

27th December, 1899. By that agreement he undertook to replace the Kingsley boilers by others of the same capacity to do the work, the "alterations or changes to be done free of charge" to the defendants.

He now seeks to shew by parol that the words "free of charge" did not refer to the brick work which formed part of the installation of the new boilers, and without the doing of which they could not be placed in working order. It is not pretended that under ordinary circumstances the replacing of the Kingsley boilers would not mean the doing of the brick work as well as the other work, but it is sought to be shewn that before the writing was signed by Campbell it was understood and agreed that he was not to bear the cost of the brick work, but that defendants were to have it done, Campbell giving them or allowing them to use the old bricks connected with the Kingsley boilers.

To allow the parol evidence for this purpose would be to sanction its receipt for the purpose of varying, qualifying, adding to, or subtracting from, the contract which the parties have put into writing. Campbell's undertaking is plainly expressed. If he could not make the Kingsley boilers satisfactory, that is, to perform their work to the defendants' satisfaction, he would replace them by others capable of doing the work, free of charge to the defendants. It is urged that the parol evidence was not objected to at the trial, and, having been received there, it cannot now be objected to. While that seems to be the general rule where there is a trial with a jury, a different rule is recognized where there is a trial by a Judge without a jury: *Jaekers v. International Cable Co.*, 5 Times L. R. 13; *Phipson's Law of Evidence*, p. 9.

Campbell having rendered himself liable in that way, what, if anything, afterwards transpired to relieve him of that liability?

He complains that the defendants, through their vice-president and managing director, Wylie, assumed to make the plans, engage the plaintiff, and direct the doing of the brick work in question. There appears to be some good reason for that course, inasmuch as there was a good deal of work to be done beyond the mere brick work for the boilers. An entirely new boiler house was being built, the expense of which the defendants were bearing, and the plans covered the whole work.

If Campbell was not satisfied with what was being done by the defendants, he might have protested against the work being taken out of his hands and notified the defendants that he was not to be held liable to pay for work which he