

HIGH COURT OF JUSTICE.

MEREDITH, C.J.C.P.

NOVEMBER 18TH, 1909

MARCILLE v. DONNELLY.

Landlord and Tenant—Duty of Landlord to Repair—Covenant in Lease—Liability of Landlord to Stranger Injured on Premises by Reason of Non-repair—Notice to Landlord—Actual Possession of Tenant—Constructive Possession of Landlord.

The plaintiff sued to recover damages for injuries sustained by him at a hotel in the town of Thorold, owing to his having fallen through an opening in the floor of the north verandah of the hotel, the condition of which was such as to be dangerous to those using it.

The hotel was owned by the defendant, and was at the time of the accident occupied by Henry E. Wilkerson under a lease from the defendant to Alfred S. Williams, dated the 5th May, 1905, of which Wilkerson was the assignee, and the assignment to Wilkerson was made with the written approval of the defendant.

The lease was made in pursuance of the Act respecting Short Forms of Leases, and contained a covenant on the part of the lessee "to repair except outside repairs," and that the lessee will repair according to notice.

The action was tried before MEREDITH, C.J.C.P., and a jury.

The jury found that the condition of the north verandah was such as to make it dangerous to persons using it; that the defendant had notice of its condition before the plaintiff was injured; that the plaintiff was injured owing to the condition of the verandah; and that he was at the time of the injury lawfully using it as a guest of the hotel; and they also found that the plaintiff was not chargeable with contributory negligence; and assessed his damages at \$500.

W. M. German, K.C., for the plaintiff.

M. J. McCarron, for the defendant.

MEREDITH, C.J.:—The plaintiff's case is based upon the theory that, as between the defendant and his tenant, the defendant was under an obligation to make such repairs of the premises as might be necessary, and that, having failed, after notice of the want of repair to the verandah, to repair it, he is liable for the