damages sustained by the plaintiff owing to its dangerous condition due to the want of repair.

I am unable to see that the lease contains any covenant on the part of the defendant to do the outside repairs. The exception from the tenant's covenant has not the effect of a covenant on the part of the defendant to make outside repairs, but merely excepts such repairs from those which the tenant is to make.

But, even if it were otherwise, and the lease had contained an express covenant on the part of the defendant to make the outside repairs, and he was in default in making them, after notice of the want of repair, before the plaintiff was injured, the plaintiff is not, in my opinion, entitled to recover.

Cavalier v. Pope, [1905] 2 K. B. 757, [1906] A. C. 428, followed in Cameron v. Young, [1908] A. C. 176, is conclusive against the plaintiff's right to recover. According to those cases, there can be no recovery by reason of the covenant, because the plaintiff is a stranger to it, nor on the theory that by reason of the covenant the defendant was constructively in possession of the premises, and therefore in control of them, because the existence of the covenant had not that effect.

It is unecessary to refer to the earlier cases, most, if not all, of which are referred to in Cavalier v. Pope, further than to mention that the statement of the law by Erle, C.J., in Robbins v. Jones, 15 C. B. N. S. 221, that "a landlord who lets a house in a dangerous state is not liable to the tenant's customers or guests for accidents happening during the term; for, fraud apart, there is no law against letting a tumble-down house, and the tenant's remedy is upon his contract, if any," which is said by Lord Macnaghten "is beyond question:" p. 430; and to refer to the statement of Lord Atkinson, on p. 433, that the liability of a landlord who covenants to repair is precisely the same as in Robbins v. Jones and Lane v. Cox, [1897] 1 Q. B. 415.

It must not be understood that anything I have said has any application to the liability of a landlord for an injury done by his house falling upon his neighbours owing to want of repair, or for an injury done to a passer-by owing to such want of repair. In such cases, as Lord Robertson points out in Cameron v. Young, [1908] A. C. at p. 180, "the person injured and claiming damages stands on his own rights and his relation to the offending or negligent proprietor is not constituted by any voluntary contract."

The action must therefore be dismissed, but, under all the circumstances, the dismissal will be without costs.