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Court : House of Lords

Decided On : Jun-22-1906

Judge : Lord Loreburn L.C., Lord Macnaghten, Lord James of Hereford, Lord Robertson, Lord Atkinson

Appeal No. : [1906] UKHL 1

Appellant : Cavalier (Pauper)

Respondent : Pope

Judgement :

LORD LOREBURN L.C.

My Lords, in my opinion the judgment of the Court of Appeal ought to be affirmed. I can find no right of action in the wife of the tenant against the landlord either for letting the premises in a dangerous state or for failing to repair them according to his promise. The husband has sued successfully for breach of contract, but the wife was not party to any contract. Accordingly the appeal fails.

LORD MACNAGHTEN .

My Lords, notwithstanding the opinion of Mathew L.J., and the able argument of the learned counsel for the appellant, I am of opinion that the judgment of the Master of the Rolls and Romer L.J. must be upheld.

The facts are not in dispute. The law laid down by the Court of Common Pleas in the passage quoted by the Master of the Rolls from the judgment of Erle C.J. in *Robbins v. Jones*(1) is beyond question: "A landlord who lets a house in a dangerous state is not liable to the tenant's customers or guests for accidents happening during the term: for, fraud apart, there is no law against letting a tumble-down house; and the tenant's remedy is upon his contract, if any."

In this case the husband was the tenant. The wife, who was not the tenant, cannot be in a better position to recover damages than a customer or guest. Her position is, perhaps, less favourable. She had the advantage or disadvantage of knowing more about the state of the house than any guest or customer could have known.

The landlord's agent, with whom all the negotiations about repairs passed, seems to have been, as Phillimore J. says, "a very unsatisfactory agent," and it may be that he had no serious intention of doing the repairs he promised. But that is not fraud within the meaning of the word "fraud" in the rule laid down by the Chief Justice.

I think the appeal must be dismissed.

I have been asked by my noble and learned friend Lord Davey, who cannot be here this morning, to say that he concurs in this judgment.

LORD JAMES OF HEREFORD .

My Lords, I have with regret arrived at the conclusion that this appeal must fail. In my opinion the verdict for the appellant cannot be maintained. There was but one contract, and that was made with the husband. The wife cannot sue upon it. Then is there any other form in

(1) (1863) 15 C. B. (N.S.) 221.

which her claim can be maintained? It was ably argued at the Bar that, as the premises belonged to the defendant, he must be taken to be in possession of them, and that, therefore, a duty arose to maintain them in a condition that would not cause injury to anyone who came upon them. But there seems to be a fallacy

in this argument. The defendant was not in actual possession of the house in question, and did not occupy it. The plaintiffs were the occupiers, and the statement of claim so alleges. No duty is cast upon a landlord to effect internal repairs unless he contracts so to do.

Then all that remains on which to found liability is the contract, and it was urged that the contract to repair placed the premises constructively in the possession of the defendant and under his control. But the actual possession by the plaintiffs seems to negative this constructive control. The case so presented also does not come within the claim on the contract under which the husband has recovered. I therefore feel that the judgment of the majority of the Court of Appeal must be maintained. I regret this result, because the female plaintiff has been injured entirely through the failure of the defendant's agent to fulfil the contract he made. But moral responsibility, however clearly established, is not identical with legal liability.

LORD ROBERTSON .

My Lords, I concur in the judgment of the Lord Chancellor.

LORD ATKINSON .

My Lords, the question for decision in this case is, on the view of the facts most favourable to the appellant, whether a landlord who lets to a tenant an unfurnished house in a dangerous or dilapidated condition, contracts to put the premises into repair, and fails to perform his contract, is responsible in damages to the tenant's wife, who was fully aware of their state and with whom he has not made any contract, for injuries sustained by her by reason of this condition.

No question was left to the jury as to whether Cunnings had made to any one any statement amounting to a representation of fact. It was contended, as I understood, that the finding that Cunnings had, before the accident, promised to repair the kitchen floor amounted in effect to a finding that he had represented that he intended to make the repairs, but, even if that be so, no question was left to the jury as to whether that intention was not, at the time the promise was made,

honestly entertained by him. And, speaking for myself, I may say that I am unable to understand how the representation of the existence of a present intention to do a certain act at some future time, unless it amounts to a contract, and contract with the appellant in this case it was found there was none, can create any legal obligation whatever. Notwithstanding the facts and circumstances, it was sought by the appellant's counsel to bring the case within some one of the three distinct and different principles established by three separate lines of authority following, namely: first, the principle established by the cases of which *Nelson v. Liverpool Brewery Co.*(1) may be taken as an example; secondly, the principle of *Indermaur v. Dames*(2); and, lastly, the principle of *Langridge v. Levy*(3) and *George v. Skivington*.(4)

If this case comes within any of these principles it must be because of the existence of the agreement to repair, since it is well established that no duty is, at law, cast upon a landlord not to let a house in a dangerous or dilapidated condition, and further, that if he does let it while in such a condition, he is not thereby rendered liable in damages for injuries which may be sustained by the tenant, his (the tenant's) servants, guests, customers, or others invited by him to enter the premises by reason of this defective condition: *Robbins v. Jones*(5); *Lane v. Cox*.(6)

It is, I think, clear that the case does not come within the principle of *Indermaur v. Dames*(2) and the cases which followed it down to *Earl v. Lubbock*(7), because one of the essential facts necessary to bring a case within that principle is that the injured person must not have had knowledge or notice of the existence of the danger through which he has suffered. If he knows of the danger and runs the risk he has no cause of action. Neither

(1) (1877) 2 C. P. D. 311.

(2) (1866) L. R. 1 C. P. 274; (1867) 2 C. P. 311.

(3) (1837) 2 M. and W. 519.

(4) (1869) L. R. 5 Ex. 1.

(5) (1863) 15 C. B. (N.S.) 221.

(6) [1897] 1 Q. B. 415.

(7) [1905] 1 K. B. 253.

can the case, in my opinion, fall within the principle of *Langridge v. Levy*(1) or of *George v. Skivington*.(2) There is here, to use the words of Collins M.R., neither fraud, misrepresentation, nor warranty, nor the handing over of a thing known to be dangerous without warning. In both these latter cases the defendant represented that the article sold was fit and proper for the purposes for which it was contemplated that it should be used, and the party injured was ignorant of its unfitness for those purposes.

The existence of the contract to repair cannot on this point, therefore, so far as these two authorities are concerned, make any difference. The liability of the defendant to the appellant must be precisely the same as in *Robbins v. Jones*(3) and *Lane v. Cox*(4), where no such agreement was entered into. The learned judge at the trial based his decision in favour of the appellant on the decision in *Payne v. Rogers*(5) and the language employed by Lopes J., as he then was, in delivering judgment in *Nelson v. Liverpool Brewery Co.*(6) The Court of Appeal were of opinion that these authorities did not apply, and, with all respect to Phillimore J., I think the Court of Appeal were absolutely right. It was insisted upon by the appellant's counsel that the premises were under the control of the landlord because of his agreement to repair. I have been quite unable to follow the reasoning by which that conclusion has been arrived at. In *Miller v. Hancock*(7) and *Hargroves, Aronson and Co. v. Hartopp*(8) the landlord was held liable because control was retained by him; but the power of control necessary to raise the duty, for a breach of which damages were recovered in the several cases to which we have been referred, implies something more than the right or liability to repair the premises. It implies the power and the right to admit people to the premises and to exclude people from them. But this power and this right belong to the tenant, not to the landlord, and the latter's contract to repair cannot transfer them to him. The existence

(1) 2 M. and W. 519.

(2) L. R. 5 Ex. 1.

(3) 15 C. B. (N.S.) 221.

(4) [1897] 1 Q. B. 415.

(5) (1794) 2 H. Bl. 350.

(6) 2 C. P. D. 311.

(7) [1893] 2 Q. B. 177.

(8) [1905] 1 K. B. 472.

of such an agreement may entitle a landlord to demand from his tenant admission to the premises for the servants and workmen required to carry out his contract, but nothing in the shape of control.

For these reasons I think the judgment of the Court of Appeal was right, and that the appeal should be dismissed.

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