

flooding the plaintiff's store, and damaging the stock, which consisted of clothing. Plaintiff sued for damages. Defendant denied liability, contending that either the trust company or the Caseys were liable, as he had not possession of the upstairs, or a title by which he could have obtained possession at the time the damage occurred.

M. J. Gorman, K.C., for plaintiff.

D. J. McDougal, Ottawa, for defendant.

BRITTON, J.—I think I must hold the defendant liable in this case. It may be, and I think it is, a very hard case for him in some respects; and it would perhaps be difficult to find another case which—in the peculiar facts and circumstances which render him liable, if he is liable—is like it.

I think he must be held, for the purposes of this action, to have been the person in possession of and in control of the property, although he had not a perfected title at the time the accident occurred. The sale took place on the 30th October, 1902, and he then acted in all respects as the owner, subject, of course, to any rights he might have over against the trust company, who were the vendors of the property. He assumed to deal with the tenants as if he owned the property, and from the 1st November he began to deal with the plaintiff in reference to these premises.

So it went on until some time in December. The agent then went to the Caseys. He did not interview Mr. Casey, because he was sick; and, as a matter of fact, Mr. Casey died on either the next day, or, at all events, very shortly, after this intended interview by the agent of the defendant. Faulkner knew of the death; and he says that the neighbours told him that the Casey family had moved out, and that they had gone to somewhere on Besserer street to some relative. So that at that time there was knowledge on the part of Faulkner of the Caseys having left the house as a place of residence; and it was at a time of the year when, in the ordinary course of things, frost might be expected to do injury to premises left vacant—left vacant, that is, in the sense of not being occupied as a residence, though there may have been furniture in the house. But there is more than that in the case. It is admitted that there was knowledge on the part of Faulkner of the waste-pipe in the vacant store being frozen, and of a plumber having been sent for, and having cut that pipe off.

There was a discussion with reference to the lock, on the day that there was information given to Faulkner, that the Caseys had moved out, although their furniture remained