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# Torts--Landlord and Tenant--Liability for Latent Defects--Implied Warranty (Forrester v. Hoover Hotel & Investment Co., 196 P.2d 825 (Cal. App. 1948))

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guest statute<sup>10</sup> in that state didn't protect the owner from liability because the statute required that the automobile be *moving* and the person be injured *while riding*, though in each case the common purpose had not been abandoned.

The present case has been well decided in view of the narrow wording of the statute. There exists, however, the dilemma of the legislature endeavoring to protect the car owner from liability for ordinary negligence to a gratuitous guest, and the judiciary forced into declaring the injured party not a guest, thus saving for him a right of action which existed prior to the statutes when he might well have been deemed a guest. The courts are blameless. It is the duty of the legislature to choose more accurate language and until they do so, the courts must interpret the statutes as they are written.

J. I. L.

TORTS—LANDLORD AND TENANT—LIABILITY FOR LATENT DEFECTS—IMPLIED WARRANTY.—Plaintiff tenant was injured when a wall-bed in her furnished apartment became disengaged from the fastenings on the door as she lowered the bed. For fourteen months the bed had been used by plaintiff and was apparently in good condition. *Held*, judgment for defendant. Even if there is an implied warranty that a completely furnished apartment is suitable for occupancy, the liability of a landlord for injuries to tenant due to a defective condition or faulty construction of demised premises is confined to the condition of the premises at the beginning of the term. With respect to conditions arising subsequently there is no liability in the absence of proof that landlord had knowledge of the defect. *Forrester v. Hoover Hotel & Investment Co.*, — Cal. App. 2d —, 196 P. 2d 825 (1948).

The theory of warranty of habitability of premises leased furnished emanated from England<sup>1</sup> and was met with disfavor in all jurisdictions in the United States with the exception of Massachusetts.<sup>2</sup> New York repudiated the doctrine in an early case.<sup>3</sup> The holding has never been overruled and is the settled law of the state. In the *Pennington* decision<sup>4</sup> California conformed with the precedent established in England and Massachusetts. The ruling was based on a California statute providing that a depositor must indemnify the

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<sup>10</sup> CALIFORNIA VEHICLE ACT St. 1929 as phrased in *Smith v. Pope*, *supra* note 7. Any person who as a guest accepts a ride in any vehicle, *moving* upon any of the public highways . . . and *while so riding* receives . . . an injury shall have no right of recovery against the owner.

<sup>1</sup> *Smith v. Marrable*, 11 M. & W. 5.

<sup>2</sup> WALSH, *THE LAW OF PROPERTY* 287 (2d ed. 1937).

<sup>3</sup> *Franklin v. Brown*, 118 N. Y. 110, 23 N. E. 126 (1889).

<sup>4</sup> *Fisher v. Pennington*, 116 Cal. App. 248, 2 P. 2d 518 (1931).

depository for all damages caused to him by the defects or vices of the thing deposited.<sup>5</sup> It was this holding on which plaintiff in the instant case relied. However, the California Court of Appeals refused to extend the doctrine beyond the narrow confines of a defect arising at the beginning of the term<sup>6</sup> and reiterated the established rule: *in the absence of fraud, concealment, or covenant in the lease, a landlord is not liable to a tenant for injuries due to a defective condition or faulty construction of the demised premises.*

Telescoped, where a duty to repair exists, liability for latent defects in all jurisdictions, excluding Massachusetts and possibly California, is predicated on knowledge or notice, actual or constructive. Barring legislation to that effect no differentiation is made between furnished and unfurnished apartments. Under the common law there is no duty to repair except for those portions of the premises reserved for use in common by the tenants.<sup>7</sup> In New York the common law duty has been extended to all parts of the demised premises by statute under the Tenement House Law<sup>8</sup> and the Multiple Dwelling Law.<sup>9</sup> Both at common law and by statute, knowledge or notice, actual or constructive, is a requisite for imposing liability.

A review of cases on the subject will indicate wherein liability has been imposed or denied and will bear out the proposition that liability is conditioned on knowledge. In *all* cases cited, knowledge or notice, actual or constructive, has been held a condition precedent to recovery. Under the common law in New York there is imposed the additional burden of the exercise of reasonable care in the discovery of defects in the premises demised.<sup>10</sup> In the absence of fraudulent concealment of known latent defects, a landlord not directly covenanting to repair, is not liable to tenant for injuries resulting from a defective gas heater.<sup>11</sup> When after a severe rainstorm a stock of goods was damaged by leakage, it was held there was no absolute duty on the part of the landlord to keep in repair those portions of the building over which he reserves domination and control where he had no notice of such defects.<sup>12</sup> Common law liability for latent defects is limited to those portions of the leased premises reserved for use in common with other tenants, or to a direct covenant to repair,<sup>13</sup> recovery being conditioned on notice. In general, the same

<sup>5</sup> CAL. CIV. CODE § 1833.

<sup>6</sup> In the *Pennington* case the injury occurred during the first month of the tenancy.

<sup>7</sup> PROSSER, TORTS 649 (1941).

<sup>8</sup> N. Y. TENEMENT HOUSE LAW § 102.

<sup>9</sup> N. Y. MULTIPLE DWELLING LAW § 78.

<sup>10</sup> *Smith v. Donnelly*, 45 Misc. 447, 92 N. Y. Supp. 43 (Sup. Ct. 1904).

*Contra*: *Ellis v. McNeese*, 109 Cal. App. 667, 293 Pac. 854 (1930).

<sup>11</sup> *Nelson v. Meyers*, 94 Cal. App. 66, 270 Pac. 719 (1928).

<sup>12</sup> *Silver v. Dry Dock Savings Institution*, 261 App. Div. 283, 25 N. Y. S. 2d 136 (1st Dep't 1941); *Kramer v. Stone*, 176 App. Div. 549, 163 N. Y. Supp. 578 (1st Dep't 1917).

<sup>13</sup> Liability restricted to the cost of repairs. PROSSER, TORTS 659 (1941).

conditions for imposing liability are required as are found requisite under the Tenement House Law, the Multiple Dwelling Law, and under common law principles.

Whether California in the future will follow the *Pennington* case is a conjectural matter. Nevertheless, in all cases of latent defects arising subsequently to the beginning of the term, California imposes liability in accord with established principles as exemplified in the *Forrester* case.

M. A. S.

TORTS—LIBEL AND SLANDER—FAIR COMMENT.—The plaintiff is a district attorney. He commenced this action against a newspaper publisher alleging the publication of two defamatory articles. The first article stated that a petition had been filed with the governor requesting him to name a competent attorney to conduct an investigation of a case which the plaintiff had handled. The second article contained a statement of an attorney criticizing the method in which the plaintiff had handled the aforementioned case, and by innuendo charged the plaintiff with incompetency. *Held*, complaint dismissed. The exercise of the right to petition, quoted in the first article, cannot be a basis for a defamation suit. The statements constituted an honest criticism of a public official in a matter of public concern, and as such are not actionable. *Tracy v. Kline & Son, Inc.*, 274 App. Div. 149 (3d Dep't 1948).

Defamation is "the offense of injuring a person's character, fame or reputation by false and malicious statements."<sup>1</sup> Defamatory matter which is set forth in permanent form such as in writing, constitutes libel.<sup>2</sup> Generally, where there has been a libelous publication, the law will imply malice and infer some damage. However, certain publications, referred to as "privileged communications" form an exception to the general rule.<sup>3</sup> A "privileged communication" is one made by a person in the discharge of some legal or moral duty, to another, who has an interest in receiving it.<sup>4</sup> This privilege to publish defamatory matter is either absolute or conditional (qualified). Absolute privilege will protect the utterer from liability in a law suit even though the publication is false, defamatory, and inspired by malice.<sup>5</sup> Because of this, the courts tend to restrict the scope of the absolute privilege rather than extend it.<sup>6</sup> Thus, the courts have

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<sup>1</sup> BLACK, LAW DICTIONARY (3d ed. 1933).

<sup>2</sup> SEALY, THE LAW OF TORTS § 169 (1939).

<sup>3</sup> *Byam v. Collins et al.*, 111 N. Y. 143, 19 N. E. 75 (1888).

<sup>4</sup> *Klinck v. Colby*, 46 N. Y. 427 (1871).

<sup>5</sup> *Hyman v. Press Publishing Co.*, 199 App. Div. 609, 192 N. Y. Supp. 47 (1st Dep't 1922).

<sup>6</sup> *Pecue v. West*, 233 N. Y. 316, 135 N. E. 515 (1922).