Sarah Elizabeth Jaudon (b.1802) m. 5 Feb 1824 William John Kirk (d. 1853)

Lit. 144 a, 153 a, b, 201 b; Plow. 133; 1 Bac. Ab. Conditions, O. 4.

"A demand to avoid an estate for condition broken must be made on the land. Where the condition is payment of rent, the land out of which the rent issueth is the principal debtor, and that is the place of demand appointed by the law."

There must have been some moment when the lease ceased to have energy; this moment, in case of forfeiture, could only have been when the lessor or his heir, having entered, became possessed of the same estate which he held before the lease. Up to that moment the cause of forfeiture might have been forgiven, and the tenant would have continued to hold by efficacy of the original lease.

"Regularly when any man will take advantage of a condition, if he may enter, he must enter; and when he cannot enter, he must make a claim."

It has been said that the house was barred so that entry could not have been made. Demand and entry are necessary forms, even although neither the tenant nor any other person is on the land. It was not necessary to enter the house, for a demand on any part of the land was sufficient. If there was no land besides the house, a demand on the door *53 sill, *would have sufficed, or whatever else was the nearest approach that the landlord could make to that solemn entry, which might show that the tenant's right of possession was thereby reconveyed to the landlord.

Might a landlord, without entry, assert that a tenant's lease had been determined by forfeiture, because of an alleged conveyance of a freehold estate, and thereupon proceed before magistrates and freeholders to try this question of forfeiture?

I adhere to the opinion which I formed on the circuit.

Motion granted.

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12 Rich. *54

*JOHN M. REID v. SARAH KIRK, C. E. CHOVIN, EDWARD PERRY and WM. WALL.

(Charleston. Jan. Term, 1859.)

[Appeal and Error ⟹1031.]

In trespass quare clausum fregit, the presiding judge assumed that defendant had no title, when there was evidence of a right of possession in defendant proper to be submitted to the jury; and charged the jury that if the title of the defendant was perfect, he had no right to enter in the high-handed manner in which he did. The verdict being for the plaintiff, a new trial was granted—the charge being calculated to prejudice the defendant's case.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4043; Dec. Dig. ⟹1031.]

[Fixtures ⟹14.]

A dwelling-house, erected by a tenant on blocks or pillars, not set in the ground, and occupied by the tenant for near thirty years, free of rent, is a fixture which the tenant has no right to remove.

[Ed. Note.—Cited in Heath v. Haile, 45 S. C. 648, 24 S. E. 300.

For other cases, see Fixtures, Cent. Dig. § 25; Dec. Dig. ⟹14.]

Before Munro, J., at Beaufort, Spring Term, 1857.

The report of his Honor, the presiding Judge, is as follows:

"The action was trespass quare clausum fregit—the facts upon which it was founded are these: Sometime between the years 1825 and 1830, one Wm. Kirk, by the permission of one Peter Floyd, erected a summer residence on land belonging to the latter. About the year 1841, Kirk built another house, not far distant from the first, but of larger dimensions, and more costly materials. Not long after the new house was built, it was burnt down; he then enlarged the old house by putting some additions to it; but from the time the first house was built, until the period of his death, which happened in 1853, leaving a widow who is one of the defendants, and some six or seven children, the premises in question were regularly occupied by himself and family during the summer months.

"The quantity of land enclosed by Kirk *55 around his *dwelling did not exceed an acre—about three-quarters of which according to the estimate of some of the witnesses, was the Floyd land, the remainder was what they termed the Porcher land."

"In addition to the dwelling-house, there was also within the inclosure a stable and a kitchen; the body of the latter being, as some of the witnesses said, on the Floyd portion of the lot, the kitchen chimney and the stable being on the Porcher portion of it.

"Peter Floyd died about the year 1849, leaving a widow and several sons and daughters; and up to the period of his death, lived on a separate tract from the one Kirk was on, and about a half mile distant from him.

"Upon the death of Kirk, in 1853, his widow, the defendant, Sarah Kirk, occupied the premises during the summer of that, and the succeeding years; and in the fall of the last mentioned year, 1854, gave permission to one J. M. Rushing, her brother-in-law, to occupy the premises until the succeeding summer. About the first of March following, while Rushing was living on the premises, the plaintiff, who had intermarried with one of Floyd's daughters, moved his family and furniture into the house, and in reply to the warnings of Rushing not to enter, said he intended to keep possession of the premises at the risk of his life. Rushing finding the plaintiff determined to keep possession of the premises, left the house a few days after the plaintiff had moved in. From the time that Rushing left the premises, the plaintiff remained in possession until the latter part

of the month of June following, when the defendants, Sarah Kirk, Chovin and Perry, accompanied by five or six negroes, entered the premises. The plaintiff forbade their entrance. Mrs. Kirk replied that she took upon herself the responsibility, and the defendant Perry said he wanted the house for Mrs. Kirk, and was going to pull it down, and remarked to plaintiff, "I suppose you won't shoot," to which the latter replied that he would not.

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*"The negroes were then ordered to unroof the house, which they proceeded to do, by punching off the shingles with fence rails. Plaintiff's wife was in the house at the time with a young infant. Shortly after they had commenced to unroof the house it began to rain, so that plaintiff's wife was compelled with her infant to seek shelter in the house of one of her brothers. Plaintiff's furniture and clothing were put out in the yard, exposed to the rain. After pulling down the house, the materials were hauled off, some two or three miles, on land belonging to the defendant Chovin, where it was afterwards rebuilt. The next day, the defendant Wall, who had been hired to assist as a laborer, came back to the premises in company with the defendant Perry, by whose directions the kitchen and stable were pulled down, and the materials hauled off. All the peach trees, consisting of between thirty and forty, and the grape vines, &c., were cut down and destroyed, the well was filled up with rubbish from the chimney and house blocks, and after completing the work of destruction, they nailed up the gate and left the premises.

"Throughout the whole of these proceedings, Perry appears to have been the active and efficient agent. Chovin was present only during the first day, and several of the witnesses concurred in saying that he did nothing either by word or act.

"Not the slightest violence was offered by either of the defendants, either to the person of the plaintiff, or to any member of his family, nor was any injury done to his furniture or clothing, other than by their removal from the house into the yard, where they were exposed to the rain.

"I omitted to state in its proper place, that at the time the plaintiff moved into the house, some of Mrs. Kirk's furniture—some bedsteads, I think—were in it.

"As the defendants' fifth ground of appeal asserts the title to the premises to have *57 been in the defendant, Mrs. Kirk, and *that the plaintiff was a mere wrong-doer, it may be proper to give a summary of the testimony on that point.

"Evidence for Plaintiff.

"Wm. Hodgins.—In a conversation with Wm. Kirk, about the time he was building his new house, in 1841, witness asked him if the land he was going to build on was the Porcher land. He replied it was not, but was land belonging to Peter Floyd, from whom he had got permission to occupy during his lifetime. The house Kirk was putting up was a frame house. He said nothing about his right to remove it.

"James Manker.—Was acquainted with Wm. Kirk about twenty-seven years. He told witness that when he first applied to Floyd, he offered either to purchase, or to swap lands with him—that Floyd refused to do either, but said that he. Kirk, might live on the land as long as he pleased, if it were even during his lifetime. This conversation was somewhere about the time Kirk was building his new house.

"John Bradham.—Heard Wm. Kirk say he had got a lot from Peter Floyd on which to build a summer residence. After Floyd's death, Kirk went to Mrs. Floyd to get permission to remain on the place. Mrs. Floyd replied that he might remain during his lifetime.

"Wm. Donberly.—In 1853, the defendant, Mrs. Kirk, after her husband's death, offered Mrs. Floyd $25 for five acres of land, or if she would not sell that quantity, said she would give $5 for the land within the inclosure. Mrs. F. refused, alleging as a reason that the land belonged to her children.

"For Defendants.

"Wm. J. Rushings. Cross-examined.—Witness *58 ness offered to *purchase the land from Mrs. Floyd, and expected the premises in question would be included in the title.

"Saml. R. McKenzie.—Is Mrs. Kirk's brother-in-law. Kirk built his first house in 1825 or 1826, and spent the summer of 1826 in it. The lot has been fenced in ever since 1826, and contained about half an acre. Kirk died in 1851, and his widow has spent the summer there ever since, until she left it.

"Chas. C. Dupont.—The testimony of this witness was almost the same as of McKenzie.

"Mrs. Susan McKenzie.—Has heard Kirk in his lifetime claim the premises.

"In reply.

"Jas. A. Floyd.—Witness is a surveyor; ran out the lot; it contains about an acre; Porcher takes about a quarter of it. The stable is on the Porcher portion of it. In running the line he struck the kitchen chimney, leaving the body of the house on the Floyd land. Counted the trees that had been cut down; there were thirty-two in all.

"Cross-examined. Witness ran the land at plaintiff's request, after he took possession in 1855. It had been allotted to plaintiff's wife in the partition of her father's estate.

"If the foregoing testimony were even less conclusive than it is, as to the parties in whom the title to the premises were vested; additional confirmation of the fact will readily be found in the conduct of Mrs. Kirk, upon the occasion of her entry upon the

premises in June, 1855; for if she had really believed the title to have been in herself, she would hardly have been guilty of the folly of pulling down her own houses and reconstructing them upon the land of another

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—of laying *waste the entire premises—and finally surrendering up the possession to the very party whom she now denounces as a mere wrong-doer.

"In my remarks to the jury on the question of title, and from which the material for the first ground of appeal has manifestly been drawn, I stated to them in substance that if Kirk's possession was in its origin permissive, it must have continued so throughout the entire period he was in the occupation of the land, unless there had been a disclaimer of tenancy. That before a tenant can occupy an adverse position to his landlord, he must disclaim his tenancy, and give notice to the landlord of such disclaimer. In other words, the tenant must not only assume the attitude of a trespasser, but must maintain that attitude during the statutory period, before he can acquire a title by adverse possession; and that the burden of establishing a title so acquired must rest upon the tenant. That unless Kirk had established such a title, his interest in the premises could under no circumstances be extended beyond his own life. That however reprehensible the plaintiff's conduct may have been in obtaining possession in the way he did, and for which he might have been punished by indictment, nevertheless, being a tenant in common with the other distributees of Floyd, and being in the peaceable possession at the time the defendants entered, no matter how his possession may have been acquired, they had no right to enter upon him in the way they did.

"In reference to the point made in the second ground of appeal, and which I considered the main point in the case, the right to pull down the buildings and to remove the materials; I instructed the jury that the defendants had no right either to remove the buildings off the land, to destroy the fruit trees, or to fill up the well.

"And here it may be proper to correct an error which was committed on circuit, and one in which I am free to confess, I fully participated. It consisted in calling Kirk's

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interest in *the land, during its occupancy under Floyd's permission, an estate for life; when it is manifest that it was nothing more than a tenancy at will, consequently had terminated upon Floyd's death, in 1849. It is true, that after the death of Floyd, Kirk obtained permission from one of the distributees, the widow, to occupy the premises upon precisely the same terms—that is, during his lifetime—but it is clear that such permission could only operate to the extent of the widow's distributive interest in the estate, but could by no means affect the interests of her co-distributees. The most that it could do was to convert Kirk into a tenant in common with the other distributees, but could under no circumstances confer upon him an exclusive right to the possession. Being tenants in common with Kirk, the other distributees had an equal right with him to the occupation of the premises; and to this end all or either of them might have entered thereon, without incurring the risk of being considered trespassers. If this be the true legal relation which Floyd's distributees sustained toward Kirk in his lifetime, with much greater show of reason might they have entered upon the possession of the widow, of whose possession subsequent to the death of her husband, the most that can be said of it is, that it had not been tortious.

"As to what is said in reference to my charge in the third and fourth grounds, as a legal proposition I am free to say, that my charge in that particular was erroneous, and if there was any possible way in which the jury could have drawn from the testimony the conclusion that the title to the premises were in the defendant, Mrs. Kirk, and that the plaintiff at the time the alleged trespass was committed, was a naked wrong-doer, or that the defendants have in any other respect been prejudiced thereby, then clearly they are entitled ex jure to a new trial.

"The jury found a verdict for the plaintiff for $1000, which they apportioned against

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the defendants in the following *manner: against Mrs. Kirk, $400; Chovin, $200; Perry, $400, and Wall, $1.

The defendants appealed and now moved this Court for a new trial on the grounds:

1. Because, it is respectfully submitted that his Honor erred in charging the jury that if the plaintiff was in peaceable possession, no matter how he acquired it, the defendants had no right to enter.

2. Because, it is respectfully submitted that his Honor erred in charging that if William Kirk was tenant for life, the defendants had no right to move the house.

3. Because, it is respectfully submitted that his Honor erred in charging that if the title of the defendant, Mrs. Kirk, to the close was perfect, "she had no right to enter in a high-handed manner, as she did."

4. Because, it is respectfully submitted that his Honor erred in refusing to charge the jury that if the title of the defendant, Mrs. Kirk, were perfect, and the plaintiff a trespasser, the plaintiff could not maintain the action of trespass quare clausum fregit against her for entering but, on the contrary, charged that this action would lie notwithstanding the defendant's title were perfect, and the plaintiff a mere wrong-doer.

5. Because it was in evidence that the title to the close was in the defendant, Mrs. Kirk, and the plaintiff a mere wrong-doer.

6. Because, even if the defendants were trespassers, the damages found by the jury were excessive.

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*Fickling, Davant, for appellants.

The defendants contend that though the plaintiff might have been in peaceable possession, the defendants had a right under any circumstances to enter for the purpose of removing her goods, and especially so if the plaintiff had acquired possession wrongfully.

That the house being on blocks was not a fixture, and that whatever may have been the character of Kirk's tenancy, provided his possession was not tortious, he, or his representatives after death, had a right to remove it, and to enter for that purpose. "But a tenant may so construct an erection or building that it shall not be considered to be affixed to the freehold in contemplation of the law; and then, whatever its purposes may be, however substantial it is in itself, the landlord will have no right to it at the end of the term. For unless a thing is absolutely attached to the realty by being set into the ground, or united to the freehold by means of nails, screws, bolts, mortars, or the like, the law regards it as a mere loose and moveable chattel." "Thus, if a tenant erects a barn, granary, stable, or any other building upon blocks, rollers, stilts, or pillars, the landlord is not entitled to consider it as a part of his freehold." 1 Tomlin's Law Dic. 805; Elwes v. Maw, 3 East. 51-55; 11 Vin. Ab. 154; Dean v. Allaby, 3 Esp. N. P. Cas. 11; B. N. P. 34; 11 Taunton, 20.

That if the title was in the defendant, Mrs. Kirk, she had a right to enter in any way she pleased, though she might be answerable for any wrong done to the person or property of the plaintiff in so doing.

That if the title was in the defendant, and the plaintiff a trespasser, the present action cannot be maintained, and that the question of title ought to have been submitted to the jury with such instructions. 2 Stark. on Ev. 816, and note on Dodd v. Kyffin, 7 T. R. 354; Densley v. Neville, 1 Leon. 301; Argent v. Dunant, 8 T. R. 403; Garr v. Fletcher, 2 Stark. 71; 3 Eng. C. L. R. 250; Gilb. Ev.

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358; Chambers v. Donaldson, *11 East, 72; Brandon ads. Grimke, 1 N. & McC. 357; Muldrow ads. Jones, Rice, 72; Johnson v. Hanahan, 1 Strob. 320.

That it was in evidence that the title was in the defendant, and the evidence ought to have been submitted to the jury, inasmuch as though it might not have been conclusive, it must at least have gone in mitigation of damages. Caston v. Perry, 2 Bail. 104.

That the damages found were under any circumstances excessive. Henderson v. Lyles, 2 Hill, 504; Richardson v. Dukes, 4 McC. 156.

Youmans, contra.

The opinion of the Court was delivered by

WHITNER, J. This being an action of trespass quare clausum fregit, the injuries to plaintiff's right of possession in the close, and the quo animo of defendants entered very essentially into the consideration of the case.

The character of the plaintiff's possession and the right of the defendants to enter, we are informed, were assumed adversely to the latter, and in this respect the presiding judge concedes there was error in his instructions, and if prejudice thereby resulted they should have a new trial.

Under the circumstances these questions depended on facts appropriately to be resolved by the jury.

The preponderance of testimony against defendants' title to the freehold was certainly very great, if not conclusive; but the right of Mrs. Kirk to the possession, as tenant from year to year, was more complex and imposing, and taken in connection with the recent rude intrusion upon her possession, presented features in the case eminently proper for the jury. The direction given to the case below, we apprehend, was calculated to prejudice the defendants, the more especially in the question of damages. The as-

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sumption of clear legal *blame upon any view of the case by the Court would go far in excluding just consideration of the bona fides or honest mistake of the parties, which however inadequate as matter of justification, directly affected the measure of compensation and punishment.

We think, therefore, the case should go back without prejudice, for another hearing.

A very earnest argument has been pressed upon this Court, that the building in question was not a fixture, and as a mere chattel might be properly reclaimed and removed. However difficult it may be in many instances to determine what may or may not be a fixture, or to lay down a general rule applicable to the different classes, this court is of one mind in reference to the case before us. With the authority relied on by counsel, it may be conceded that "a tenant may so construct a building that it shall not be considered as affixed to the freehold in contemplation of law," but we hesitate to adopt as a true test that "unless a thing is absolutely attached to the realty by being set into the ground, or united to the freehold by means of nails, screws, bolts, mortars, or the like, the law regards it as a mere loose and moveable chattel."

The whole subject is much discussed in a note found in 2 Smith's Lead. Cas. 215, (Am. ed.) and many sensible deductions from adjudged cases, of approved authority there cited, will serve to illustrate the rule of the common law as well as the exceptions. Every thing which is annexed to the freehold becomes part of the realty, and can only be

severed from it and reinvested with the character of personal property by the act of the owner of the land, and the rule applies not only to houses and other structures which are permanent in themselves, but to every chattel which is actually and substantially affixed to the freehold. Wherever these rules apply an exception must rest upon some reasonable and sensible distinction. This, we think, has not been shown in the present instance. True, it is termed a summer house, and

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*liberal rules are adopted in favor of tenants, which have been greatly enlarged in modern times, yet it was a dwelling house, successively occupied for a period of nearly thirty years, standing in the same place, added to occasionally, year after year. The appellant relies upon authority cited, that "if a tenant erects a barn, granary, stable, or any other building upon blocks, rollers, stilts or pillars, the landlord is not entitled to consider it as a part of the freehold." Such a rule might constitute one half of the buildings in a parish, mere chattels.

Where the property of one has been attached to the freehold of another for a temporary purpose, with an express or implied agreement, that it shall not be permanently annexed to the land, it may be removed when that purpose is satisfied. This is a rule sustained by respectable authority cited in the note referred to above. Looking to the fact in this case, and the reason of the thing, it is manifest that this improvement should go with the freehold. It was a permanent dwelling house, built in the usual way, and doubtless was intended and understood as a consideration moving the owner of the soil to its occupation by another, without rent charge, that these improvements, contemplated by the parties, would become essential parts of the freehold, improvements of the realty itself. Such is a just and fair implication, and dispenses with any discussion as to the rights of a tenant to remove as before and after the surrender or expiration of the lease.

Though the case goes back upon other grounds, it may not be deemed extraneous to present the above views, as indicating the mind of the Court, and therefore save at least a portion of the labor and time necessary to another hearing.

The motion for a new trial is granted.

O'NEALL, WARDLAW, WITHERS and GLOVER, JJ., concurred.

Motion granted.

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12 Rich. *66

*CITY COUNCIL OF CHARLESTON v. JOHN BLAKE and P. DUQUERCRON.

(Charleston. Jan. Term, 1859.)

[*Municipal Corporations* ⟹630.]

An ordinance of the City Council of Charleston imposed a penalty on the "owner or occupier" of any house or room, the chimney of which should take fire, and blaze out at the top: —*Held*, That, where the premises were occupied by a tenant, the owner was not liable under the ordinance.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 1385; Dec. Dig. ⟹630.]

In the City Court of Charleston, April Term, 1858.

The report of his Honor, the Recorder, is as follows:

"These were actions brought in the City Court of Charleston, under the 5th section of an ordinance of the City Council, ratified 7th February, 1848. Walker's Digest of City Ordinances, p. 48. The words of the ordinance are, "If any chimney in the city shall take fire and blaze out at the top, the owner or occupier of the house or room in which such chimney may be, shall forfeit and pay the sum of not less than twenty or more than forty dollars.

"Provided, however, that if the said owner or occupier shall prove, by other testimony than his or her own, that the said chimney has been swept within two weeks, and shall also give the number of the badge of the sweeper who swept the same, he shall be released, and the said chimney sweeper, or if he be a slave, his owner, or the person having the care and management of him, shall forfeit and pay the said sum." The actions were brought, not against the occupiers or tenants of the houses, but against the owners or landlords. Motions were made for nonsuit on the ground that, under the ordinance, the occupier alone of the house or room in which the fire occurred was liable.

"I overruled the motions in both the cases,

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and instructed *the jury that if they thought from the evidence that the fires in the several cases did occur, the actions against the owners were well brought under the ordinance, and that they should find for the plaintiff. The juries found for the plaintiff in both cases."

The defendants appealed on the ground:

That the action for the penalty under the ordinance should have been against the tenants and occupiers, and not against the landlords.

Thomas Y. Simons, for appellants, submitted,

That the construction contended for is against common right, and would make the landlord liable for the act or default of another.

That a fair and just construction of the Statute will show that the person in possession, whether owner or occupier, and thus in default, is the person amenable to the penalty of the ordinance.

Penal statutes receive a strict interpretation. The general words of a penal statute

shall be restrained for the benefit of him against whom the penalty is inflicted. Dwarris on Statutes, 634. In the construction of a statute, it is the office of an expositor to put such a sense upon the words that no innocent person shall receive any damage by a literal construction. Dwarris, 594. Effect not to be given to the precise words of the Act, if there will be absurdity, inconvenience, or injustice. Dwarris, 587. It is not the words of the law, but the internal sense of it, that makes the law. The letter of the law is the body—the sense and reason of the law is the soul. Every statute ought to be expounded, not according to the letter, but according to the meaning. "Qui hæret in litera hæret in cortice." The enlarged interpretation of a law will penetrate the soul and spirit of a law, and reach the intent and meaning of the legislator. Dwarris, 552.

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A thing *which is in the letter of a statute is not within the statute unless it be within the meaning of the enactment. Bac. Ab. tit. Statute, I.

Porter, City Attorney, contra.

The opinion of the Court was delivered by

WARDLAW, J. Words so unequivocal, as to be incapable of any other interpretation, would be required to show a matter so unreasonable, as that a landlord who, by a lease for years, had transferred to a tenant the exclusive enjoyment and care of a house for a term, should during the term be liable for the tenant's negligence in respect to the house. If the ordinance in question has, under the word owner, subjected a landlord, who has leased for a term, to this liability, it might be asked, what would be the rule in the case of a life estate. Looking through the ordinance we see a penalty, in the case of a slave chimney-sweeper, cast upon "his owner or the person having the care and management of him." If a boy slave was hired for a year, and the bailee employed him in chimney sweeping, it would not, we think, occur to any one to suppose that the bailor, as owner, could be made subject to the penalty. In the analogous case which we are considering, it appears to us that the city ordinance by the alternative, owner or occupier, intended to provide that the owner should be liable, if he occupied personally, or by agent, or servant, or guest: but that the occupant should be liable, if there was a person in possession under some definite right, not subject to the will of the owner, him who has the title in reversion. The notion that both owner and occupier were intended to be liable, we think altogether untenable.

The motion in each case granted.

O'NEALL, WITHERS, WHITNER and GLOVER, JJ., concurred.

Motion granted.

12 Rich. *69

*THE CITY COUNCIL OF CHARLESTON v. M. LUHRS and J. J. BREDENBERG.

(Charleston. Jan. Term, 1859.)

[*Costs* ⟹146.]

Fees in the City Court of Charleston are regulated by the Act of 1827, and not by the Fee Bill of 1791.

[Ed. Note.—For other cases, see Costs, Cent. Dig. § 572; Dec. Dig. ⟹146.]

[*Courts* ⟹55.]

The City Court of Charleston is not a Magistrate's Court.

[Ed. Note.—For other cases, see Courts, Cent. Dig. § 193; Dec. Dig. ⟹55.]

In the City Court of Charleston; February Term, 1858.

The report of his Honor, the Recorder, is as follows:

"These were actions in the summary process jurisdiction of the Court, to recover the penalty of twenty dollars in each case, for violations of the city ordinances against negroes loitering. An application is now made in behalf of defendants to reform the taxation of costs by the clerk.

"It was urged, first, that costs in this Court should be taxed according to the Fee Bill of 1827. 6 Stat. 333.

"Secondly, that these being cases within the summary process jurisdiction, and below fifty dollars, the taxation should be according to the A. A., 1809, (5 Stat. 596,) for only half costs.

"And thirdly, that the Court of Appeals having, in the City Council v. Steines, 10 Rich. 438, decided that the Recorder had authority to try and decide without a jury all cases within a magistrate's jurisdiction, only magistrate's costs should be taxed.

"With regard to the first point. The City Court was established by an Act of the Legislature, passed 19th December, 1801. 7 Stat. 300. By the 4th section the jurisdiction was limited to all actions for the recovery of any debt or sum of money arising on contract, express or implied, and for offenc-

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es *against the by-laws of the corporation, provided no verdict or judgment recovered in the said court shall exceed one hundred dollars. By section 11th, the fees of all officers of the said Court shall be in all respects the same as were then allowable by law in the summary jurisdiction of the Court of Common Pleas. At this time the Fee Bill of 1791, (5 Stat. 154,) was in force; and had there been no other legislation on the subject, no question could be made. But by A. A. 1818, (7 Stat. 319,) the Legislature increased the jurisdiction of the City Court, and provided in the second section of that Act that the charges and fees of the several officers of the said Inferior City Court shall be the same as in the Court of Sessions and Com-