

BOARDMAN v. FURRY—BRITTON, J.—JUNE 1.

Contract—Use of Rooms in House—Life-interest in Land—Destruction of House by Fire—Refusal to Rebuild or Provide other Accommodation—Damages—Future Payments in Lieu of Rooms.—Action for possession of land, for damages, and to compel the enforcement of an agreement. In December, 1904, the plaintiff owned two parcels of land, one of 100 acres and the other of 40 acres, both subject to a blanket mortgage for \$2,600. The defendant purchased both parcels, paying \$100 and assuming the mortgage; and the plaintiff conveyed both parcels to the defendant on the 14th December, 1904, reserving to the plaintiff a life-estate in the 40-acre parcel. By an agreement dated the 1st November, 1906, it was provided that the defendant was to have the south part of what was called the old house, 'on the 40-acre parcel, to include the bed-room and lodge-room then occupied by him, and also the use of the large barn on that parcel, except the part described in the agreement. The plaintiff was to have the small barn and the north part of the house for his own use during his life. The defendant undertook to pay taxes on the buildings and on his own lands and "insurance on the buildings." The defendant paid insurance and taxes, and continued to occupy according to the agreement, until the 21st June, 1915, when a fire occurred which destroyed the house, small barn, and shed. The fire insurance company paid \$1,200 in respect of the loss, and this was paid to the mortgagee and applied upon the mortgage which the defendant had assumed. The defendant refused to rebuild except for himself or provide the necessary rooms for the plaintiff. The action was tried without a jury at Welland. BRITTON, J., in a written judgment, after stating the facts, said that he was of opinion that, under the agreement, the defendant was bound to furnish rooms for the plaintiff or otherwise provide an equivalent shelter for him. For the refusal to do so, the measure of damages was the reasonable cost to the plaintiff of the equivalent of what he was entitled to under the agreement. The plaintiff's loss was at least \$5 a month, which would be 5 per cent. on the \$1,200 insurance money received by the defendant. Allowing the defendant from the 21st June to the 15th August, 1915, as a breathing-space in which to rebuild or provide accommodation for the plaintiff, and assessing damages from the 15th August, 1915, to the 15th May, 1917, the plaintiff was entitled to recover \$105. If the defendant still refuses to build or provide rooms, the plaintiff will be entitled to \$5 a month in the future, payable quarterly from the 15th May, 1917, on the 15th days of August, November, February, and May, while the plaintiff lives. Judg-