

REVIEW OF CURRENT ENGLISH CASES.

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NEGLIGENCE—BUILDING CONTRACT—CLAUSE THAT CONTRACTOR SHALL ALLOW REASONABLE USE OF SCAFFOLDING BY OTHER TRADESMEN—DUTY OF CONTRACTOR TOWARDS WORKMEN EMPLOYED BY OTHER TRADESMEN—INVITATION.

Elliott v. Roberts (1916) 2 K.B. 518. The defendants in this case had entered into a contract with the London County Council to enlarge and remodel a school building. The contract included providing hot water and heating apparatus, but it reserved liberty to the County Council to nominate special tradesmen to do this work, in which case a fixed sum was to be deducted from the contract price and to be paid directly by the Council to the tradesmen executing the work: persons so employed were, by the contract, declared to be sub-contractors employed by the defendants. The contract also provided that the defendants would afford facilities to any other tradesmen employed by the Council, including the reasonable use of scaffolding erected by the defendants for their own purposes. The Council in exercise of its right nominated a firm of hot water engineers to provide and instal the hot water and heating apparatus. The plaintiff, one of the servants of this firm, in course of his work, had occasion to use a gangway provided by the defendants over an opening in an upper floor in the building, and owing to the planks being loose, they slipped, and he fell through the aperture and was injured. The action was tried by Lush, J., and a jury, and a verdict of £2,000 was given for the plaintiff, that learned judge however dismissed the action on the ground that the position of the defendants to the plaintiff was that of licensors, and as such they owed no duty to him, it being admitted that there was no concealed trap. The Court of Appeal (Eady, Pickford, and Bankes, L.JJ.) however came to the conclusion that the defendants were not licensors but inviters, and as such owed him a duty to take reasonable care that the gangway was in proper order; but as, from the way the case was presented to the jury, they might possibly have come to the conclusion that the negligence of the defendants consisted in not fastening the planks, or not providing a hand-rail, both of which defects were known to the plaintiffs, the verdict could not stand, and a new trial was therefore ordered. The plaintiff's ground for recovery, as put by Bankes, L.J., being "that his injury was the result of his being exposed to a concealed danger which the defendants knew or ought to have known, and of which he himself had no knowledge or notice."