

SUMMER SESSION, 1892.

COURT OF SESSION.

Thursday, May 12.

SECOND DIVISION.

[Sheriff of Lanarkshire.

WEBSTER v. BROWN.

Reparation—Landlord and Tenant—Relevancy—Insecure State of House—Duty of Tenant who Discovers Defect in House.

The tenant of a house had occupied it from Whitsunday 1890 till 9th March 1891. On the latter date she fell down the steps leading from the level of the street up to the outside door of the house, and sustained serious injuries. She brought an action against the landlord for £1000 as damages for the injuries received by her, and averred that when she entered into possession of the house she found the steps were much worn and in a dangerous condition for her use as a tenant.

Held that there was no relevant case against the landlord, there being only two courses open to a tenant who discovers a defect in his house, either (1) to remain in the house and take the risk of accident, or (2) to give the landlord notice to remedy the defect, and if the landlord does not do so within a reasonable time, to leave the house.

Mrs Mary M'Call or Webster, trained nurse, 77 Hill Street, Garnethill, Glasgow, raised an action in the Sheriff Court of Lanarkshire at Glasgow against Alexander Brown, plumber and gasfitter, 5 and 7 Bath Street, Glasgow, for £1000 as damages for injuries alleged by her to have been received on 9th March 1891 through the fault of the defender.

The pursuer averred —“(Cond. 2) The pursuer is tenant of the house in which she resides at 77 Hill Street foresaid, and the defender is the proprietor. The pursuer

was also tenant of the same house for the preceding year ending Whitsunday 1891, at a rent of £50 sterling, and the defender was the proprietor thereof. (Cond. 3) The said house is two stairs up, and is one of four houses which comprise the tenement No. 77 Hill Street foresaid, and the tenants of all the houses in the tenement enter from the street by the same outside door. (Cond. 4) After Whitsunday 1890, when the pursuer entered into possession of the said house, she found that the steps, five in number, from the level of the street up to the said outside door were much worn, and in a dangerous condition for her use as a tenant. Complaints were made among the pursuer and the other tenants as to the condition of the steps, and conveyed to the defender, with the result that in the autumn of the same year the defender visited the property, and expressed his intention of putting in new steps, which intention he carried out shortly after the date of the accident after mentioned by putting in new steps, or at least by putting new covers on the old steps, and prior to the said accident the pursuer frequently complained to the defender's factor, J. Campbell Brown, who is a son of the defender and resides with him, as to the dangerous condition of the said steps, requesting him to have them put right. (Cond. 5) The steps were originally very steep and narrow from front to back, with a bottelling on the front corner of each step about two inches deep, and protruding about two inches to increase their width. The steps were of soft sandstone, and being exposed to the weather, were by the passenger traffic worn on the fronts of their upper surfaces for a width of two or three feet up the centre of the entrance to such an extent that the bottelling had disappeared, and the steps presented the appearance of a sloping declivity. It was thus very difficult, especially in going down, to avoid falling. (Cond. 6) On the morning of 9th March 1891, about ten o'clock, the pursuer left her house. . . . When she had gone down stairs and entered

on the said steps, her foot resting on the first step down from the top lost hold of the sloping surface, and both feet escaping from under her, she fell on her back on the centre of the steps and descended to the level of the street, the back of her legs, body, and head being dragged over the rugged surface of the steps, and she was thereby injured externally and internally and suffered shock, and this through the fault or negligence of the defender in not putting and maintaining the said steps in a good and safe condition for the use of the pursuer as a tenant."

The pursuer pleaded—"(1) The pursuer having been injured as aforesaid through the fault or negligence of the defender, decree should be granted as craved, with expenses. (2) The defender, being proprietor of the house of which the pursuer was the tenant, was bound to put and keep the house in good tenantable condition and repair, including a good and safe mode of access thereto, and he having failed to keep the steps, which were the only mode of access thereto, in a good and safe condition for her use as a tenant, is liable for the loss and injuries the pursuer has thereby suffered, and decree should be granted as craved, with expenses. (3) The pursuer having sustained permanent injuries by the failure of the defender to provide and maintain the said steps in a good and safe condition for her use as a tenant, though informed and well aware of their condition, the defender is bound to compensate her for the loss and injuries she has thereby sustained, and decree should be granted as craved, with expenses."

The defender pleaded—"(1) The pursuer's averments are irrelevant and insufficient to support the conclusions of the action."

On 11th February 1892 the Sheriff-Substitute (GUTHRIE) allowed a proof before answer.

The pursuer appealed for jury trial to the Court of Session.

Argued for the defender—The action should be dismissed as irrelevant. The only averments of the pursuer were that the stairs were worn badly, that she knew that this was the case when she entered into possession of the house, and that she continued to occupy the house notwithstanding her knowledge of the dangerous state of the stairs. If the landlord refused or delayed to remedy the defect the tenant should have left the house—*Scottish Heritable Securities Company, Limited v. Grainger*, January 28, 1881, 8 R. 459. The landlord was no doubt bound to provide a suitable stair, but if a tenant takes a house with a sloping declivity instead of a stair, and continues to occupy the house, although well aware that the stair is in such a bad condition, he takes the risk, and has no recourse against the landlord. The case of *Fulton v. Anderson*, November 18, 1884, 22 S.L.R. 100, had no bearing on the present, since in that case the person injured was a third party, and the defect in the staircase was not apparent to a person using the stair.

Argued for the pursuer—The case was relevant. It might have been assumed that if this accident had occurred to a member of the public the landlord would have been held to be at fault. There was no reason why the same liability should not rest upon the landlord in a question with a tenant. The ordinary obligation of a landlord was to put the tenant in possession of a house which was habitable and safe, and the landlord must be responsible if he did not fulfil that obligation. Where a house became uninhabitable the tenant was entitled to leave it, but where the defects, as in the present case, could easily be removed, the tenant fulfilled her duty when she brought the matter under the notice of the landlord.

At advising—

LORD JUSTICE-CLERK—The pursuer states her case on the footing that she was tenant of a house for nine months, and that after she had entered upon a new term, and in the tenth month of her tenancy, an accident occurred to her on account of the defective state of the stairs leading from the street to the outside-door of her house. It is not alleged that between the date on which she entered into possession and the date on which the accident happened any change had taken place in the state of the stairs. Thus for ten months she had used them without objection. If a person becomes tenant of a house, and if defects in the house or its approaches become known to him, there are two courses open to him—(1) he can remain in the house, which implies that he considers the defects trifling and is willing to overlook them; or (2) he can give the landlord notice to have the defects remedied, and if the landlord does not make the necessary alterations within a reasonable time he can leave the house. I do not suggest that the tenant on discovering the defects should instantly leave the house and charge the landlord with the expense of acquiring a new tenancy, but he is bound within a reasonable time to bring the matter under the notice of the landlord, and upon getting no remedy to leave the house or remove at his own risk. But in this case the pursuer has occupied this house for many months, and during the whole of that time she has known the defective state of the stairs, and has not made any representation to the landlord.

In the circumstances I must hold that there is here no relevant case stated for the pursuer.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—I also agree. I think the pursuer's averments in condescendence put her out of Court. She there avers—"When the pursuer entered into possession of the said house she found that the steps, five in number, from the level of the steps up to the said outside-door, were much worn, and in a dangerous condition for her use as a tenant." For nine or ten months she continued to use these steps. I think therefore she acted in face of a known

danger, and must take the consequences. It is the duty of a tenant who discovers a serious defect in the condition of the house when he enters into possession immediately to give notice of the defect to the landlord, and insist on its being repaired, and if the landlord fails to repair the defect within a reasonable time the tenant may leave the house. If, however, the tenant does not do so, but continues notwithstanding the defect to occupy the house the tenant must just take the consequences.

The Court dismissed the action as irrelevant.

Counsel for Pursuer—Younger. Agents—Simpson & Marwick, W.S.

Counsel for Defender—Sym. Agent—Alexander Wylie, S.S.C.

Thursday, May 12.

FIRST DIVISION.

[Sheriff of Roxburgh, Berwick, and Selkirk.

PAROCHIAL BOARD OF GALASHIELS v. PAROCHIAL BOARD OF MELROSE.

Poor—Relief—Settlement—Jurisdiction—Alteration of Boundaries of Parish—Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), secs. 49 and 50.

Section 49 of the Local Government Act empowers the Boundary Commissioners appointed under the Act to alter the boundaries of parishes. Section 50 authorises the local authorities affected by any such order to adjust their debts and liabilities by agreement, so far as affected by the order, and provides that failing such agreement the adjustment may be made by the Commissioners.

The Boundary Commissioners pronounced an order detaching a piece of land from the parish of Melrose and annexing it to the parish of Galashiels. Shortly after the order had come into effect two persons resident within the transferred area applied for and received relief from the parish of Galashiels. One of these paupers had resided in the transferred area continuously for more than five years prior to the date of the order, and the other had been born there prior to the date of the order.

In an action of relief at the instance of the Parochial Board of Galashiels, held (1) — *distinguishing Parochial Board of Borthwick v. Parochial Board of Temple*, July 17, 1891, 18 R. 1190—that the jurisdiction of the Court was not excluded by the provision empowering the Commissioners to adjust the liabilities of parishes; and (2) that Melrose Parish was bound to relieve the parish of Galashiels of the expenses

of the paupers' maintenance, in respect that the order of the Commissioners altering the boundaries of the parishes did not affect the settlements which the paupers had acquired in the parish of Melrose prior to its date.

Prior to the passing of the Local Government Act of 1889 a part of the town of Galashiels and the adjacent land was included in the parish of Melrose. On 13th December 1890 the Boundary Commissioners appointed under that Act, and in the exercise of the powers conferred upon them by the 49th section thereof, issued an order in the following terms:—“*Parishes of Galashiels and Melrose.*—Whereas each of the parishes of Galashiels and Melrose is situated partly in the county of Roxburgh and partly in the county of Selkirk: And whereas it appears to us, after communicating with the authorities and others interested, and considering all objections made to the terms of our draft order thereon, to be expedient to alter and adjust the boundaries of the said counties and parishes in manner hereinafter provided: Now, therefore, we, the Boundary Commissioners for Scotland, do hereby, in pursuance of the powers conferred upon us by the Local Government (Scotland) Act 1889, determine and order as follows—(1) Subject to the provisions of the said Act, so much of the parish of Melrose as is situated in the county of Selkirk shall cease to be part of that parish, and shall form part of the parish of Galashiels.” This order came into force on 11th June 1891.

On 26th August, Catherine Hay, who resided in the town of Galashiels and within the area of land which had been detached from Melrose and joined to Galashiels Parish, made application for relief to the inspector of poor of Galashiels Parish, and being a proper object of relief, she received relief from that parish. The inspector of poor of Galashiels Parish thereafter applied to the Parochial Board of Melrose to relieve him of the expense of the said pauper's maintenance, and the the Parochial Board of Melrose having refused to do so, the inspector of poor of Galashiels Parish raised an action against the inspector of poor of Melrose Parish, as representing the Parochial Board of that parish, concluding for decree ordaining him to refund to the pursuer the sums already expended on the pauper's maintenance, and to free and relieve him in all time coming of all further advances which the pursuer might make on her account.

The pursuer averred in substance that Catherine Hay had resided for a continuous period of five years prior to 11th June 1891 in a house situated within the area of ground which had been transferred from Melrose to Galashiels Parish.

The defender admitted that to be true, but made the following statements of fact—“(Stat. 5) After the transference on 11th June 1891 certain claims between the parishes of Galashiels and Melrose fell, as provided by the Local Government (Scotland) Act 1889, to be adjusted. The rates