

in the place. This was at a time when the defendant was receiving rent from the plaintiff as a tenant, when he had received one month's rent, and when a duty was cast upon him with reference to the tenants who were occupying in good faith, to look after the property. With that knowledge, and dealing, as he was, with the other tenant, he takes no steps to find out how the upper part of the premises is occupied, in fact, does nothing, according to his own evidence, until this accident occurred. So I think there was negligence here on the part of the owner of a property who had knowledge that the family of a person who had been occupying it, had gone away, and that it was negligence with respect to the plaintiff of which the latter has a right to complain.

By what was done between the parties the relation of landlord and tenant had been established between the plaintiff and the defendant. No such relation was established as between the defendant and the Caseys. It simply stands that the defendant, exercising authority, taking possession of this property, dealing with it as the owner, left the upper part of it unprotected after he had knowledge of the head of the house having died and the acting head of the house—that is Miss Casey—having left with the children.

Under the circumstances I think there is evidence of negligence; and hard as it may be on the defendant, I think it is a case where, if, as Mr. Gorman puts it, one of two innocent parties must suffer through the fault of another, that one must suffer who left it in the power of another to do the act, or to neglect to do something that he ought to have done; and, while I feel that I am dealing with a case that is not perhaps expressly covered by authority, I think that is the only disposition I can make of it.

Judgment for plaintiff.

CARTWRIGHT, MASTER.

JUNE 29TH, 1903.

CHAMBERS.

LANDER v. BLIGHT.

*Summary Judgment—Promissory Note—Defence—Contemporaneous Parol Agreement.*

Motion by plaintiff for summary judgment under Rule 603.

M. H. Ludwig, for plaintiff.

H. A. E. Kent, for defendant.

THE MASTER.—Plaintiff's affidavit sets out the indorsement on the writ of summons, which is in the usual form