
HILLSBOROUGH.

BEAN & *a.* *v.* FITZPATRICK.

A landlord's breach of a covenant to perform special services for his tenant is not an eviction.

CASE, for depriving the plaintiffs of the use of a printing-office. Facts found by the court. In September, 1889, the parties entered into a contract by which the plaintiffs were to have the right to print a paper, of which they were the publishers, in the defendant's printing-office. They were to have the use of the press, engine, boiler, and types, and the privilege of occupying the editorial room. The defendant was to furnish fuel for the boiler, and a hand to run the boiler and press. The plaintiffs agreed to pay the defendant two dollars per week for the presswork, including use of press, boiler, and engine, and three dollars and fifty cents per week for use of the office, type, and other printing material. The plaintiffs soon became delinquent in their payments, and on November 9 the defendant demanded of the plaintiffs immediate payment of the amount then due. Upon the plaintiffs' neglect to comply with the demand, the defendant notified them that he should not furnish them with power. In the evening the plaintiffs started a fire under the boiler and were preparing to print their paper themselves, when the defendant turned down the gas-lights, opened the boiler door, and told the plaintiffs that they could not print their paper there unless they paid up. Thereupon the plaintiffs left the office.

William Little, for the plaintiffs:

Charles A. O'Connor, for the defendant.

Per Curiam.* The plaintiffs contend that they were tenants of the defendant, and that they could not be ejected or deprived of the occupancy of the printing-office, because the defendant had not given them notice to quit.

Whether they were tenants entitled to notice we need not inquire, as they were not evicted or deprived of the occupancy. The defendant merely refused to perform the executory contract on his part, and he was justified in his refusal by the plaintiffs' violation of the contract in regard to payment. The defendant was to furnish fuel for the boiler, and a hand to run the boiler and press. This he properly refused to do, and the contract did not

* See foot-note on page 80.

provide that the plaintiffs might do it. Turning down the gas was a reasonable mode of preventing the plaintiffs' running the boiler and press, which they had no right to run.

Judgment for the defendant.

SMITH, J., did not sit: the others concurred.

SABINE v. MERRILL, *Adm'r.*

The defendant's ability to pay for the services of a housekeeper is not evidence of their value.

Unwarranted remarks of counsel, which have no unfair effect, constitute no ground for setting aside a verdict.

ASSUMPSIT, for services in doing housework for, and in the care and nursing of, the defendant's intestate, W. G. Perry, from May 3, 1877, to the time of his decease, November 9, 1887. The evidence tended to show that in April, 1877, the plaintiff engaged to take charge of Mr. Perry's household for four dollars a week; that she acted in that capacity from May 3, 1877, until his death; that at various times she rendered additional services for him, doing the housework and nursing him in sickness; that she was usually paid every four weeks at the rate of four dollars a week, for which she gave receipts, contained in diaries, generally expressed to be "in full to date." There was also evidence that Mr. Perry recognized that four dollars a week did not pay her for her extra services. Among the receipts in the diaries was the following unsigned receipt: "Settled up with Mrs. E. F. Sabine from August 7th to Sept. 30th, 1887, \$18 62-100 dollars in full to date." This was not put in evidence. By request of the administrator, she had charge of the property in the house until December 23, 1887, and gave him a receipt, the first item of which is as follows: "Settled with William G. Perry up to date, Oct. 1st, at \$4.00 per week, continuing until Nov. 9th, 1887, making 5 weeks and 4 days, 22.57." The plaintiff offered to show that the estate of the intestate amounted to over \$57,000. The evidence was excluded, subject to the plaintiff's exception. Counsel for the defendant, in his closing argument, referring to the receipts, read the entry of the unsigned receipt and commented upon it. To this the plaintiff excepted. The jury returned a verdict for the plaintiff for \$300, which she moves to set aside.

Burnham, Brown & Warren, for the plaintiff.

James F. Briggs and Sulloway & Topliff, for the defendant.

67	226
70	374
70	376
67	226
72	256
67	226
74	49