do his work from the outside of the building. He was never directly authorised to go inside, nor was he prohibited. The highest right he had to be upon the second storey was that of a bare licensee. That, if nothing more, would bring the case within King v. Northern Navigation Co., 24 O.L.R. 643, affirmed in appeal 27 O.L.R. 79, and the plaintiff would fail in this action.

There remains the question of whether or not the defendant is brought within the rule laid down by Brett, M.R., in Heaven v. Pender, 11 Q.B.D. 503, 509 . . . : "Whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognise that, if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he would cause danger or injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger." . . .

The present case differs from the case cited. In that case the staging was, to the knowledge of the defendants, necessary in order to do the painting. It was to be used by the ship painter. In the present case the defendants' servant did not think that the painter would use the passageway or that any person other than carpenters would use it. The defendant did not know that any one other than the carpenters would be on the second storey until after the floors were laid, the laying of which was in progress when the accident happened.

In the case cited, the defendant was interested in the work being done; in the present case the defendant had no interest whatever in the work the painter was doing or proposed to do when the board broke.

It is a most unfortunate thing for the plaintiff, but it seems to me that I should be carrying the liability against the defendant further than it has yet been carried, were I to render judgment in favour of the plaintiff.

See also the following cases: Grand Trunk R.W. Co. v. Barnett, [1911] A.C. 361; Gregson v. Henderson Roller Bearing Co., 20 O.L.R. 584; Earl v. Lubbock, [1905] 1 K.B. 253.

The action should be dismissed, but, under the circumstances, without costs.