1929
*Nov. 4.
1930
*Feb. 4.

EUGENE TAYLOR (PLAINTIFF)..........APPELLANT;

AND

THE PEOPLE'S LOAN AND SAVINGS CORPORATION (DEFENDANT)...... RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO

Negligence—Landlord and tenant—Claim for damages for personal injuries caused by fire in defendant's building while plaintiff attending meeting of society which was lessee of premises in the building—Absence of fire escapes—City by-laws—Factory, Shop and Office Building Act, R.S.O., 1914, c. 229—"Factory."

Defendant owned a four storey building, and leased premises on the top storey to a fraternal unincorporated society, of which plaintiff (subsequently to the lease) became a member. During a meeting of the society a fire occurred in the building and plaintiff, whose egress by the stairway was cut off by the fire, was injured. The building was not provided with fire escapes. Plaintiff sued defendant for damages.

Held: Plaintiff could not succeed. There was nothing to show that he was an invitee of defendant. Defendant's obligation was not higher or more extensive than that of lessor under the lease, and, assuming, the most advantageous position for plaintiff, that he and defendant stood in the relation of tenant and landlord under it, they were governed by the law as stated in *Lane* v. *Cox,* [1897] 1 Q.B. 415, *Cavalier* v. *Pope,* [1906] A.C. 428, *Fairman* v. *Perpetual Invt. Bldg. Soc.* [1923] A.C. 74, at pp. 95-96, *Scythes & Co. Ltd.* v. *Gibson's Ltd.,* [1927] S.C.R. 352, at p. 358; the landlord does not, in the absence of a provision to that effect, become liable to the tenant for defective construction or maintenance of the leased premises, or for damages resulting from any such cause. As to certain clauses of a city by-law, requiring fire escapes to be provided after notice by the building inspector, and requiring a building considered dangerous to be made safe, upon notice by the inspector, these had no application because (whatever the effect might otherwise have been) no such notice had been given as to the building in question. Whether or not a certain printing business carried on by a tenant in rooms on the lower two storeys of the building operated, as to such rooms, to create a "factory" within the *Factory, Shop and Office Building Act,* R.S.O., 1914, c. 229, it afforded no reason for regarding the fourth storey as a "factory," and therefore (apart from other considerations standing in plaintiff's way of recovery under that Act) the provisions of that Act invoked by plaintiff were inapplicable.

Judgment of the Appellate Division, Ont., 63 Ont. L.R. 202, in its result affirmed.

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*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Smith JJ.

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APPEAL by the plaintiff from the judgment of the Appellate Division of the Supreme Court of Ontario (1) which, reversing the judgment of Raney J. (2), held that the plaintiff was not entitled to recover from the defendant damages claimed for personal injuries to the plaintiff caused through a fire which occurred in the defendant's building, premises in the top storey of which had been leased by defendant to a fraternal unincorporated society, of which the plaintiff, at the time of the fire, was a member, and a meeting of which he was attending when the fire occurred. The material facts of the case are sufficiently stated in the judgment now reported. The appeal was dismissed with costs.

J. W. G. Winnett K.C. for the appellant.

I. F. Hellmuth K.C. and *T. N. Phelan K.C.* for the respondent.

The judgment of the court was delivered by

NEWCOMBE J.—On the night of 22nd January, 1927, a building of four storeys, belonging to the defendant company, situate on Richmond street, London, Ontario, was destroyed, or seriously damaged, by fire. Parts of the building had been leased, and were in the possession of tenants. Among others, the space on the fourth floor, described as "the top flat of the building known as No. 426 Richmond street," was, by indenture of 1st April, 1923, in form and as thereby expressed, leased by the defendant company to "Court Eclipse, No. 1036, Canadian Order of Foresters of the said city of London," a fraternal, unincorporated society.

The lease was by indenture in duplicate, in pursuance of the *Act Respecting Short Forms of Leases;* it was executed, on behalf of the defendant company, by its President and Secretary-Treasurer, who affixed the company's corporate seal; and, on behalf of the Court Eclipse, by the Chief and Financial Secretary of the Court, who attached a seal. The lease was to run for one year from its date, and there is a memorandum endorsed of 26th April, 1924, extending the term for one year from the first of that month. It would

(1) (1928) 63 Ont. L.R. 202. (2) (1928) 62 Ont. L.R. 564.

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appear that the society continued to occupy the premises described down to the time of the fire, although there is no further written extension in evidence.

On the night of the fire, the members of the Court, or society, were entertaining themselves and their friends at a social assembly held in the flat, and the plaintiff, who had joined the society subsequently to the lease, was present. The party was broken up by the fire, which started on one of the lower floors while the festivities were in progress, and, most unfortunately, had, before it was discovered, gathered such headway that egress by the stairway was cut off for several of the members and their guests, including the plaintiff. The building was not provided with fire escapes, and so it was necessary for these unfortunate people to jump from the windows, in order to save themselves.

The plaintiff, who raised an alarm, and remained at a window until the firemen arrived, landed in one of the nets, and his hands proved to be so severely burned as permanently to destroy their usefulness. He claimed $15,000 damages, and that amount was found at the trial, and not questioned before us. The Appellate Division (1) reversed the trial judge, holding that there was no liability, and from that judgment the plaintiff appeals.

The learned trial judge (2) was of opinion that the defendant company was liable both at common law and by the legislation of Ontario. He held that, although there was no contract between the parties, the plaintiff was not a trespasser nor a mere licensee, but, in the language of the judgment, that he was

an "invitee," just as much as he would have been if he had paid an admission fee to the defendant company.

I do not, however, find any material with which to construct an invitation by the defendant; its obligation cannot, in my view, be any higher, or more extensive, than that of lessor under the lease of 1st April, 1923; and, to assume the most advantageous position for the plaintiff, if he and the defendant stand in the relation of tenant and landlord under that instrument, they are governed by the

(1) (1928) 63 Ont. L.R. 202. (2) (1928) 62 Ont. L.R. 564.

law as stated in *Lane* v. *Cox* (1); *Cavalier* v. *Pope* (2); *Fairman* v. *Perpetual Investment Building Society* (3); *Scythes & Company Limited* v. *Gibson's Limited* (4). The landlord does not, in the absence of a provision to that effect, become liable to the tenant for defective construction or maintenance of the leased premises, or for damages resulting from any such cause.

There is a municipal by-law of the City of London, no. 5430, of 4th December, 1916, as amended, requiring, by clause 40, " the owner, lessee or agent of every building (except private dwellings) three storeys or more in height," to provide fire escapes within one month after notice by the Inspector of Buildings; but in this case there was no notice, and so the clause does not apply, whatever its effect might otherwise have been. For the like reason the provisions of clause 10 of the by-law do not apply; that clause requiring the owner or his agent, of a building which, in the opinion of the Inspector, is in a dangerous condition, to proceed at once, upon notice in writing of the Inspector, to make the building safe.

The judge expresses his view with regard to the legislation as follows:

> But did the failure of the building inspector to take his duties seriously absolve the defendant company from responsibility? I think not. Its officers certainly knew of the condition of the building and the absence of fire escapes, and their duty was to comply with the law irrespective of official notice or absence of official notice.

But I do not think that this is an admissible interpretation. There is no common law liability; and as to the by-law, to mention one reason only, the requisite of notice was not satisfied.

Chapter 229, R.S.O., 1914, *An Act for the Protection of Persons Employed in Factories, Shops and Office Buildings*, is also invoked on the plaintiff's behalf, and the trial judge considered that the plaintiff, as an invitee of the owner, was entitled to the benefit of s. 59, subs. 3, which provides that

> The owner of every factory, shop or office building over two storeys in height, and, where deemed necessary by the Inspector, the owner of every factory, shop or office building over one storey in height, shall provide one or more systems of fire escape, and shall keep the same in good repair and to the satisfaction of the Chief Inspector, as follows:

(1) [1897] 1 Q.B. 415.
(2) [1906] A.C. 428.
(3) [1923] A.C. 74, at pp. 95-96.
(4) [1927] S.C.R. 352, at p. 358.

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and directions follow as to the structure, position and character of the stairways or ladders, shewing clearly enough, in addition to what may be inferred from the title of the statute, that it is for the protection of the employees that the fire escapes are required.

It appears that Langford and Company occupied rooms on the two lower flats for printing purposes, and it was for that reason that the learned judge considered that the building was a factory, and subject to factory regulations, even on the fourth floor, where the Court Eclipse was located. There seems to be some doubt as to whether the business of Langford and Company operated to create a factory within the meaning of the Act, even as to the space which they occupied; the learned judge suggests that the place was "barely within the statutory definition of the word." But, however that may be, and apart from other considerations which stand in the plaintiff's way of recovery under the *Factory, Shop and Office Building Act,* I see no reason why the fourth floor should be regarded as a factory, and I do not consider that this Act applies, any more than the other enactments which have been cited.

My conclusion is thus in conformity with that unanimously reached by the Appellate Division.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Winnett, Morehead & Co.*

Solicitors for the respondent: *Murphy, Gunn & Murphy.*

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*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Lamont JJ.