

and if he provides and maintains proper appliances for the purpose of the supply, he has fully discharged the duty which he owes to his tenants, and is not answerable for the negligent user of those appliances by a tenant.

Where the landlord is the occupier of an upper storey, he is, no doubt, answerable both for his omission to provide and maintain proper appliances, and for his negligent user of those appliances, and a liability to the same extent also attaches to him on his regaining possession from his tenant, though he does not himself occupy, and he is answerable for suffering to continue any condition created by his former tenant, which he knows or has reasonable cause to believe may occasion injury to his tenants: *Anderson v. Oppenheimer*, 5 Q. B. D. 602; *Blake v. Woolf*, [1898] 2 Q. B. 426; *Mendel v. Fink*, 8 Ill. App. 378; *Green v. Hague*, 10 Ill. App. 598; *Quigley v. Johns Mfg. Co.*, 26 N. Y. App. Div. 434; *Citron v. Bayley*, 36 N. Y. App. Div. 130; *Leonard v. Gunther*, 47 N. Y. App. Div. 194.

The difficulty in this case is in the application of the law to the facts. . . .

My learned brother Britton was of opinion that . . . defendant was answerable for the damages done to the plaintiff's goods.

I am, with great respect, unable to agree in that opinion. Granting that what was done by the defendant was a taking possession of the property as between him and the trust company,—and that I think is by no means clear,—I do not understand how it can be said that he was in possession of the part of the building which was occupied by the Caseys, so as to make him answerable for not taking steps to prevent the water from freezing in the pipes. Assuming that he had a right to dispossess them—and that is by no means clear, I think, as they or some of them were the heirs-at-law of Mrs. Casey—he did not exercise that right, and was not bound to exercise it, and so long as it was not exercised and they were left undisturbed in their possession, they and not he were answerable for the proper user of the appliances for the water supply, and for the consequence of any negligence in the use of them.

What is the negligence which is to be imputed to the defendant? Why should he have anticipated that they would allow the water to freeze in the pipe? The simple expedient of turning off the water would have prevented any danger from the