

(Woodfall, 15th ed., 632). And, as we all know, a tenancy for a fixed period less than a year is governed by the same principles as a tenancy from year to year. Applying this quotation to the present case—if these coils burst in consequence of negligence of defendant, he is liable for breach of his implied covenant to use the house in a tenant-like manner; but if the bursting was accidental and without negligence on defendant's part, it will be regarded as permissive waste for which, as we have seen, he is not liable.

The plaintiff's case for negligence is this:—The former owner of the house, who left it six years ago, testifies that the heating apparatus was then in good condition. Plaintiff himself, put on a fire in November, 1909, and found that apparatus worked all right. The plumber, who was called in after the bursting, found coils and every thing in good condition. Then plaintiff says he saw defendant's wife away from the house during the afternoon of January 4th, and the inference is that the fire was allowed to get low, if not to go out. But the bursting, plaintiff says, did not occur until night of 5th, which proves, I think, there can be no connection, whatever, with the fire being low or out on the 4th—assuming for the moment it was—and a break on the 5th. It is a matter of such common knowledge in this country, that I might be justified in taking judicial notice of it—I do not need to do that here for we have the positive evidence of an experienced man, McKenzie—that coils if frozen will burst whenever a good fire is put on and they begin to thaw. Now there must have been a good fire on between afternoon of 4th and night of 5th, or, remembering what the weather was like, every coil in the house would have been frozen, and if freezing took place when plaintiff would have us believe, the bursting would have occurred earlier. Defendant's wife on the other hand says, she met plaintiff not on afternoon of 4th, but of 6th, and that the bursting took place not on night of 5th but on night of 6th, and there might, if we take her dates, be some connection between her being out and the breaking, though I am obliged to find there was not. It speaks well for the honesty of both parties that their evidence on this point is against their own interests.

There is, of course, a presumption of continuance, and evidence that heating apparatus was in good condition six years ago could not be rejected; but it is of little weight