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Landlord and Tenant -- Liability for Personal Injuries Caused By Breach of Landlord's Agreement to Repair

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the part of the courts to construe the contract so as to strengthen rather than weaken the accomplishment of the union's objectives in collective bargaining.

The two recent South Carolina cases of *Johnson v. American Railway Express Co.*,[26] and *Marshall v. Charleston & W. C. Ry. Co.*,[27] which hold that an employee injured by the employer's breach of the union-employer agreement respecting due process in the method of discharge, are, therefore, not only in accord with the trend of American law[28] in this field, but they constitute hopeful indications of a sympathetic attitude upon the part of the southern judiciary toward the significance of the unionization of southern industry.

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Landlord and Tenant—Liability for Personal Injuries Caused By Breach of Landlord's Agreement to Repair.

Plaintiff, an infant of a tenant, was injured by the falling of a door due to defective hinges. In the lease, the lessors (defendants) had agreed to keep the premises in good repair at all times during the tenancy. On demurrer, *held* the action was *ex contractu;* only such damages are recoverable as were reasonably within the contemplation of the parties when the contract was made; and damages for personal injuries are too remote. Defendant's demurrer upheld.[1]

In the absence of statute,[2] or of a valid covenant or stipulation in the lease,[3] the lessor is not bound to make ordinary repairs to the leased premises,[4] nor is he bound to pay for such repairs made by the

[26] *Supra* note 12.

[27] *Supra* note 12.

[28] Rice, *Collective Labor Agreements In American Law,* (1932) 44 HARV. L. REV. 572; Fuchs, *Collective Labor Agreements in American Law* (1925) 10 ST. LOUIS L. REV. 1; WITTE, THE GOVERNMENT IN LABOR DISPUTES (1932).

[1] Timmons v. Williams Wood Products Corporation, 162 S. E. 329 (S. C. 1932).

[2] Annis v. Britton, 232 Mich. 291, 205 N. W. 128 (1925); Smithfield Improvement Co. v. Coley-Bardin, 156 N. C. 255, 72 S. E. 312 (1911); see Bushman v. Bushman, 311 Mo. 551, 279 S. W. 122, 126 (1925).

Some jurisdictions have by statute imposed an obligation to repair and made the lessor liable in tort. Klein v. Young, 163 La. 59, 111 So. 495 (1927); Jarchin v. Rubin, 128 Misc. 437, 218 N. Y. Supp. 269 (1926).

[3] Lesser v. Kline, 101 Conn. 740, 127 Atl. 279 (1925); Cox v. Walter M. Lawney Co., 35 Ga. 51, 132 S. E. 257 (1926); Fields v. Ogburn, 178 N. C. 407, 100 S. E. 583 (1919); Hudson v. Anson Real Estate & Insurance Co., 185 N. C. 342, 117 S. E. 165 (1923).

[4] Farber v. Greenberg, 98 Cal. App. 675, 277 Pac. 534 (1929); Newman v. Golden, 108 Conn. 676, 144 Atl. 467 (1929); Richmond v. Standard Elkhorn Coal Co., 222 Ky. 150, 300 S. W. 359, 58 A. L. R. 1423 (1927); Duffy v. Hartsfield, 180 N. C. 151, 104 S. E. 139 (1920) (especially where the defects are apparent when the lease is made).

tenant.[5] However, the parties to a tenancy may agree that the landlord shall make necessary repairs.[6]

The courts are divided on the question of a lessor's tort liability on his covenant to repair demised premises. The ruling in the principal case is in accord with the decisions in England and in a majority of the jurisdictions in the United States. These authorities hold that the landlord's failure to comply does not impose tort liability[7] but merely gives rise to an action *ex contractu*,[8] and following the general rule of damages,[9] rigidly assert that damages for personal injuries are too remote and not within the contemplation of the parties.[10]

On the other hand, a number of states have imposed tort liability on the landlord who has covenanted to repair and negligently fails to do so.[11] The contract to repair is deemed a matter of inducement from which arises the affirmative duty to exercise due care toward all who are rightfully upon the premises.[12] It is also suggested that the

[5] Sueskind v. Michael Hardware Co., 228 Ky. 780, 15 S. W. (2d) 528 (1929); Halsell v. Scurr, 297 S. W. 524 (Tex. Civ. App. 1927).

[6] Magee v. Indiana Business College, 89 Ind. App. 640, 166 N. E. 607 (1929).

[7] Cavalier v. Pope, (1906) A. C. 428; Cameron v. Young, (1908) A. C. 176; Murrell v. Crawford, 102 Kan. 118, 169 Pac. 561 (1917); Fiorntino v. Mason, 233 Mass. 451, 124 N. E. 283 (1919); Dustin v. Curtis, 74 N. H. 266, 67 Atl. 220, 13 Ann. Cas. 169 (1907).

[8] Willis v. Snyder, 190 Iowa 248, 180 N. W. 290 (1920); O'Neil v. Brown, 158 Ky. 118, 164 S. W. 315 (1914); Williams v. Fenster, 103 N. J. L. 566, 137 Atl. 406 (1927).

[9] Beindorf v. Thorpe, 126 Okl. 157, 259 Pac. 242 (1927); Gordon v. Curtis Bros., A. D. Moodie House Moving Co., 119 Ore. 55, 248 Pac. 158 (1926).

[10] Schick v. Fleischhauer, 26 App. Div. 210, 49 N. Y. Supp. 962 (1898); Kushes v. Ginsberg, 99 App. Div. 417, 91 N. Y. Supp. 216 (1904), 188 N. Y. 630, 81 N. E. 1186 (1907); Tucker v. Yarn Mill Co., 194 N. C. 756, 140 S. E. 744 (1927); see Jordan v. Miller, 179 N. C. 73, 75, 101 S. E. 550, 551 (1919).

The same has been said of damage to the tenant's property. Bowling v. Carroll, 122 Ark. 23, 182 S. W. 514 (1916); Hendry v. Squier, 126 Ind. 19, 25 N. E. 830, 9 L. R. A. 798 (1890). *Contra:* Gabai v. Krakovitz, 98 Pa. Super. Ct. 150 (1929).

In O'Neil v. Brown, 158 Ky. 118, 164 S. W. 315 (1914), it was held that the damages contemplated might be enlarged by the fact of notice. In Massachusetts, a jurisdiction accepting the prevailing doctrine, the landlord is liable in tort when he agrees to maintain the premises in a "safe"condition. Miles v. Janvrin, 196 Mass. 431, 82 N. E. 708, 124 Am. St. Rep. 575, 13 L. R. A. (N. S.) 378 (1907) *semble*. Also in Alabama, when the covenant was an inducement to the tenant's remaining after threatening to vacate, it was held that the injuries were in the contemplation of the parties: Hart v. Coleman, 201 Ala. 345, 78 So. 201, L. R. A. 1918 E. 213 (1918).

[11] Collison v. Curtner, 141 Ark. 122, 216 S. W. 1059 (1919); Robinson v. Heil, 128 Md. 645, 98 Atl. 195 (1916); Barron v. Liedloff, 95 Minn. 474, 104 N. W. 289 (1905); Merchant's Cotton Press & Storage Co. v. Miller, 135 Tenn. 187, 186 S. W. 87, L. R. A. 1916F 1137 (1916); Flood v. Pabst Brewing Co., 158 Wis. 626, 149 N. W. 489, L. R. A. 1916F 1101 (1914).

[12] Clark v. Engelhardt, 9 La. App. 34, 120 So. 498 (1929) (this duty is a non-delegable one, so the landlord is liable for the negligence of an inde-

covenant to repair gives the lessor a privilege of entering the premises for the purposes of repair and consequently a power of control sufficient to impose tort liability.[13] The minority doctrine is accepted by the American Law Institute.[14]

The cases adopting the majority view seem to hold that the tenant is in contributory fault—although not so expressed—in remaining in possession with knowledge of the defects,[15] and that it is the duty of the tenant to make repairs and charge the cost thereof to the landlord.[16]

The law in North Carolina is in accord with the prevailing doctrine. In *Tucker v. Yarn Mill Co.*,[17] a tenant was injured by breaking through a defective board in the porch. The lease contained the

pendent contractor in making repairs); Barron v. Liedloff, 95 Minn. 474, 104 N. W. 289 (1905); Marks v. Nambil Realty Co., 245 N. Y. 256, 157 N. E. 129 (1927) (landlord is liable for negligence in making gratuitous repairs).

For the landlord's total failure to make promised repairs (non-feasance) only the minority impose tort liability, but where the lessor repairs negligently (misfeasance), all the courts agree that he is liable for resulting injuries. Smith v. Tucker, 151 Tenn. 374, 270 S. W. 66 (1925); see Murrell v. Crawford, 102 Kan. 118, 169 Pac. 561, 562 (1917).

[13] Where the lessor has complete control of a part of the premises, he is liable for personal injury resulting from defective condition. Medlock v. McAlister, 120 S. C. 65, 112 S. E. 436 (1922) (elevator).

Lord Atkinson, in Cavalier v. Pope, (1906) A. C. 428, 433: "The power of control necessary to raise the duty implies something more than the right to repair"; Stevens, J., in Willis v. Snyder, 190 Iowa 248, 180 N. W. 290 (1920): "No implied reservation of control over the premises arises from a mere agreement of the lessor to keep them in repair."

[14] TORTS RESTATEMENT, (AM. L. INST. 1929) §227: "LIABILITY WHERE LESSOR COVENANTS TO REPAIR. A lessor of land is subject to liability for bodily harm caused to his lessee and others upon the land in the right of the lessee by a condition of disrepair existing before or arising after the lessee has taken possession, if (a) the lessor, as such, has agreed by a covenant in the lease or otherwise to keep the land in repair, and (b) the disrepair creates an unreasonable risk to persons upon the land which the performance of the lessor's agreement would have prevented."

[15] Cohen v. Krumbein, 28 Ga. App. 788, 113 S. E. 58 (1922); Rose v. Butler, 69 Hun. 140, 23 N. Y. Supp. 375 (1893). *Contra:* Kreppelt v. Green, 218 S. W. 354 (Mo. 1920).

[16] Buck v. Rodgers, 39 Ind. 222 (1872); see Jordan v. Miller, 179 N. C. 73, 75, 101 S. E. 550, 551 (1919). *Contra:* Vandergrift v. Abbott, 75 Ala. 487 (1883); Spencer v. Hamilton, 113 N. C. 49, 18 S. E. 167 (1893).

[17] 194 N. C. 756, 140 S. E. 744 (1927).

In Hudson v. Anson Real Estate & Insurance Co., 185 N. C. 342, 117 S. E. 165 (1923), where there was no express agreement to repair, the plaintiff was nonsuited. The court said, "And even with a covenant to repair, the general rule is that such a liability will not be usually imputed."

In Jordan v. Miller, *supra* note 10, where there was a covenant that the landlord repair, the plaintiff, employee of the tenant, was not allowed to recover for personal injury because the jury found that she was contributorily negligent in stepping through the hole in the platform, but the court said, quoting from 16 R. C. L. 1095, that ordinarily where the landlord breaches his contract to repair, the tenant cannot recover for personal injuries, whether in contract or tort.

landlord's agreement to repair. The plaintiff was nonsuited, the court holding that the damages were too remote and not within the contemplation of the parties.

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Registration—Similarity In Name As Notice.

On petition for the recognition of mortgagee's claim as a lien against the funds of the mortgagor's trustee in bankruptcy, *held,* where the mortgagor's creditors knew that it had conducted a flying school under the name of "Greer College of Motoring," a mortgage so recorded was constructive notice of a lien against "Greer College and Airways." And had the creditors not had such information, they would have been presumed to know that flying machines require motors.[1]

Most courts strictly construe the recordation statutes. When the Christian name is wrong,[2] or omitted,[3] the record is said not to be notice. On the other hand, omission of the first name and substitution of the middle name is held fatal by some courts[4] and immaterial by others.[5] In the case of common diminutives and corruptions of proper names, the almost universal view is that the searcher is given sufficient notice.[6] It is also held in the use of the proper initial for

[1] *In re* Greer College and Airways, 53 F. (2d) 585 (C. C. A. 7th, 1931). The other ground for the decision was that under an existing Illinois statute which required several steps in the process of change of corporate name, the name had not in fact been changed until the final step.

[2] Zimmerman v. Briggans, 5 Watts 186 (Pa. 1836); Stark v. Weisner, 214 N. Y. Supp. 292 (1926); Bankers' Loan and Investment Co. v. Blair, 99 Va. 606, 39 S. E. 213 (1901); Zimmer v. Dunlap, 99 N. J. Eq. 610, 133 Atl. 514 (1926); Bernstein v. Schoenfeld, 81 N. Y. Supp. 11 (1902). *Contra:* Ouimert v. Sirous, 124 Mass. 162 (1877) (Joseph Cyr, sufficient notice to one searching for Germain Sirous: decision due to Massachusetts doctrine that things good between parties are good as to third persons).

[3] Ridgway's Appeal, 15 Pa. 177 (1850); Richardson v. Gardner, 128 Va. 676, 105 S. E. 225 (1920).

[4] Johnson v. Hess, 126 Ind. 298, 25 N. E. 445 (1890) (William not notice to one looking for Henry W.); Haring v. Murphy, 113 N. Y. Supp. 452 (1908).

[5] Loser v. Plainfield, 149 Iowa 672, 128 N. W. 1101 (1910); Jenny v. Zehnder, 101 Pa. 296 (1882) (F. Zehnter, notice of John Jacob Frederick Zehnder).

[6] H. R. & Co. v. Smith, 208 N. Y. Supp. 396, 151 N. E. 448 (1926) (Bess and Elizabeth); Burns v. Ross, 215 Pa. 293, 64 Atl. 526 (1910) (Frank and Francis); Goodell v. Hall, 112 Ga. 435, 37 S. E. 725 (1900) (Elizabeth and Eliza); Styles v. Theo. P. Scotland and Co., 22 N. D. 469, 134 S. W. 708 (1912) (Charles and Charlie); Fallon v. Kehoe, 38 Cal. 44 (1869) (Darby and Jeremiah). *Contra:* Thomas v. Desney, 57 Iowa 58, 10 N. W. 315 (1881) (Helen and Ellen); Zimmerman v. Briggans, *supra* note 2 (John and Jacob); Thornily v. Prentice, 121 Iowa 89, 96 N. W. 728 (1903) (Willis and Wiliam).