

building; it was, no doubt, somewhat seriously damaged, but not to such an extent that it was necessary to rebuild it, using the word "rebuild" in contradistinction to "repair;" the addition was, no doubt, rendered temporarily unfit for occupation, though a part of it seems to have been used in the hotel business after the fire and before its restoration; the repairs were made and the building was restored, though its height was reduced by one storey, for the purpose, as was testified, of affording better light to the upper part of the main building, and the restoration was completed very soon after the fire, and at a comparatively trifling cost, and one that bore but a small proportion to the value of the restored building.

It is also a fair conclusion from the evidence that a prudent owner of both building and land would have taken the same course that defendant took, and would have repaired as she did. . . .

The building was not . . . destroyed, but only damaged, by the fire, and had the event on which the right of defendant was to come to an end, been "the destruction by fire" of the building, I should have had no doubt that that event had not happened.

When, as in this case, a building is damaged, though not so seriously but that it can be and is repaired and made fit for use again for the purpose for which it was originally designed, at a comparatively trifling expense, and with but a brief interruption to the use of it, it would, in my opinion, be quite inappropriate to speak of it as having been destroyed. The building was, in my opinion, not destroyed but only damaged, and not rebuilt but only repaired.

I refer to *Wall v. Hinds*, 4 Gray (Mass.) 256; *Spaulding v. Munford*, 37 Mo. App. 281; *Einstein v. Levi*, 25 N. Y. App. Div. 565. . . .

If plaintiff's contention is well founded, had a fire . . . occurred the very next day after the instrument was executed, resulting in the roof being burnt off . . . or even partly so, but so as to render the building temporarily, though for never so short a period, unfit for occupation, and although a very small expenditure of money and a very few days would be required to repair it so as to restore it to its original state, the right to occupy would be gone forever, and defendant bound to give up possession, leaving the building to become the property of plaintiff, for him to make it good, if he chose, at a trifling cost.

I cannot bring myself to adopt a construction of the instrument which would produce such a result, and, however precarious may be the tenure of defendant—and as to this I express no opinion—it is not, in my opinion, so