doing, has tendered a useless and immaterial issue, and introduced surplusage in his said replication. 2. And also for that the said plaintiffs, in and by their said replication, hath, in connection with the foregoing denial of their having any estate or interest in the said buildings or stores, and as a part of the same matter of answer to, or avoidance of the matter set forth in the said second plea, stated and alleged as follows, that is to say, that to prevent the further "spreading of the said conflagration in that plea mentioned, and the destruction of a large portion of the aforesaid City, and the buildings and property therein as aforesaid, the immediate destruction of the goods, wares and merchandizes, in said plaintiffs' declaration, was not absolutely necessary, nor would it have been impossible without such immediate destruction of the said goods, wares and merchandizes, to have arrested the said fire and conflagration." Whereas, the said defendant hath not, in or by his said second plea, or in any part thereof, affirmed or alleged, that to prevent the further spreading of the said conflagration, in that plea mentioned, and the destruction of a large portion of the aforesaid City, and of the buildings and property therein, the immediate destruction of the goods, wares and merchandizes, in the said plaintiffs' declaration mentioned, was absolutely necessary, nor hath the said defendant, in his said second plea,

or in any part thereof, affirmed or alleged that it would have been impossible, without such immediate destruction of the said goods wares and merchandizes, to have arrested the said fire and conflagration. But on the contrary, the said defendant, in and by the said second plea, hath in substance set forth and alleged, that to prevent the further spreading of the said conflagration, in that plea mentioned, and the destruction of a large portion of the said City, and of the buildings and property therein, the immediate destruction of the said buildings or stores, in the said plea mentioned, without waiting to remove thereout the goods, wares and merchandizes, if any, then being therein, was absolutely necessary, and that without such immediate destruction of such buildings or stores, the said fire and conflagration could not and would not have been arrested, and therefore the defendant saith, the said plaintiffs, in and by their said replication, hath not only denied in this respect what is nowhere alleged in the said second plea, but has tendered a useless and immaterial issue.

(3) For that the said plaintiffs, in and by the said replication, has connected three several facts or matters totally distinct and independent of each other, and not constituting one single point or ground of answer to, or avoidance of the matters set forth in the said second plea, and has thereby rendered the said replication double, and multifarious, and incapable of trial; *in this*, to wit, that the said plaintiffs have, in and by their said replication; *first*, denied that they had any estate or interest in the said stores or buildings at the time of the blowing up, burning and destroying the same; *secondly*, that the immediate destruction of the said goods, wares and merchandizes, in the said plea mentioned, was not absolutely necessary to prevent the further spreading of the conflagration, in that plea mentioned, and the destruction of a large portion of the said City, and of the buildings and property therein; and *thirdly*, that it would not have been impossible, without such immediate destruction of the said goods, wares and merchandizes, to have arrested the said fire and conflagration.

(4.) For that the said replication of the said plaintiff,

and the matters therein set forth, as hereinbefore stated, is not direct and positive, but argumentative; in this, to wit: that instead of denying, or else confessing and avoiding the facts stated by the defendant in his said second plea, so far as relates to the immediate and absolute necessity of blowing up, burning and destroying the stores, or buildings, in the said second plea mentioned, the said replication denies only the necessity of immediately burning up the goods, wares and merchandizes then being in the said stores or buildings, the destruction of which goods, wares and merchandizes is, in and by the said plea, set forth as only consequential upon the blowing up, burning and destroying the said stores or buildings, in the said second plea mentioned, and as unavoidably, and therefore excusably resulting therefrom; and also, for that the said replication is also argumentative in this, to wit, that it does not traverse or deny any fact averred by the defendant in the said second plea, but states certain propositions, or avers certain other facts supposed to be inconsistent with the facts averred by the defendant, or traverses and denies, not the facts alleged in the said plea, but the inferences that may be supposed to result therefrom.

(5.) For that the said replication, as above pleaded, does not answer, deny, nor confess and avoid the allegations contained in the said second plea in every material point; but instead of denying, or confessing and avoiding the immediate and absolute necessity of blowing up, burning and destroying the said stores or buildings, in the said second plea mentioned, for the purpose therein stated, the said replication simply denies the immediate and absolute necessity of destroying the goods, wares and merchandizes, in the said plea mentioned.

(6.) For that the said matters, in the said replication of the said plaintiffs, set forth and contained as hereinbefore specified, are not so pleaded as to be capable of trial by the country, in this, to wit: that the three several distinct facts or allegations hereinbefore specified, namely, that the said plaintiffs had no estate or interest in the said stores or buildings; that the immediate destruction of the goods,

67 wares and merchandizes aforesaid, was not absolutely necessary to prevent the further spreading of the conflagration; and that it would not have been impossible, without such immediate destruction of the said goods, wares and merchandizes, to have arrested the said fire, are so pleaded and set forth in the said replication, that the defendant cannot join issue thereupon to the country, without subjecting himself to the necessity of sustaining all three of the distinct propositions aforesaid, which would be involved in such issue.

(7.) Because the said plaintiffs have concluded the said replication to the country; whereas, if the matters therein contained are well pleaded, the said replication ought to have concluded with a verification.

68 And also, for that the said replication is in other respects uncertain, informal and insufficient, &c.

(Demurrer to replication to second special plea.)

69 And the said defendants saith, that the said replication of the said plaintiffs to the said third plea of him, the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant, and that the said defendant is not bound by the law of the land to answer the same, and this the said defendant is ready to verify: wherefore, for want of sufficient replication in this behalf, the said defendant prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And the said defendant, according to the form of the statute in such cases made and provided, states and shows to the Court here, the following causes of demurrer in law to the said replication of the said plaintiffs to the said third plea of the said defendant; that is to say:

70 (1.) Because the said plaintiffs, in and by their said replication, says, that by reason of any thing by the said defendant in the said third plea alleged, they, the said plaintiffs, ought not to be barred from having or maintaining their aforesaid action thereof against the defendant, because

they, the said plaintiffs, saith, "That to prevent the further spread of the conflagration, in that plea mentioned, and the destruction of a large portion of the aforesaid City, and of the buildings and property therein as aforesaid, the immediate destruction of the goods, wares and merchandizes, in the said declaration mentioned, was not absolutely necessary, nor would it have been impossible, without such immediate destruction of the said goods, wares and merchandizes, to have arrested the said fire and conflagration." Whereas, the said defendant hath not, in or by the said third plea, in the said replication mentioned, affirmed or alleged, that to prevent the further spreading of the said conflagration, in that plea mentioned, and the destruction of a large portion of the aforesaid City, and of the buildings and property therein, the immediate destruction of the goods, wares and merchandizes, in the said plaintiffs' declaration mentioned, was absolutely necessary; and therefore, the said defendant saith, that the said plaintiffs, in and by their replication last aforesaid, hath not only denied, in respect of the matter aforesaid, what is nowhere in the said third plea affirmed or alleged, but has rendered the said replication argumentative, and thereby tendered a useless and immaterial issue.

(2.) Because the said plaintiffs have, in and by their replication last aforesaid, further alleged, that it would not have been impossible, without such immediate destruction of the said goods, wares and merchandizes, to have arrested the said fire and conflagration; whereas, the said defendant, in or by his said third plea, hath not affirmed or alleged that it would have been impossible, without the immediate destruction of the said goods, wares and merchandizes, to have arrested the said fire and conflagration; and so the said defendant says, the said plaintiffs, in and by their replication last aforesaid, have, in respect of the matter last aforesaid, not only traversed and denied what is not averred or alleged by the said defendant in his said third plea, but has thereby rendered the said replication double, and argumentative, and tendered a useless and immaterial issue.

(3.) Because the said replication to the said third plea of

the said defendant is double, in that it avers, in the *first* place, that it was not absolutely necessary to prevent the further spreading of the said conflagration in that plea mentioned, and the destruction of a large portion of the aforesaid City, and the buildings and property therein, that
 75 the said goods, wares and merchandizes in the plaintiffs' declaration mentioned, should be immediately destroyed. And *secondly*, the said replication avers, that it would not have been impossible without such immediate destruction of the said goods, wares and merchandizes to have arrested the said fire and conflagration.

(4.) Because the replication last aforesaid, is argumentative in this, to wit, that it does not traverse or deny any fact averred by the defendant in the said third plea, but states certain propositions, or avers certain other facts supposed to be inconsistent with the facts averred by the defendant, or traverses and denies not the facts alleged in the said plea, but the inferences that may be supposed to result therefrom.
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(5.) Because the said plaintiffs have concluded their said replication to the said third plea to the country, whereas, if the said replication and the matters contained therein are well pleaded; the said replication ought to have concluded with a verification, and also, for that the said replication is in other respects uncertain, informal and insufficient, &c.
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Joinder in Demurrer.

And the said plaintiffs say, that their said replication to the pleas of the said defendant, by him secondly and thirdly above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law for them, the said plaintiffs, to maintain their aforesaid declaration, which said replication and the matters therein contained, the said plaintiffs are ready to verify and prove as the Court here shall direct and award. Wherefore, inasmuch as the said defendant hath not answered the said replication, nor hitherto in any manner denied the same, the said plaintiffs pray judgment, &c., and their damages by them sustained on occa-
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sion of the committing the said trespasses to be adjudged to them.

Continuance and Judgment on Demurrer.

And now, at this day, to wit, the first Tuesday of January, in the year of our Lord eighteen hundred and fifty, before our said Supreme Court, at Trenton, come the parties aforesaid, by their respective Attorneys aforesaid, and because our said Court, now here, are not yet advised what judgment to give of and upon the premises, a day is further given to the parties aforesaid, until the first Tuesday in October next, to hear judgment thereupon.

At which day, before our said Court, at Trenton aforesaid, come the parties aforesaid, by their respective Attorneys aforesaid, whereupon all and singular the premises aforesaid, being seen, and by the said Court, now here, fully understood, and mature deliberation being thereupon had, it appears to the said Court here, that the replications aforesaid, and the matters therein contained, are not sufficient in law for the said The American Print Works to have and maintain their aforesaid action thereof against the said Cornelius W. Lawrence.

Judgment.

Therefore, it is considered, that the said The American Print Works, take nothing by their said writ, but that they and their pledges to prosecute, be in mercy; &c., and that the said Cornelius W. Lawrence do go thereof without day, &c.

H. W. GREEN.

And it is further considered by the Court here, that the said Cornelius W. Lawrence do recover against the said The American Print Works, the sum of sixty-three dollars and one cent for his costs and charges by him about his defence, in this behalf laid out and expended by the Court here adjudged, to the said Cornelius W. Lawrence, and with his assent, according to the form of the statute in such case made and provided.

82 Judgment signed this twenty-third day of October, in the year of our Lord one thousand eight hundred and fifty.

HENRY W. GREEN.

Assignment of Errors.

STATE OF NEW JERSEY.

COURT OF ERRORS AND APPEALS.

THE AMERICAN PRINT WORKS,

vs.

CORNELIUS W. LAWRENCE.

83 And afterwards, to wit, on the twenty-first day of January, in the year one thousand eight hundred and fifty-one, before the Court of Errors and Appeals in the State of New Jersey, at Trenton, come the said The American Print Works, plaintiffs, by Alexander C. M. Pennington, their Attorney, and say, that in the record and proceedings aforesaid, and also in giving of judgment aforesaid, there is manifest error in this, to wit: That by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said Cornelius W. Lawrence, against the said The American Print Works. Whereas, by the law of the land, the judgment ought to have been given for the said The American Print Works against the said Cornelius W. Lawrence. And the said The American Print Works, pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings sforesaid, may be reversed, annulled and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

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A. C. M. PENNINGTON.

Attorney.

STATE OF NEW JERSEY,
 COURT OF ERRORS AND APPEALS.

CORNELIUS W. LAWRENCE,

ads.

THE AMERICAN PRINT WORKS.

And hereupon, afterwards, to wit, on the twenty-first day of January, in the year one thousand eight hundred and fifty-one, the said Cornelius W. Lawrence, by Benjamin Williamson, his Attorney, freely comes here into Court, and says, that there is no error in the record and proceedings aforesaid, and he prays that the said Court may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c. 86

BENJAMIN WILLIAMSON

Attorney.

Printed in New York

STATE OF NEW JERSEY

COURT OF ERRORS AND APPEALS

NASSAU W. YARNER

CORNELIUS W. LAWRENCE

adv.

THE AMERICAN PRINT WORKS

STATE OF NEW JERSEY

And hereupon, afterwards to wit on the twenty-first day of January in the year one thousand eight hundred and fifty-one, the said Cornelius W. Lawrence, by Benjamin Williamson, his Attorney, freely comes here into Court, and says that there is no error in the record and proceedings aforesaid, and he prays that the said Court may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in favor aforesaid given, may be in all things affirmed, &c. &c. &c. in the

BENJAMIN WILLIAMSON

Attorney

Print Works, by Benjamin Williamson

Attorney

Print Works, by Benjamin Williamson

Attorney

Print Works, by Benjamin Williamson

Attorney

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Attorney

Print Works, by Benjamin Williamson

Attorney

A. C. M. PENNINGTON

Printer

NOTICE TO THE PUBLIC

By Order of the
Board of Trustees

of the
City of Hudson

That the Board of Trustees of the City of Hudson, do hereby certify that the following is a true and correct copy of the Charter of the City of Hudson, as amended, and that the same is now on file in the office of the City Clerk.

W. T. WALKERMAN,

Mayor of the City of Hudson, President of the Board of Trustees.

Attest: Myself, City Clerk of the City of Hudson, and of the County of Dutchess, New York, in presence of the undersigned, J. H. Schuyler.

Witness my hand and of mine of the County of Dutchess, New York, this 1st day of January, 1888.

