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LIABILITIES ARISING OUT OF A DANGEROUS CONDITION OF REAL PROPERTY,  
WITH PARTICULAR REFERENCE  
TO LEASED PREMISES

By D. L. BROOKS, LL.B.\*

I

LIABILITY OF AN OWNER IN POSSESSION

Where the owner of real estate is in possession of the same in his own right, he owes certain duties to persons who come thereon. He does not owe the same duty to all such persons. He naturally owes a greater degree of care to those who come upon his property at his invitation and for his benefit as well as their own, than he owes to those coming for purposes of their own or without any right whatever. In order, therefore, to determine the liability of the landowner in any given case it is necessary to ascertain whether the person injured was, at the time of the injury complained of, an invitee, a licensee or a trespasser. (Cases arising between employer and employe are not within the scope of this article.)

An invitee is one who comes on the premises not only at the express or implied invitation of the invitor, but who shares with the latter a mutuality of interest. If the interest be such as concerns merely the person entering, he is a mere licensee.<sup>1</sup> For example, one who goes upon another's premises pursuant to an express invitation, but for social purposes is not an invitee but a licensee.<sup>2</sup> The invitor must exercise an ordinary degree of care to keep the premises in a safe condition for the benefit and protection of the invitee. In a case in point the proprietor of a store was held liable to a customer for failure to warn the latter of an open stairway so located in the premises as not to be readily observable to one exercising an ordinary degree of care.<sup>3</sup>

A licensee is one who goes upon the premises for some purpose of his own, as distinguished from a purpose in which the parties have a mutual interest.<sup>4</sup> Toward such licensee the land-

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<sup>1</sup>*Greenfield v. Miller*, 173 Wis. 184.

<sup>2</sup>*Ibid.*

<sup>3</sup>*Lehman v. Amsterdam Coffee Co.*, 146 Wis. 213.

<sup>4</sup>*Greenfield v. Miller, supra.*

## DANGEROUS CONDITION OF LEASED PREMISES

owner does not owe the duty of ordinary care; he owes merely the duty not to set a trap and not to be guilty of acts of active negligence rendering the premises dangerous.<sup>5</sup>

A trespasser, or one who is wrongfully on the premises, is there practically at his own risk. The landowner owes such a person the duty to refrain from gross negligence.<sup>6</sup> It has been held, for example, that a property owner owes no duty to trespassers, whether children or adults, to fence in a pond on his property, unless it is so located as to be dangerous to those using the highway.<sup>7</sup>

### II.

#### LIABILITY WHERE THE RELATION OF LANDLORD AND TENANT EXISTS

##### A. Landlord's Liability to the Tenant, to Persons on the Premises under the Tenant or at the Tenant's Invitation or License; also to Strangers Lawfully in the Vicinity and to Trespassers.

*Introductory Statement.* We have heretofore considered the liability of the landowner in possession to persons on the premises. We shall now consider the liability of the landowner (or landlord, as he has now become by virtue of the lease), after he has leased the premises and has thus relinquished possession and control in favor of his tenant. As is well understood, the effect of the lease is to relieve the landlord of most, but not all, liability arising out of the dangerous condition of the premises. The extent of his liability is governed by several circumstances, the effect of which we shall attempt to describe. The several main factors governing the extent of the landlord's liability are as follows: Whether or not there is in the lease an express covenant by the landlord to keep the premises in repair; whether the landlord has retained control over certain portions of the leased premises, such as common stairways, entrances and elevators; whether the person injured is the tenant himself, or some person on the premises under the tenant by invitation or license; whether such injured person is a stranger who was lawfully in the vicinity of the premises but who had no connection with the

<sup>5</sup> *Ibid.* and *Brinlson v. C. & N. W. Ry. Co.*, 144 Wis. 614.

<sup>6</sup> *Zartner v. George*, 156 Wis. 131; *Edmond v. Kimberly-Clark Co.*, 159 Wis. 83.

<sup>7</sup> *Klix v. Nieman*, 68 Wis. 271; *Edmond vs. Kimberly-Clark Co.*, *supra*.

tenant; whether such injured person was a trespasser at the time of the injury; and, finally, whether the leased premises come within the scope of the Wisconsin Statutes prescribing the duty of landlord's with reference to "public buildings."

It is also a factor in every case whether or not the plaintiff was guilty of contributory negligence.

1. Landlord's Liability in Absence of Express Covenant to Repair.

(a) With Reference to Portions of the Premises which have Passed into the Exclusive Possession and Control of the Tenant.

(1) Liability to the Tenant:

In this connection, the rule has been stated:

The rule seems to be well settled that, in the absence of any secret defect or deceit or warranty or agreement on the part of the landlord to repair, the tenant takes the leased premises in the condition they happen to be in at the time of the leasing, and that in such case the landlord is not liable to the tenant for an injury caused by the premises being out of repair during the term.<sup>8</sup>

The reason why the landlord is absolved from liability to his tenant under the circumstances stated in the rule, is that he has, by leasing the premises, without any stipulation on his part to make repairs, committed the care thereof and the duty to keep them in repair to the tenant. Any recovery by the tenant, therefore, would be founded on a violation of his own duty in most cases.<sup>9</sup>

In fact, given the circumstances now under consideration, the liability of the landlord for injuries to the tenant is the exception rather than the rule. There are, however, as heretofore indicated, circumstances under which the landlord may be liable. If at the time of the making of the lease there is a concealed or secret defect in the premises, which defect is known to the landlord and not disclosed to the tenant, and is not discoverable by the latter by the use of that degree of care which the law demands of him, the landlord is liable to the tenant or his employees for resultant injuries.<sup>10</sup> It necessarily follows, that where the defect is open and visible, though in existence at the time of the making of the lease, and the tenant knows of the defect, the con-

<sup>8</sup> *Cole v. McKey*, 66 Wis. 500.

<sup>9</sup> Winslow, J., concurring in *Flood v. Pabst Brewing Co.*, 158 Wis. 626.

<sup>10</sup> *Anderson v. Hayes*, 101 Wis. 538.

tinued use of the defective part of the premises and consequent injury to the tenant, does not constitute the basis of a suit against the landlord. Under such circumstances, the tenant has been held to have assumed the risk of injury; and the landlord's promise to repair the defect, made after the commencement of the term, has been held without consideration and insufficient to change the rule of liability.<sup>11</sup> Further, where the defect is secret or latent and in existence at the time of leasing, but is unknown to either landlord or tenant, an injury resulting therefrom must be borne by the tenant. The fact that the defect could have been discovered by the landlord by the exercise of ordinary care does not make him liable, and this is because of the fact that the tenant is held to exercise an equal degree of care to discover such defects. His own failure to discover, therefore, precludes him from a recovery against the landlord.<sup>12</sup>

Under the rule quoted from the case of *Cole v. McKay*, the landlord must not practice deceit with reference to the condition of the premises. This rule was applied, in another jurisdiction, against a landlord who leased premises without disclosing the fact that they were infected with a contagious disease.<sup>13</sup>

Where the landlord does undertake to make repairs, even though under no obligation so to do, he is liable for negligence in making them. His duty to the tenant in such regard cannot be evaded by entrusting the performance of the work to an independent contractor.<sup>14</sup>

The landlord is not liable, of course, where one of his several tenants in the same building negligently causes injury to another.<sup>15</sup> But where he leases a portion of the premises for a purpose which he knows to be unsafe and likely to cause injury to another tenant, he is liable for resultant injury. An example of this is found in the case where the landlord leased an upper floor of a building for storage of heavy articles, knowing the floor to be of insufficient strength for such purpose. A lower tenant injured by the collapse of the floor was held entitled to recover from the landlord.<sup>16</sup>

<sup>11</sup> *McGinn v. French*, 107 Wis. 54.

<sup>12</sup> *Kurtz v. Pauly*, 158 Wis. 534.

<sup>13</sup> 24 Cyc. 1114 Note #51.

<sup>14</sup> *Wertheimer v. Saunders*, 95 Wis. 573; *Wilber v. Follansbee*, 97 Wis. 577.

<sup>15</sup> 24 Cyc. 1122.

<sup>16</sup> *The Brunswick-Balke-Collender Co. v. Rees et al*, 69 Wis. 422.

(2) Liability to Tenant's Subtenant, Employee, Invitee and Licensee:

The general rule is that a subtenant, guest, or servant of the tenant is regarded as so far identified with the tenant that his right to recover against the landlord is the same as the tenant's right would be had the accident happened to him.<sup>17</sup>

In Wisconsin also, the landlord's liability to the invitee of the tenant seems to be placed upon the same grounds as his liability to the tenant himself.<sup>18</sup> But,

It is equally well settled that an employee, servant, or subtenant of the tenant has no greater rights as against the landlord than the tenant himself.<sup>19</sup>

The writer has found Wisconsin cases where the landlord was held liable, to his tenant's invitees strictly so-called,<sup>20</sup> to the tenant's employe,<sup>21</sup> and to the tenant's guests at a hotel.<sup>22</sup> But no case has been found where the injured person was a mere licensee of the tenant.

(3) Liability to Strangers Lawfully in the Vicinity:

Strangers lawfully in the vicinity of the premises, and injured by reason of the dangerous condition thereof, are not in the same boat with persons having some connection with the tenant so far as regards their right of recovery against the landlord. They have no duty to discover defects in the property such as has the tenant and those under the tenant, and hence, for defects existing at the time of the making of the lease can recover against the landlord under circumstances where the tenant and such other persons could not.<sup>23</sup> In the last case cited it was said:

The law is firmly established by the great weight of authority, that, as between the owner of leased property and a *mere stranger*, the owner is liable for an injury to the latter, caused by a dangerous defect in the property existing at the time of the lease, unless protected by a covenant binding the lessee to remedy such defects, and there is much authority that he is liable anyway.

Further, if a person purchases premises which are in a defec-

<sup>17</sup> 24 Cyc. 1119; *Taylor, Land. and T.* (9th Ed.) Sec. 175a.

<sup>18</sup> *Flood v. Pabst Brewing Co.*, 158 Wis. 626.

<sup>19</sup> *Anderson v. Hayes*, 101 Wis. 538.

<sup>20</sup> *Flood v. Pabst Brewing Co.*, 158 Wis. 626.

<sup>21</sup> *Anderson v. Hayes, supra*.

<sup>22</sup> *Fellows v. Gilhuber*, 82 Wis. 639.

<sup>23</sup> *Schaefer v. Fond du Lac*, 99 Wis. 333.

tive condition, with knowledge, or reasonable means of knowledge, of the defects, and then leases the same to another or allows such other to hold possession of such premises under such conditions as to indicate permission to continue the defects, and a third person having no connection with such other, without fault on his part, is injured by reason of such defects while rightfully in the vicinity of the danger such purchaser is liable to respond in damages to such third person for such injury.

The landlord, it is seen, is liable to such stranger upon the showing that at the time of the leasing of the premises there was a dangerous defect therein and that the landlord had knowledge or reasonable means of knowledge thereof. He would, on the other hand, be liable to the tenant and those under the tenant only upon the showing that at the time of the leasing there was a secret defect in the premises of which the landlord knew but failed to disclose to the tenant, and that the latter could not have discovered the defect by the exercise of ordinary care. (This is without reference to the elements of fraud, deceit or agreement to repair.<sup>24</sup>)

It is to be noted, however, that even as to a stranger lawfully in the vicinity of the premises, the landlord is not liable for defects which did not exist at the time of the leasing but which were created during the term by the sole negligence of the tenant. For example, where during the term of a tenant in exclusive possession, an accumulation of ice falls from the roof and injures a passerby, the liability, if any, is upon the tenant.<sup>25</sup>

#### (4) Liability to Trespassers:

We have heretofore mentioned the fact that a landowner in possession owes the duty to a trespasser to refrain from what amounts to wilful injury.<sup>26</sup> But where the owner commits the premises into the exclusive possession and control of a tenant, it is difficult to imagine a situation where he would be liable for injuries to some one trespassing upon the tenant's possession, unless it consisted in the concealment on the premises at the time of leasing of something which would constitute a grossly negligent act.

Obviously where the landlord retains control of certain portions of the premises there would be more room for liability on his part to trespassers.<sup>27</sup>

<sup>24</sup> *Anderson v. Hayes, supra.*

<sup>25</sup> *Airwill v. Blatz*, 118 Wis. 226.

<sup>26</sup> *Zartner v. George*, 156 Wis. 131.

<sup>27</sup> *Cole v. McKey*, 66 Wis. 500.

## (b) With Reference to those Portions of the Leased Premises over Which the Landlord Retains Control.

## (1) His Liability to Tenant:

In many leases, such as those of duplex flats, apartments, office buildings and the like, it is customary for the landlord to retain control over such portions thereof as are provided for the ingress and egress of the various tenants. Since the landlord, and not the tenant, has control over such parts of the premises he, and not the tenant, should bear any liability resulting from the dangerous condition thereof.

In this case, as in the case where the tenant has exclusive possession, there is no liability on the landlord's part except such as may be founded in tort for breach of duty. There is no implied covenant on the landlord's part of fitness, present or future, forming a contract between him and the tenant. The principle underlying the liability of the landlord under such circumstances is, that he, like the owner of any other piece of realty, is bound to so use it as not to injure other persons in the enjoyment of their property.<sup>28</sup> The tenant must prove that the landlord was negligent in permitting the defect to exist.<sup>29</sup>

To establish negligence on the part of the landlord, however, it is not necessary to show that he had actual knowledge of the existence of the defect prior to the time of the accident.<sup>30</sup> It need only be shown that the landlord in the exercise of ordinary care ought to have discovered the danger and ought to have repaired it before the time of the accident. In short, it is the duty of the landlord to maintain the premises used by the various tenants in a "reasonably safe" condition for such use.<sup>31</sup> In the Wilber case the court said:

It was not necessary that she (owner) should have had actual knowledge of the defect. Her duty was that of due care. Ignorance of the defect was no defense.

The case of *Inglehardt v. Mueller*, 156 Wis. 609, is a good example of the application of the foregoing rule. There was a defect in the manner of hanging a radiator on the wall of an apartment house entrance, causing it to fall on a child of one of

<sup>28</sup> *Kuhn v. Heavenrich*, 115 Wis. 447.

<sup>29</sup> *Cole v. McKey*, *supra*.

<sup>30</sup> *Wilber v. Follansbee*, 97 Wis. 577.

<sup>31</sup> *Inglehardt, Admin. v. Mueller*, 156 Wis. 609.



the tenants. The landlord did not know of the defect but was held liable on the ground that he would have discovered it had he used ordinary care.

Rooms not in the possession of a tenant are within the control of the landlord for the time being, and he must exercise ordinary care to prevent the freezing and bursting of water pipes therein and thus prevent injury to his other tenants.<sup>32</sup> In performing his duty to keep in repair such parts of the premises as are within his control, the landlord must exercise ordinary care so as not to cause injury to his tenants using such parts of said premises.<sup>33</sup>

(2) His Liability to an Invitee of the Tenant:

With respect to such portions of the premises, as in the case of premises within the exclusive control of the tenant, the landlord owes the latter's invitee the same degree of care as he owes to the tenant himself. Thus, where the invitee of the tenant was injured due to the defect in an elevator maintained by the landlord for the use of his various tenants in the same building, he was held entitled to recover against such landlord.<sup>34</sup> But as to the owner of an elevator in an office building, it has been said, that he is:

to all intents and purposes a common carrier and his liability to those rightfully using the elevator is that of common carrier to passengers, and of such a common carrier as a railroad or steamship line.<sup>35</sup>

(3) His Liability to a Trespasser or Licensee:

It has been held that the landlord, as to such portions of the premises as are under his control, owes no duty whatever to afford safe passage thereover to one who is not on the premises rightfully, as for example the invitee of a sublessee holding under a sublease made in violation of the terms of the lease.<sup>36</sup> But no doubt the landlord would be liable for gross negligence to trespassers.

As to a licensee of the tenant, the landlord certainly ought not be held to any higher degree of care than he owes to licensees on property of which he is in possession in his own right.<sup>37</sup>

<sup>32</sup> *Moroder v. Fox*, 155 Wis. 503.

<sup>33</sup> *Wilber v. Follansbee*, supra.

<sup>34</sup> *Smith v. Lederer, et al*, 157 Wis. 479.

<sup>35</sup> *Dibbert v. Metropolitan, Inv. Co.*, 158 Wis. 69.

<sup>36</sup> *Cole v. McKey*, 66 Wis. 500.

<sup>37</sup> See *Greenfield v. Miller*, 173 Wis. 184, for degree of care.

B. LIABILITY OF THE TENANT

I. Where no Express Covenant on Tenant's Part to Make Repairs.

(a) With reference to those portions of the premises under the exclusive control of the tenant.

(1) Liability to His Invitees, etc.

Regardless of whose duty it is, as between the landlord and his tenant, to keep the premises in repair it is also the rule that:

A tenant or occupant of premises owes a duty to third persons resorting thereto in the course of business, or upon his invitation, express or implied, to keep the premises in a reasonably safe condition.<sup>38</sup>

And as to the tenant's duty toward all other persons on the premises, it would seem reasonable to suppose that he would be bound to exercise the same degree of care required of a landowner in possession in his own right. It has been held that as to injuries received by strangers lawfully in the vicinity of the premises, the tenant, being in exclusive control of the premises, and not the landlord, is liable.<sup>39</sup> Where such person was injured by a defect which was in existence at the time of the leasing, however, the landlord was also held liable on the theory that he authorized the continuance of a nuisance.<sup>40</sup> It is to be noted that the last mentioned rule applies only to strangers in the vicinity having no connection with the tenant. As to those under the tenant, we have seen that the rule of the landlord's liability is much more restricted.

(b) With reference to those portions of the premises over which the landlord has retained control.

(1) Tenant's Liability to His Invitees:

The landlord, as the party in responsible control, ought to bear the burden of liability for injuries caused by the dangerous condition of those parts of the premises under this classification. But even here, the tenant is not without responsibility to his invitees. It has been said that he owes such invitee the duty of ordinary care, but that this does not mean that he is bound to exercise all the care of a proprietor; and that in the absence of a known breach by the landlord of his obligation to repair, or of actual

<sup>38</sup> 24 Cyc. 1124, 1125.

<sup>39</sup> *Atwill v. Blatz*, 118 Wis. 226.

<sup>40</sup> *Schaefer v. Fond du Lac*, 99 Wis. 333.

notice of want of repair, or of facts sufficient to put him on efficient inquiry, he may rely on the landlord to perform his duty. The result of the case in question seems to be that the tenant need only make a casual inspection of the premises and warn his invitee of dangers known or so discovered.<sup>41</sup>

(2) Tenant's Liability to Licensees and Trespassers:

Here too, the landlord ought to bear the burden. He is substantially like an owner in possession, and his liability to licensees and trespassers is quite limited.<sup>42</sup> He does not owe the duty of safe passage over such portions of the premises to one who is not rightfully there.<sup>43</sup> No doubt the tenant's duty would be merely to refrain from acts of misfeasance.

(3) Tenant's Liability to Strangers Lawfully in the Vicinity:

Here, too, it would seem that the tenant could only incur liability for acts of misfeasance.

(c) Liability as Between Several Tenants of Same Premises:

It is clear that one of several tenants may be liable to his cotenants for his negligent conduct about the premises. And where the injury is the result of the negligence of both the landlord and one of his tenants, the tenant injured may recover against either or both.<sup>44</sup>

2. Where Lessee Expressly Covenants to Repair:

In leases for three years or less the lessee, in Wisconsin, impliedly covenants to repair.<sup>45</sup> It is not readily perceived why an express covenant on his part to make repairs would in any way affect his liability with respect to leases for such period of time. Nevertheless, it has been held in case of a lease for three years, that the lessee's covenant to repair was of importance in determining the question of liability for injuries to an invitee of the lessee. The decision, though not clear, seems to hold that the effect of such a covenant on part of the lessee would be to relieve the landlord of all liability, with respect to the tenant and those hav-

<sup>41</sup> *Smith v. Lederer*, 157 Wis. 479.

<sup>42</sup> *Greenfield v. Miller*, 173 Wis. 184.

<sup>43</sup> *Cole v. McKey*, *supra*.

<sup>44</sup> *Brunswick-Balke-Collender Co. v. Rees et al*, 69 Wis. 442.

<sup>45</sup> *Koerber v. Somers*, 108 Wis. 497.

ing connection with the tenant, for injuries arising out of the dangerous condition of the premises, and regardless of whether the said condition existed at the time of the leasing or arose subsequently.<sup>46</sup> Commenting on that case, Justice Marshall said:

It was held that the lessor was not liable, but the decision was put on the ground that there was an agreement in the lease which obligated the lessee to repair. Upon that theory the decision is in accord with much authority in this country and England, but it must be said there is much authority of a very respectable character against it.<sup>47</sup>

### C. LIABILITY AS AFFECTED BY LANDLORD'S COVENANT TO REPAIR

1. "Where a landlord agrees to keep leased premises in repair his right to enter and have possession of the premises for such purpose is necessarily implied, and his duties and liabilities in that regard are in some respects similar to those of an owner and occupant."<sup>48</sup> By covenanting with his tenant to keep the premises in repair, he elects not to surrender to the latter the duty of care which ordinarily passes with the transfer of exclusive possession. Having so elected, he remains liable for breach of duty to repair as if no lease had been made and he himself had remained in possession as owner.<sup>49</sup> He is liable to an invitee of the tenant injured by reason of the dangerous condition of the premises, and it makes no difference whether the defect existed at the time of the leasing or arose subsequently.<sup>50</sup>

In the absence of the landlord's covenant to repair, so far as the tenant's failure to repair those parts under his control is concerned, the action of the injured person would be against the tenant. But by virtue of the landlord's covenant, there is created a duty between the landlord and the invitee of the tenant, for breach of which the invitee may sue the landlord directly. The action against the landlord in such cases sounds in tort. It is not in contract, since the landlord's covenant is with his tenant alone. As has been said:

His (the landlord's) *negligent* failure to repair, therefore, is a breach of duty, and any one lawfully upon the premises by invitation of the

<sup>46</sup> *Fellows v. Gilhuber*, 82 Wis. 639.

<sup>47</sup> *Schaefer v. Fond du Lac*, *supra*.

<sup>48</sup> *Flood v. Pabst Brewing Co.*, *supra*.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

tenant who suffers injury in consequence of the landlord's breach of duty has an action for *negligence* against the landlord.<sup>51</sup>

In order to fix the liability of the landlord under his covenant it is not enough to show failure to repair. It must be shown that he was guilty of negligence in that regard. And in order to establish negligence on his part, it seems that it must be shown that he had notice, actual or constructive, of the defects which caused the injury complained of.<sup>52</sup>

## 2. Landlord's Liability to Tenant for Breach of Covenant to Repair.

While the landlord is liable to third persons for negligently failing to perform his covenant to repair, it is questionable, to say the least, whether he is liable to the tenant for more than such damages as would be recoverable as for breach of contract. One authority states that:

When a landlord covenants to make repairs, or to keep the property in good condition, he is liable, of course to the tenant for such expenditures or loss as the latter fairly makes or suffers, because of a breach of the covenant; . . . and the landlord is not usually held liable in tort for injury to the tenant, due to the former's failure to repair or remove a defect, especially when it was open and known to the latter, or was such that the tenant might have known of it by reasonable care, unless the terms of the agreement clearly place such an obligation on the landlord, or they are such that he practically retains control of the property for the purpose of keeping it in repair for the tenant's use.<sup>53</sup>

But other authorities indicate that even to the tenant, the landlord would be liable in tort for negligently failing to perform his covenant to repair.<sup>54</sup>

## 3. Does the Landlord's Covenant to Repair Relieve the Tenant from Liability?

The usual liability of the tenant "is not affected by the landlord's covenant to make repairs. Such a covenant . . . may sometimes enable the injured party to recover against the landlord also; but in itself it does not relieve the tenant."<sup>55</sup> In a Wisconsin case there was a covenant by the landlord to repair and no contention seems to have been made that it relieved the tenant

<sup>51</sup> *Ibid.*

<sup>52</sup> 24 Cyc. 1128, 1129.

<sup>53</sup> *Reeves on Real Property*, pp. 858, 859; *Miles v. Janwerin*, 196 Mass. 431.

<sup>54</sup> 24 Cyc. 1115.

<sup>55</sup> *Reeves on Real Property*, sec. 642.

from liability.<sup>56</sup> As between the landlord and his tenant, however, ultimate liability would rest with the landlord on account of the covenant.<sup>57</sup>

#### D. STATUTORY DUTY OF OWNER OF A PUBLIC BUILDING

Sec. 2394-48 states that:

every owner of . . . a public building now or hereafter constructed shall so construct, repair or maintain such . . . public building, and every architect shall so prepare the plans for the construction of such . . . public building, as to render same safe.

Sec. 2391-41 subd. 12, provides that:

The term "public building" as used in sections 2394-41 to 2394-71 shall mean and include any structure used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public, or by three or more tenants.

For further definitions of the term "public building" see 19 A. L. R. 543.

The Industrial Commission is empowered to inspect such public buildings in order to discover whether or not the law is being complied with;<sup>58</sup> and has rather broad powers of supervision and regulation in that regard.<sup>59</sup>

Regardless of what may be his duty as landlord, the owner of a public building is bound to maintain the same in a reasonably safe condition. In one of the decisions under the statutes it was held that the owner of an apartment house was liable to a tenant who was injured when a rear porch (which was also used as a common passageway by the various tenants) gave way. The owner had no notice of any defect, but could have discovered the same by a careful inspection.<sup>60</sup> In another case the plaintiff was entering a public building on business and was injured by falling over a step so placed as to make the entrance unsafe. It was held that plaintiff came within the statute and that she could recover.<sup>61</sup> It is obvious that at least so far as the statutes in question apply to those portions of public buildings within the exclu-

<sup>56</sup> *Flood v. Pabst Brewing Co.*, 158 Wis. 626.

<sup>57</sup> *Reeves on Real Property*, sec. 644.

<sup>58</sup> Sec. 2394-50 subd. 3, Wis. Stats.

<sup>59</sup> Sec. 2394-51; 2394-52; 2394-53.

<sup>60</sup> *Zeminger v. Preble*, 173 Wis. 243.

<sup>61</sup> *Hommel v. Badger State Inv. Co.*, 166 Wis. 235.

*DANGEROUS CONDITION OF LEASED PREMISES*

sive control of the tenant, they make a radical change in the liability of the landlord for injuries arising out of the dangerous condition thereof.