HOUSE OF LORDS.

Friday, June 22.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Robertson, and Atkinson.)

CAVALIER *v.* POPE.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Landlord and Tenant—Contract by Landlord with Tenant to Repair Defective Premises—Breach of Contract—Injury to Tenant's Wife—Non-Liability of Landlord.

A landlord let to a tenant a dilapidated house and contracted with him to put it into a state of repair. This contract he failed to implement, and in consequence the tenant's wife sustained serious physical injuries. *Held* that she had no cause of action against the landlord in respect of the injuries sustained by her.

Appeal *in forma pauperis* from a judgment of the Court of Appeal (COLLINS, M.R., and ROMER, L.J., MATHEW, L.J., *dissenting*), who had set aside so much of a judgment of PHILLIMORE, J., as adjudged that the appellant Minnie Cavalier should recover from the respondent William Pope the sum of £75.

James Cavalier leased a house upon a weekly tenancy, and under a verbal agreement, from William Pope. He occupied the house along with his wife. They repeatedly drew the attention of Pope's agent to the defective state of the kitchen floor, and the agent promised James Cavalier that the necessary repairs would be executed if he would stay on as tenant of the house. The repairs were not executed, and Cavalier's wife met with an accident owing to a chair upon which she was standing going through the kitchen floor.

Cavalier and his wife brought an action against Pope, their claim being for damages for breach of contract resulting in personal injury to the wife and expense to the husband. The jury in answer to questions put to them by the learned Judge found that the agent knew that the floor was defective and promised to repair it, and that in doing so he was acting within the scope of his authority. They returned a verdict for the plaintiffs and assessed the damages in the case of the wife at £75 and in the case of the husband at £25.

The defendant appealed against the judgment in favour of the wife, and the Court of Appeal sustained the appeal.

The plaintiff, Cavalier's wife, appealed to the House of Lords.

Their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—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 these 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—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 Collins, M.R., 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 Collins, M.R., from the judgment of Erle, C.J., in *Robbins* v. *Jones* (9 L.T.Rep. 523, 15 C.B.N.S. 221) is beyond question—"A landlord who lets a house in a dangerous state is not liable to the tenants, customers, or guests for accidents happening during the term; for, fraud apart, there is no law against letting a tumbledown 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 a 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 Erle, C.J. I think the appeal must be dismissed.

LORD JAMES OF HEREFORD—I have with regret arrived at the conclusion that this appeal must fail. The action was brought by the appellant and her husband, and the statement of claim alleged that a contract to repair the flooring of the kitchen of a house owned by the defendant and occupied by the plaintiffs was made on the defendant's behalf by his agent, that the contract was broken, and that in consequence the appellant sustained personal injuries. In support of these allegations proof was given of a contract to repair internally a house of which the male plaintiff was tenant. The contract was made with him, but both the plaintiffs sued on it, and at the trial James Cavalier the husband recovered £25 for the damage he had sustained in consequence of the breach. The jury also found a verdict for the female plaintiff for £75 in satisfaction of injuries she sustained through the non-performance of the repairs of the flooring by the defendant. The question before your Lordships is, Can such verdict for the appellant be maintained? In my opinion it cannot. 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 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 failure 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 James Cavalier has recovered. I therefore feel that the judgment of the majority of the Court of Appeal must be maintained. As I have said, I regret this result, because the female plaintiff has been injured entirely through the failure of the defendant's agent to fulfil the contract which he made. But moral responsibility, however clearly established, is not identical with legal liability.

LORD ROBERTSON concurred.

LORD ATKINSON—The question for decision in this case is, on the view of the facts most favourable to the appellants, whether a landlord who lets to a tenant an unfurnished house in a dangerous or dilapidated condition, contracts to put the premises in 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 had not made any contract, for injuries sustained by her by reason of this condition. No question was left to the jury as to whether the agent had made to anyone any statement amounting to a representation of fact. It was contended, as I understood, that he had before the accident promised to repair the kitchen floor. That amounted in effect to a finding that he represented that he intended to make the repairs; but, even if that be so, no question was left to the jury as to whether the intention was not at the time the promise was given 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 authorities following—namely, first, the principle established by the cases of which *Nelson* v. *Liverpool Brewery Company* (2 C.P. Div. 311) may be taken as an example; secondly, the principle of *Indermaur* v. *Dames*, 16 L.T. Rep. 293, L. Rep. 2 C. P. 311; and lastly, the principle of *Langridge* v. *Levy*, 4 M. & W. 337, and *George* v. *Skivington*, L.R. 5 Ex. 1. If this case comes within any of these principles it must apparently 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 their defective condition—*Robbins* v. *Jones*, *ubi sup.*; *Lane* v. *Cox*, 1897, 1 Q.B. 415. 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* and *Lane* v. *Cox*, where no such agreement was entered into. The learned judge at the trial based his decision in favour of the appellants on the decision in *Payne* v. *Rogers*, 2 H. Bl. 350, and the language employed by Lopes, J., in delivering judgment in *Nelson* v. *Liverpool Brewery Company*, 2 C.P. Div. 311. The Court of Appeal were unanimously of opinion that these authorities did not apply, and, with all respect to Phillimore, J., I think that the learned Lords Justices 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 unable to follow the reasoning by which that conclusion has been arrived at. *Miller* v. *Hancock*, 1893, 2 Q.B. 177, and *Hargroves, Aronson & Company* v. *Hartop*, 92 L.T. Rep. 414, 1905, 1 K.B, 472, are instances of cases where 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 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 the work, 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.

Appeal dismissed.

Counsel for the Appellant—E. F. Lever—Wilshere. Agent—J. Davis, Solicitor.

Counsel for the Respondent—M. Lush, K.C.—C. W. Lilley. Agent—R. Chapman, Solicitor.