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Summons.

(Filed March 11, 1927.)

The State of New Jersey to Mechanics Trust Com-
pany of New Jersey: Morris Varvatas, Peter
Varvatas and Spios S. Kukos, 10

YOU ARE SUMMONED to answer the
annexed complaint of Catherine Mc-
[L. s.] Namara, in an action at law in the
Hudson County Circuit Court.

AND TAKE NOTICE that unless you file your an-
swer to said complaint with the Clerk of the said
Court within twenty days after service upon you
of this writ and the annexed complaint, plaintiff
may proceed in the suit and judgment may be
entered against you. 20

WITNESS, Honorable Frank L. Cleary, Judge of
the Hudson County Circuit Court, at Jersey City,
this 15th day of February, 1927.

JOHN J. MCGOVERN,
Clerk.

BRENNER & KRESCH, 30
Attorneys of Plaintiff.

Complaint.

(Filed March 11, 1927.)

HUDSON COUNTY CIRCUIT COURT.

10	CATHERINE McNAMARA, <i>Plaintiff,</i>	}	Action at Law.
	<i>v.</i>		
20	MECHANICS TRUST COMPANY OF NEW JERSEY, MORRIS VARVATAS, PETER VARVATAS and SPIOS S. KUKOS, <i>Defendants.</i>		

Plaintiff, Catherine McNamara, residing in the City of Bayonne, County of Hudson and State of New Jersey, says that,

FIRST COUNT.

1. On or about the 10th day of August, 1926, and for some time prior thereto, the defendant Mechanics Trust Company of New Jersey, was the owner and proprietor of certain lands and tenements located at and commonly known as No. 15 West 8th Street, in the said City of Bayonne, which premises consisted of a two story building divided into four living apartments, and two stores.

2. The defendant retained possession and control and was in charge of the halls, entrances, lobbies and stairways of the said building, which were used in common as the sole means of access to and egress from the said apartments in said building from and to the street adjoining thereto, whereby it became the duty of the said defendant

Complaint.

to use due and proper care to keep and maintain the said building, so that the same should not become dangerous to the tenants of the said building or to the public who should or might have occasion to use the said premises.

3. The said building being a tenement house, it was also incumbent upon the said defendant to keep proper lights burning in the evening at or near the stairs on every floor in said building, so as to permit the tenants, occupants or other persons who should or might have occasion to use said halls, entrances or stairways to pass along the said stairs in safety.

10

4. On or about the date aforesaid and prior thereto the steps of the stairways leading to the upper floor became out of repair and was in a defective and dangerous condition, of which fact the defendant had notice and knowledge; and it thereby became and was the duty of the said defendant to keep and maintain the steps, staircases and stairways in a proper condition and not to permit the same to become dangerous to the tenants, occupants or the persons who might have occasion to use the said stairs of the said building.

20

5. On or about the date aforesaid, the plaintiff who was lawfully in the said building, and while passing along the stairs leading to the porch or first floor thereof, fell headlong down the said flight of stairs, due to the negligence and carelessness of the said defendant, and as the result thereof the plaintiff was severely and permanently injured.

30

6. The negligence and carelessness of the defendant, Mechanics Trust Company of New Jersey,

40

Complaint.

its agents, servants or employees, consisted in this, that

10 (a) It failed to keep any lights burning after sunset on the evening as aforesaid in the said halls at or near the stairs as aforesaid.

(b) That it violated the Tenement House Act of New Jersey by failing to comply with the provisions thereof relating to lights being kept in halls near staircases and in lobbies and in entrance halls.

20 (c) It unlawfully and negligently created a dangerous condition in the halls and stairways of the said tenement house as aforesaid by omitting to keep proper lights burning therein on the evening aforesaid.

(d) That it failed to keep the steps of the stairs and railings in a safe condition.

(e) That it failed to keep the steps of the stairs and railings in proper repair.

30 (f) That it unlawfully and negligently created a dangerous condition on the stairs by permitting the steps and railings to become out of repair and in a defective condition.

40 7. By reason of the negligence of the defendant, as aforesaid, the plaintiff, Catherine McNamara, fell down the said stairs, being thrown to the floor with great force and violence, thereby sustaining severe and permanent injuries about her head, arms, and shoulders and to other parts of her body, and as a result thereof she has undergone and in the future will undergo great pain and suffering.

Complaint.

8. By reason of the injuries so inflicted the said plaintiff has been obliged to pay large sums of money for doctor bills, medicines and medical attention and in the future will be obliged to expend further sums for same, and the said plaintiff has been and in the future will be deprived of her earnings, profits and advantages as a result of the injuries inflicted as aforesaid, which income the plaintiff would have received except for the injuries aforesaid. 10

Plaintiff, Catherine McNamara, demands as damages the sum of \$5,000.

SECOND COUNT.

1. On or about the 10th day of August, 1926, and for sometime prior thereto, the defendants, Morris Varvatas, Peter Varvatas and Spios S. Kukos, were the owners, proprietors or lessees of certain lands and tenements located and commonly known as No. 15 West 8th Street, in the City of Bayonne, County of Hudson and State of New Jersey, which premises consisted of a two story building divided into four living apartments and two stores. 20

2. The defendants retained possession and control and were in charge of the halls, entrances, lobbies and stairways of the said building, which were used in common as the sole means of access to and egress from the said apartments in said building from and to the street adjoining thereto, whereby it became the duty of the said defendants to use due and proper care to keep and maintain the said building, so that the same should not become dangerous to the tenants of the said building or to the public who should or might have occasion to use the said premises. 30
40

Complaint.

10 3. The said building being a tenement house, it was also incumbent upon the said defendant to keep proper lights burning in the evening at or near the stairs on every floor in said building, so as to permit the tenants, occupants or other persons who should or might have occasion to use said halls, entrances or stairways to pass along the said stairs in safety.

20 4. On or about the date aforesaid and prior thereto the steps of the stairways leading to the upper floor became out of repair and was in a defective and dangerous condition, of which fact the defendants had notice and knowledge; and it thereby became and was the duty of the said defendant to keep and maintain the steps, staircases and stairways in a proper condition and not to permit the same to become dangerous to the tenants, occupants or the persons who might have occasion to use the said stairs of the said building.

30 5. On or about the date aforesaid, the plaintiff who was lawfully in the said building, and while passing along the stairs leading to the porch or first floor thereof, fell headlong down the said flight of stairs, due to the negligence and carelessness of the said defendants, and as the result thereof the plaintiff was severely and permanently injured.

6. The negligence and carelessness of the defendants, Morris Varvatas, Peter Varvatas and Spios S. Kukos, their agents, servants or employees, consisted in this, that

40 (a) They failed to keep any lights burning after sunset on the evening as aforesaid in the said halls at or near the stairs as aforesaid.

Complaint.

(b) That they violated the Tenement House Act of New Jersey by failing to comply with the provisions thereof relating to lights being kept in halls near staircases and in lobbies and in entrance halls.

(c) They unlawfully and negligently created a dangerous condition in the halls and stairways of the said tenement house as aforesaid by omitting to keep proper lights burning therein on the evening aforesaid.

10

(d) That they failed to keep the steps of the stairs and railings in a safe condition.

(e) That they failed to keep the steps of the stairs and railings in proper repair.

20

(f) That they unlawfully and negligently created a dangerous condition on the stairs by permitting the steps and railings to become out of repair and in a defective condition.

7. By reason of the negligence of the defendants, as aforesaid, the plaintiff, Catherine McNamara, fell down the said stairs, being thrown to the floor with great force and violence, thereby sustaining severe and permanent injuries about her head, arms, and shoulders and to other parts of her body, and as a result thereof she has undergone and in the future will undergo great pain and suffering.

30

8. By reason of the injuries so inflicted the said plaintiff has been obliged to pay large sums of money for doctor bills, medicines and medical attention and in the future will be obliged to expend further sums for same, and the said plaintiff has been and in the future will be deprived of her

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Answer of Mechanics Trust Co.

earnings, profits and advantages as a result of the injuries inflicted as aforesaid, which income the plaintiff would have received except for the injuries aforesaid.

10 Plaintiff, Catherine McNamara, demands as damages the sum of \$5,000.

BRENNER & KRESCH,
Attorneys of Plaintiff.

Answer of Defendant Mechanics Trust Company of New Jersey.

(Filed March 5, 1927.)

20

HUDSON COUNTY CIRCUIT COURT.

CATHERINE McNAMARA,
Plaintiff,

v.

MECHANICS TRUST COMPANY OF
NEW JERSEY, MORRIS VARVATAS,
PETER VARVATAS and SPIOS S.
KUKOS,
Defendants.

Action at Law.

30

Defendant, Mechanics Trust Company of New Jersey, for answer to the plaintiff's complaint, says that:

FIRST COUNT.

1. Defendant denies each and every allegation contained in paragraphs two, three, four, five, six, seven and eight.

40

Answer of Mechanics Trust Co.

FIRST DEFENSE.

The defendant, Mechanics Trust Company of New Jersey, says that for some time prior to the occurrence of the alleged accident, while the property was in good condition, entered into a written agreement wherein and whereby it relinquished possession and control of said premises and at the time of the alleged accident was not in possession or control and under no obligation to maintain the premises or to keep the lights burning therein. There was, therefore, no privity between the plaintiff and the defendant, Mechanics Trust Company of New Jersey.

10

SECOND DEFENSE.

The alleged accident set forth in the plaintiff's complaint was due to the contributory negligence on the part of the plaintiff, in that:

20

- a. She did not take the proper precaution for her own safety.
- b. She did not heed where she was going.
- c. She was in divers other ways careless and negligent.

30

SECOND COUNT.

The defendant, Mechanics Trust Company of New Jersey, does not answer the second count as it does not relate to this defendant.

CHAS. STOCKDELL GRAY,
Attorney for Defendant,
Mechanics Trust Company.

40

**Reply to Answer of Defendant Mechanics
Trust Company of New Jersey.**

(Filed March 3, 1927.)

HUDSON COUNTY CIRCUIT COURT.

10

CATHERINE McNAMARA,
Plaintiff,

v.

MECHANICS TRUST COMPANY OF
NEW JERSEY, MORRIS VARVATAS,
PETER VARVATAS and SPIOS S.
KUKOS,

Defendants.

Action at Law.

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The plaintiff for a reply to the answer of the defendant, the Mechanics Trust Company of New Jersey, says that,

1. She denies all the allegations contained in the paragraphs of the first defense.
2. She denies all the allegations contained in the paragraphs of the second defense.

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BRENNER & KRESCH,
Attorneys of Plaintiff.

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Answer of Defendants Morris Varvatas, et al.

(Filed February 24, 1927.)

HUDSON COUNTY CIRCUIT COURT.

<p>CATHERINE McNAMARA, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>MECHANICS TRUST COMPANY OF NEW JERSEY, MORRIS VARVATAS, PETER VARVATAS and SPIOS S. KUKOS, <i>Defendants.</i></p>	<p>} Action at Law.</p>	<p>10</p>
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Defendants, Morris Varvatas, Peter Varvatas and Spios S. Kukos, residing in the City of Bayonne, Hudson County, New Jersey, say: 20

ANSWER TO FIRST COUNT.

The allegations contained in the first count of the plaintiff's complaint are not made against these defendants and they therefore neither deny nor admit the same.

FIRST DEFENSE TO SECOND COUNT. 30

1. Defendants deny all allegations contained in the second count of the complaint.

SECOND DEFENSE TO SECOND COUNT.

2. The alleged accident, if it happened, was the result of the contributory negligence of the plaintiff, in that she failed to use the degree of care that the ordinary prudent person would use under similar circumstances.

40

Reply to Answer of Varvatas, et al.

THIRD DEFENSE TO SECOND COUNT.

3. The alleged accident, if it happened, was the result of the negligence of persons other than these defendants.

10

FOURTH DEFENSE TO SECOND COUNT.

4. These defendants owed no duty and were under no obligations to use any care towards the plaintiff.

MEANEY & LIFLAND,
Attorneys of Defendants, Morris
Varvatas, Peter Varvatas and
Spios S. Kukos.

20

**Reply to Answer of Defendants Morris
Varvatas, et al.**

(Filed February 26, 1927.)

HUDSON COUNTY CIRCUIT COURT.

CATHERINE McNAMARA,
Plaintiff,

v.

MECHANICS TRUST COMPANY OF
NEW JERSEY, MORRIS VARVATAS,
PETER VARVATAS and SPIOS S.
KUKOS,

Defendants.

Action at Law.

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Plaintiff, for a Reply to the answer of the defendants, Morris Varvatas, Peter Varvatas and Spios S. Kukos, says that:

Case.

1. She denies all the allegations contained in the Second Defense to Second Count.
2. She denies all the allegations contained in the Third Defense to Second Count.
3. She denies all the allegations contained in the Fourth Defense to Second Count. 10

BRENNER & KRESCH,
Attorneys of Plaintiff.

HUDSON COUNTY CIRCUIT COURT.

<p style="text-align: center;">CATHERINE McNAMARA</p> <p style="text-align: center;"><i>v.</i></p> <p>MECHANICS TRUST COMPANY OF NEW JERSEY, MORRIS VARVATAS, PETER VARVATAS and SPIOS S. KUKOS.</p>	20
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Before—Hon. A. DAYTON OLIPHANT, J., and a Jury.

Jersey City, N. J.,
June 18, 1928. 30

APPEARANCES :

BRENNER & KRESCH, Esqs., for the Plain-
tiff, by ALFRED BRENNER, Esq.
C. STOCKDELL GRAY, Esq., for the Defend-
ant, Mechanics Trust Co. of N. J.

A jury was duly empanelled; being found satis-
factory, they were sworn.

Counsel opened to the jury.

The Court: It may be noted on the record that 40

Catherine McNamara, direct.

Messrs. Meaney & Liffand have withdrawn as counsel for the defendants Morris Varvatas, Peter Varvatas and Spios S. Kukos.

Mr. Brenner: May it also be noted that was after notice of trial?

10 The Court: Yes.

MRS. CATHERINE McNAMARA, sworn for the plaintiff:

Direct examination by Mr. Brenner:

Q. Mrs. McNamara, you live at 15 West 8th Street, Bayonne? A. Yes, sir.

Q. You have lived there for how long? A. Two years; going on two years.

20 Q. From whom did you rent your apartment?
A. From Morris Varvatas, a Greek man.

Q. They are the people who have been referred to as the owners of the White House Restaurant?
A. Yes, sir.

Q. Do you know when you first rented from him? A. Well, it was in January, January first 1926, I think it was.

Q. 1926 January first? A. Yes, sir.

30 Q. That was about eight months before you had this accident? A. Yes, about that.

Q. Now, that building has how many tenants in it? A. Four tenants.

Q. Are there two stores below the apartments?
A. Yes, there is two stores underneath us.

Q. Now, to get into that building, you enter from what street? A. From 8th Street, the front entrance.

40 Q. The front entrance is on 8th Street? A. Yes, sir.

Q. Where is that entrance with reference to the

Catherine McNamara, direct.

stores, at the end of the stores or in between? A. My entrance is between two stores.

Q. Then when you go in the entrance, are there separate stairways to each apartment, or do all the tenants over the stores use the one entrance, the one set of stairs? A. There is only one set of stairs for four families. 10

Q. Is the same true as to the hallways, that all the tenants use just this one hallway? A. Yes, sir.

Q. Now, which apartment did you occupy, front apartment, or rear apartment? A. Well, it ran front to back; all the way through, front to the back.

Q. Was that true of the other apartments on that floor? A. Yes, the same way.

Q. That was on the second floor? A. Well, the first floor upstairs, on the landing. 20

Q. The first floor over the stores? A. First floor over the stores, yes, sir.

Q. Then above these two apartments, were there two other apartments? A. Yes, there was two or more apartments.

Q. Did they run the same way? A. Yes, they all are on the landing, then one stairs upstairs to their floors.

Q. Did they run from front to rear of the building? A. Yes, sir. 30

Q. When you go up the front stairs, there was a landing there, was there not? A. Yes, there is a long landing back to my door.

Q. How long was that landing? A. I should say about twenty feet.

Q. Were there doors leading off from that landing? A. Yes, to my kitchen door. I had to walk all the way back to my door; it was the bedroom door I went into. 40

Catherine McNamara, direct.

Q. That would be the bedroom door? A. Yes, sir.

Q. Did your kitchen connect with the bedroom?

A. Yes, the kitchen was right beside that.

10 Q. Where was that door that you would enter with reference to the end of the landing? A. My doorway that I had to go in just was on the edge of the landing, of the stairway I mean, going down the back; it was about that much (indicating).

20 Mr. Gray: If your Honor please, if we are going into the question of construction, I would like your Honor to charge on that question that any question of construction is not binding upon my defendant. There is no allegation of improper construction of the building.

The Court: As I understand, the intention is simply one of lights.

Mr. Brenner: The purpose of this testimony is simply to show liability and how this accident did happen.

Mr. Gray: No objection to that, your Honor.

30 Q. At the end of this landing was a stairway going down? A. Going down.

Q. Down to the back yard? A. Yes, sir.

Q. Or back stairs? A. Yes, the back stairs.

Q. The door that you testified to you said was how far from the end of this landing leading to the back stairs? A. About that (indicating).

Mr. Brenner: A matter of about four inches.

Mr. Gray: Five or six inches.

40 Q. This night of August 10th, where were you

Catherine McNamara, direct.

coming from? A. I was coming from work. I finished my work in the bank.

Q. What bank? A. Mechanics Trust Co.

Q. The same Bank as the defendant bank? A. Yes, sir.

Q. What time did you finish your work at the Bank? A. It was about half past eight. I went down the stairs to get some things in for the morning so I would not go out so early, because I have to go to work early too in the morning. 10

Q. What time did you get back? A. I just went around—it was after nine, half past nine, something around that.

Q. Now, when you got inside of the entrance, was there any light at the downstairs entrance near the stairs, or any other place? A. Well, I went up the stairs— 20

The Court: No; just answer the question.

Q. (Question read as follows: Now, when you got inside of the entrance, was there any light at the downstairs entrance near the stairs, or any other place?) A. When I went upstairs, it was awfully dark; it was terribly dark.

Q. Just answer my question; when you got to the entrance downstairs, was there any light there? A. No, sir; there was no light. 30

Mr. Gray: I object to any question about the light as not being binding on the defendant Mechanics Trust Company. The evidence so far is that she rented from the Greeks; they therefore became the landlord and therefore no question of lighting or duty to give light devolves on the Mechanics Trust Company. 40

The Court: I will overrule your objec-

Catherine McNamara, direct.

tion at this time. You may renew it later. As I understand it, this whole case will turn on one question and you may make your motions for the purpose of the record as you go along, but I will reserve decision until we reach that point.

10

Q. You said there was no light at the entrance?

A. No.

Q. Did you then go upstairs? A. Yes, sir.

Q. And when you arrived upstairs, was there any light on the second floor? A. No, there wasn't a bit of light, because when I went to the top step, I put my foot on the top step and I came down like that.

20

Q. It was so dark you could not see the step?

A. Then I went to grope my way to find my door. I had to grope my way all along. Just as I was reaching where I put the key, I was reaching for the key; all of a sudden I had no landing for this foot and down I fell. I was down at the foot of the stairs.

Q. Just walked off the landing going down the back stairs? A. Yes, sir.

30

Q. Now, was there any jet of any kind either on the first floor or the second floor that could be lit, either electric or gas? A. There was gas in that landing, and you know, that landing, second landing, there was gas there.

Q. What about on the first floor, at the entrance?

A. They had nothing there.

Q. They had no jet of any kind? A. No.

Q. Did they have any electric outlet? A. No.

Q. Was there any electric outlet? A. They had electricity in, the Greeks put in electricity.

40

Q. Was there any in the second floor? A. No electric, just gas.

Catherine McNamara, direct.

Q. You say there was a gas jet on the second floor that could be lit? A. Yes, sir.

Q. But no gas jet or no electric outlet or any light of any kind that could be lit on the first floor? A. No.

Q. Had the light been out in either or both of these hallways on other nights when you came home? 10

Mr. Gray: I don't know that that is binding.

A. Yes, they were, or either the light upstairs would be lit and it would throw a little light.

Q. What was that? A. The Greeks themselves lived upstairs and you see, sometimes they would like light a light themselves. 20

Q. Which light do you mean? A. That is on the top floor.

Q. In their apartment or in the hallway? A. In the hallway; that used to throw a little light under the front landing, but this night, there was no light either upstairs or downstairs.

Q. When you went upstairs or until you reached your own landing, did you know that their light was not lit on the third floor? A. I could see it was terribly dark; there was no light. 30

Q. You could tell that before you got to the second floor landing? A. No, I could see when I got up to the second stairs it was terribly dark.

Q. Would that light on the third floor be lit most nights or not? A. It was mostly upstairs, then the middle floor, my floor.

Q. Other nights when you came home, you were able to see by that light? A. Yes, sir.

The Court: Was there a light on your floor? 40

Catherine McNamara, direct.

The Witness: Yes, sir.

The Court: I mean was there a jet there?

The Witness: There was a jet there.

The Court: There were jets on that floor?

The Witness: One jet in the hallway.

10 The Court: If that was lit, it gave you light sufficient to see to get to your apartment?

The Witness: Yes, sir.

The Court: And that was not lit on this night?

The Witness: No, sir.

20 Q. At either end of this landing, was there any gate or any other thing that would stop you from going downstairs so that you would ever stop yourself? A. No.

Mr. Gray: That is a question of construction.

The Court: It may go in for the purpose of showing how the accident happened and no other purpose.

Mr. Brenner: For the further purpose of the question of contributory negligence.

30 Q. There was no bar of any kind that would prevent you? A. No, but it was steps going down to the bottom.

Q. Now, after you fell, who came to your assistance? A. I heard them run over to the restaurant. My two sons; one of them didn't go out that night and the other boy was just home. They ran downstairs when they heard the crash, but I think he must have found—

40 The Court: No.

Catherine McNamara, direct.

Q. Did they bring you upstairs? A. Yes, they brought me upstairs.

Q. Did they then call the doctor? A. He went to the drugstore, because my head and face was so bad—

The Court: Just answer the question. 10

Q. They did send for the doctor? A. Yes, they send for the doctor at the same time.

Q. Did the doctor come that night? A. The doctor came that night, yes, sir.

Q. What is the name of the doctor? A. Dr. Corti.

Q. After the accident, did you remain in bed? A. I remained in bed about nine weeks. I was eleven weeks before I could walk on this foot. 20

Q. Which foot? A. Right foot; that was down in here where my knee and ankle—

Q. What was the matter with the leg so that you could not walk on it? A. I don't know what happened to the knee. There was a big bump, swollen up, black and blue; down here it was all swollen on the ankle so that I could not put it under me for about nine weeks.

Q. Where else were you hurt outside of the knee? A. I had two ribs broken here; I was strapped up about seven weeks. 30

Q. Any other injuries that you had? A. My glasses were smashed.

Q. When you smashed the glasses did you cut your face? A. The boy said he took some pieces of glass out of my eye.

The Court: Did it cut your face?

The Witness: No, sir; it didn't cut my face; it was all black and blue. 40

Q. Your face was bruised, not cut? A. No.

Catherine McNamara, direct.

Q. Any other injury that you had? A. Well, my legs were all kind of black and blue. They were all bruised up, and my arms.

Q. After you got out of bed, did you continue in the house, or did you go back to work? A. Well, after eleven weeks I went back down to my work again.

Q. After eleven weeks? A. Yes, sir.

Q. You were in bed nine weeks? A. Yes, sir.

Q. Then two weeks after that you went back to work? A. Yes, sir.

Q. Did you go back to the same place? A. Yes, sir.

Q. Are you working at the same place yet? A. Yes, sir.

Q. During the eleven weeks that you were out of work, did you get your wages? A. They gave me my wages.

Q. You never lost anything in wages? A. No, sir.

Q. What about your doctor's bill, did you have to pay that? A. No, I didn't pay. I could not afford to pay my doctor bill.

Q. Did you receive a bill from the doctor? A. No, he didn't let me know what the full amount was. I asked him how much the first night he bandaged me up. He said \$5 for that night.

Q. You haven't as yet received a bill for his services since that time? A. No, I didn't receive any bill.

Q. Did you discontinue the services of the doctor after you went back to work, or did you keep on under the doctor's care? A. Well, I could not afford to go to the doctor.

40 The Court: Don't tell us that. Just answer the question.

Catherine McNamara, direct.

The Witness: I went to the dispensary a good many times.

Q. The dispensary, where? A. Bayonne.

Q. How long did you go? A. Well, a couple of weeks up there I was going.

Q. Since that have you been under the doctor's care? A. Yes, once in a while.

Q. What is the matter with you now that makes it necessary for you to go to the doctor? A. I can't kneel on this knee except I am very careful. If I go down of a sudden, not thinking, there is something sticks to me, just as if this—as if a needle goes through the bone.

Q. Does anything happen, as far as you can see, to your leg, when that happens? A. If I am careful, it don't hurt. If I go of a sudden, it sticks, like a needle going through and this leg, there is a dent in this leg.

Q. Which leg do you mean? A. This right leg.

Q. What is the matter with it? A. There is a big dent. I have stuff to make it look good. I have stuff to fix in my stocking.

Q. What kind of dent? A. The whole entire leg.

Q. Did you have that before? A. No, sir; I never had nothing the matter with my leg before.

Q. Did you ever have any pains in that leg before? A. No, sir; never. My back hurts me. I have terrible pains across my back on account of my hip.

Q. When did you have pains in your back? A. I have them steady for about a year.

Mr. Gray: I object to that.

Mr. Brenner: If we don't connect it up through the doctor, we cannot of course recover.

Catherine McNamara, cross.

Q. Did you spend anything else outside of the doctor's bill, for medicine, or anything of that kind? A. I have been getting washes to rub on here, the bones and everything.

10 Q. Did you spend anything for that, or have you kept any record? A. No, I really could not tell.

Q. Do you still rub it on? A. Yes, sir.

Cross examination by Mr. Gray:

Q. Mrs. McNamara, when did you say you went into that house? A. It was January first, I think. I have the receipts yet.

Q. 1926? A. Yes, sir.

20 Q. When was the accident? A. It was in August.

Q. In August, 1926? A. Yes, sir; I think it was in August.

Q. Do you remember how you happened to move into that house; how did you happen to go there? A. Because I thought it would be handy for my work.

Q. Who did you talk to about it? A. I didn't talk to anybody. I just seen a "let" up in the restaurant and I inquired who was the landlord.

30 Q. Up in the "White House" restaurant, you saw a sign "To let"? A. Yes, sir.

Q. You went in the restaurant and asked about it? A. Yes, sir.

Q. Who did you talk to about it? A. Varvatas.

Q. You made your arrangement with him? A. Yes, sir.

Q. To rent the apartment? A. Yes, sir.

40 Q. He told you he was the landlord? A. Well, he said he was the man that rented the rooms.

Q. You rented them from him? A. Yes, sir.

Catherine McNamara, cross.

Q. You never talked to anybody else before you went in? A. I don't remember if I did, sir.

Q. And how much rent did you agree to pay?

A. \$25 a month.

Q. To whom did you pay that rent? A. To Mr. Varvatas. 10

Q. He is the only man that you ever saw, that had anything to do with the place, isn't he? A. Well, I knew that the Bank owned the house anyhow.

Q. You never had any talk with the Bank about it? A. No.

Q. You knew that because you worked in the Bank? A. Yes, sir.

Q. That is how you knew that? A. I knew that before. I think someone told me it was the Bank's building. 20

Q. Who used to put these lights on in the hall, turn them on? A. They used to have a janitor woman there.

Q. Who did? A. Varvatas, but then they sacked her, they left her go and since she left they hardly lighted the lights, very seldom.

Q. Did this janitress live in the house? A. Yes, she did.

Q. Where? A. She lived right across from me. Right across the hall from me. 30

Q. She used to light the gas jet? A. Yes, light it every night when she was there.

Q. And the light upstairs, did she light that? A. No; they used to light the light upstairs themselves.

Q. You say there was no light down in the hallway at all? A. No light downstairs.

Q. Now, did you ever look for a light, to see whether there was a light there or not, a place to 40

Catherine McNamara, cross.

make a light? A. I never seen a light lighted while I was there. I didn't see any light lit, put a light down there.

Q. Did you ever look? A. I could see there was not any.

10 Q. You are sure of that? A. I think I am.

Q. No gas jet and no electric fixture? A. No, nothing on the first landing.

Q. The first landing was the landing you lived on? A. No, there was a landing as you came in the door. There was a landing; then you go up the stairs.

Q. That landing was right on the level of the street, wasn't it? A. Yes, you came up a step or so.

20 Q. I mean as you opened the door and got inside, you were still on the level of the sidewalk? A. Not on the level.

Q. About a couple of inches, one little step? A. A step like that (indicating).

Q. Then you went upstairs, is that right? A. Yes, sir.

Q. About how many steps were there going up to your stairs? A. About twenty.

30 Q. Was there light near this front door, on the street, or anything? A. No, no light on the street.

Q. No lights on the street? A. Not opposite the door.

Q. You could see as you went in? A. You could just see as you went inside the door upstairs.

Q. This night, when you went out, you got past downstairs all right, didn't you; you didn't have any trouble down there? A. No, not till I was up about half way of the stairs. Then it was getting dark.

40 Q. As you went up? A. Yes, sir.

Catherine McNamara, cross.

Q. Because you expected to see a light either on the second floor or on the third floor, didn't you? A. I knew there was no light when I was half way up. I could see it was terrible darkness.

Q. On other nights you say there were lights on the second floor and on the third floor; were there? 10
A. Well, it would be most upstairs. There was light upstairs on the top floor more than there would be light on my floor.

Q. It would throw plenty of light on your floor?
A. It would throw light down the front stairway coming up.

Q. What caused you to fall down do you think?
A. I don't know. I suppose I gave a step a couple of inches too far with my foot, you see, feeling to get to the door. I was reaching for the key when all of a sudden— 20

Q. Where did you keep this key that you say you were reaching for? A. I tried to get it on the side; it was only—

Q. Near the stairway? A. Yes, sir.

Q. You were reaching for this key along this stairway when you fell? A. Yes, I put up my hand to get it.

Q. You think you fell because there was no light on that floor; is that right? A. Yes, of course if there was a light I would not have fallen. 30

Q. If there was a light on the third floor, you would not have fallen? A. I would see the light in the back stairs going down.

Q. That light from the third floor is thrown down towards the front door? A. It wasn't there; it would throw but little light. There was none lights upstairs; none upstairs or downstairs.

Q. As I say you came in the front door and you could see about half way up from the street light? 40

Catherine McNamara, cross.

A. I could see a couple of steps up as I came in through the little bit of the street showed a light in there.

10 Q. Then you went past this ground floor, up these stairs to the right, didn't you, then you got up to the landing of your floor where the accident happened? A. Yes, sir. I groped my way until I got to it.

Q. Did you ever complain to anybody about these lights not being on the stairs? A. Why, yes, I used often to say it is dangerous they don't light the lights there.

Q. Who to? A. I used to say to my boys when they would come in and out.

20 Q. Did you ever see these Greeks, Varvatos, about this at all? A. Yes, even complained, say, "Why don't you light the lights here?" that it is dangerous.

Q. Who did you complain of that to? A. To Varvatos and the others.

Q. Did they ever do anything? A. Sometimes they would light it; sometimes they would not light it.

30 Q. Now, Mrs. McNamara, how long had you been employed before this accident? A. I have been working all my lifetime and supporting my children. My husband was no good; he has left me.

Q. Had you ever had trouble with your legs before? A. No, I had not. I have to have now two stockings, two rubber stockings.

Q. Didn't you wear rubber stockings before? A. No, sir; I didn't.

40 Q. Were you ever treated for varicose veins? A. When I fell down the stairs, the only time I ever wore rubber stockings.

Catherine McNamara, redirect.

Q. Weren't you troubled with varicose veins?

A. No, I never was bothered. I never missed a day with my legs before.

Q. This place where you say you were hurt is sore? A. Yes, it is kind of sore.

Q. What did you hurt it on; did you strike it on something? A. I don't know. It looked as if the blood vessel busted in there; it was so bad. I got a bump on my knee. 10

Q. You got such a bump on your knee? A. Yes, because I know my leg was gone under me.

Q. Who told you to put rubber stockings on? A. I went to the doctor.

Q. Did he tell you? A. Yes, he did; he said I have to wear a rubber stocking.

Q. On both legs? A. To make the two legs even. I put one on either. 20

Q. This place where the pain is, that is the same leg with the bad knee? A. Yes, sir.

Q. You just wear a stocking on the other leg to make them look alike? A. Yes, to make them look alike.

Redirect examination by Mr. Brenner:

Q. At the entrance to the first landing, is there a glass panel in the door so that light can come in? A. You mean on the back stairs? 30

Q. No, I mean the front stairs; where you enter from the street? A. Yes, sir; there is half glass with a kind of green, dismal looking panel of glass.

Q. So that light would show through from the street, show through that glass on to part of the space? A. When the door would be shut, it would not throw much light.

Q. There would be some come through? A. Very little come through with that glass. 40

Tessie Lair, direct.

Q. On the landing there, as you came in the front door, how long was that landing? A. About from there to that man's foot there (indicating).

Q. To about here? A. No, your foot over to here; from your foot over to here.

10

Mr. Brenner: About four feet?

Mr. Gray: Four or four and a half feet.

Q. Now, on the second floor, when you arrive at your own landing, were the panels of your own doorway, in your doors, were they glass or were they solid? A. No, all wooden doors.

Q. Was there any skylight or anything of that kind that would let light in from the outside on to the second floor? A. No, sir, not anything.

20

Mr. Gray: I object to that question; not on the question of construction.

Mr. Brenner: That is the only purpose of it.

MISS TESSIE LAIR, sworn for the plaintiff:

Direct examination by Mr. Brenner:

30 Q. Miss Lair, in August, 1926, you were working in the White House Restaurant? A. Yes, sir.

Q. At 5 West 8th Street? A. Yes, sir.

Q. What work did you do there? A. Waitress.

Q. In the evening of August 10th, was your attention directed to the fact that something had happened? A. Yes, sir.

Q. What was the first thing that you heard? A. Well, I heard a terrible thumping coming down the stairs.

40

Q. Which stairs? A. The back stairs.

Q. Did you go out there? A. Yes, sir, I did.

Tessie Lair, direct.

Q. Right away? A. Yes, sir.

Q. When you got out there, did you see what happened? A. Well, I could not see for the darkness.

Q. When could you first see? A. When her sons came and lit some matches. 10

Q. What did you see then? A. Well, I seen her on the floor.

Q. You saw Mrs. McNamara on the floor? A. Yes, sir.

Q. At the foot of the steps? A. Yes, sir.

Q. What did you do? A. Well, we picked her up, that's all. Her face was all cut and bruised.

Q. Did you help her into the house? A. No, Mr. Varvatos did.

Q. Did you go upstairs to see her? A. Not all the way to the top I didn't go. 20

Q. Did you go part of the way? A. Yes, sir.

Q. As far as you went, could you see whether or not there was any light on the second floor? A. No.

Mr. Gray: Same objection to all this testimony.

The Witness: No, there was no light.

Q. There was no light on the second floor? A. No. 30

Q. Was it dark or light on the second floor? A. No, dark.

Q. Very dark? A. Very dark.

Q. Did you go into Mrs. McNamara's apartment at all? A. No, I didn't.

Q. Did you go in subsequent to that? A. No, I went up the next day. I brought her part of her glasses.

Q. She was in bed next day? A. Yes, sir. 40

Q. Before this night, did you ever go into the

Tessie Lair, cross.

hall downstairs, or into the hall upstairs? A. Yes, sir.

Mr. Gray: I object to the testimony, whether the light was burning before or subsequent to the night of the accident.

10 The Court: Unless it is for the purpose of showing whether there was a place for light.

Mr. Brenner: That is all I want to show.

Mr. Gray: I object as not binding on this defendant.

Q. Was there any light at all on the downstairs landing? A. No, there was not.

20 Q. Any gas jet or electric fixture, or anything else? A. No.

Q. Was there any on the second floor landing? A. There was none on that landing at all; there was no lights at all.

Q. At any time you went up? A. At any time.

Q. Do you know whether there was a place where there could be light? A. Yes, there was.

Q. Which floor, first or second? A. Right near her apartment there was a jet, but it was not lit.

30 Q. On the first floor, where you entered the house, was there any jet there at all? A. No.

Q. Or any electric fixtures? A. No.

Cross examination by Mr. Gray:

Q. How old are you? A. Eighteen.

Q. Were you going to school or going to business at the time of the accident? A. Business.

Q. Where do you live? A. 14 West 23rd St.

Q. How did you happen to be over there? A. I was working there.

40 Q. You were working in the restaurant? A. Yes, sir.

Tessie Lair, cross.

Q. What time did you quit at nights in the restaurant? A. 11 o'clock.

Q. Do you remember this night particularly for any reason except the fall? A. It was so long ago, I don't remember what night it was.

Q. Did you go out in the hall or in the back stairs? A. When I heard the crash, I ran out to the back stairs. 10

Q. How did you get to the back stairs? A. Out of the kitchen door.

Q. And these back stairs led out to about the same place? A. There was only about that much between the kitchen door and the hall (indicating).

Q. You never lived in the house? A. No, I didn't. 20

Q. Did you ever go up in the house? A. Yes, sir.

Q. What for? A. To bring something up for the boss's wife.

Q. How often did you do that? A. I did it quite often.

Q. Did you go up the front way or the back way? A. Both ways.

Q. Which way did you go most frequently? A. Back stairs. 30

Q. What would cause you to go out the front door and go up that way when you were in the back? A. Sometimes I would come to work and I would go up the front stairs.

Q. You would not be taking things to the boss's wife when you were going to work? A. Sometimes if she needed it.

Q. Did she ever need it? A. Yes, she did.

Q. How long had you worked there before this accident happened? A. Two years. 40

Tessie Lair, cross.

Q. The Greeks had had the restaurant for that two years, had they? A. Yes, sir.

Q. Had they had the whole house for two years?

A. I don't know if it was exactly two years; I could not say.

10 Q. About how long do you think it was? A. A little over a year anyway.

Q. The Greeks had the restaurant all that time and lived upstairs all the time? A. Yes, sir.

Q. Had the house all the time? A. Yes, sir.

Q. Did you know this janitress who used to make lights, turn on the lights at night? A. Well, I don't know her so well.

Q. You knew who she was? A. Yes, sir.

20 Q. Where did she live? A. She lived right across from Mrs. McNamara.

Q. Did you ever see her making lights, turning on lights upstairs? A. No.

Q. You don't know whether she did or not; did you ever see a light on the second floor? A. Once in a while.

Q. About how often would you say? A. Well, I could not say because I didn't go up every night.

Q. What time did you work, day time? A. I came different times, mostly every day.

30 Q. What time did you come to work, what time of the day when you worked to 11 o'clock at night? A. Different times.

Q. Most of the time? A. One o'clock.

Q. You worked from one o'clock in the afternoon to 11 o'clock at night? A. Yes, sir.

Q. Did you ever go in the front hallway at night? A. No.

Q. Only in the day time? A. Yes, sir.

40 Q. You would know if there was a light burning in the front hallway or not; how would you know if you would not go in at night? A. If I would be

Tessie Lair, cross.

working to 11 o'clock, she would yell out for something and I would bring it to her.

Q. Then you would go up the front or the back stairs? A. The back stairs.

Q. You would go through the front hall at night?
A. If I was going to the hall I would go down the front stairs. 10

Q. What time would that be, 11 o'clock, or after?
A. No, not 11 o'clock.

Q. You did work later? A. I did, if I had to work, if I wasn't upstairs.

Q. What time would you go home? A. 11 o'clock, but I didn't go home from upstairs. I went home from the restaurant.

Q. When you came down? A. I didn't come downstairs. I went out the restaurant. 20

Q. You went out of the restaurant upstairs? A. No, 11 o'clock at night I went right out of the restaurant.

Q. Home? A. Yes, sir.

Q. You don't know whether there was any light burning there before 10 o'clock?

The Court: How is it material?

Q. You never made any special effort to see whether there was a light burning downstairs or not at night? A. I know for sure there wasn't, very seldom was a light there. They neglected the place very much indeed. 30

Q. You are sure now it was very seldom there was a light in the downstairs hall? A. Yes, sir.

Q. There was one occasionally? A. Yes, once in a while.

Joseph McNamara, direct.

JOSEPH McNAMARA, sworn for the plaintiff:

Direct examination by Mr. Brenner:

Q. You are a son of Catherine McNamara? A. Yes, sir.

10 Q. You lived in the house with your mother?
A. At the time.

Q. You were not married at the time? A. No, sir.

Q. Do you recall this night of August 10th, when your mother fell downstairs? A. Yes, sir.

Q. Were you home at the time? A. Yes, I had just come in about a quarter after nine.

Q. Did you go downstairs to help her? A. After I heard the crash, I went downstairs.

20 Q. When you came into the house, was there a light on the ground floor, or the second floor on which you lived? A. No, sir.

Q. Was there any light on the third floor when you came in? A. No, sir.

Q. The entire hall was dark? A. Yes, sir.

Q. Now, when your mother fell downstairs, was there any light that you could see on either the first floor or the second floor? A. No, sir; I lit a match after I heard the crash to see what happened.

30 Q. Did you see your mother then? A. After I got down to the bottom of the stairs.

Q. Where was she? A. Lying down on the landing.

Q. Did you help her up? A. Yes, sir.

Q. Put her to bed? A. Yes, sir.

Q. Send for the doctor? A. Yes, sir.

Q. How long did your mother remain in bed?

40 A. I guess it was two full months.

Q. Did she go right back to work after that or

Joseph McNamara, direct.

did she remain home? A. I guess a little while after that.

Q. And then went back to work? A. Yes, sir.

Q. She has been working since then? A. Yes, sir.

Q. Did you frequently come home before ten o'clock? A. I had the habit of coming home every night around ten o'clock. 10

Q. Was there ever any light burning in either of these floors, first or second? A. It was mostly out, this light.

Q. Was there any place for light on the first floor, any jet? A. There was a gas jet on the landing.

Q. On the first or second? A. On the first floor.

Q. Where was that jet? A. Between about the center of the landing. 20

Q. How big is that landing? A. It is a twenty-foot landing.

Q. I am not talking about that landing; I am talking about the one on the street floor? A. There is no jet on the street floor at all.

Q. What about electric fixtures? A. There is no electric fixture.

Q. On the second floor where you lived, the second floor above the stairs there was a gas jet? A. Yes, sir. 30

Q. Where was that jet located? A. The middle of the landing.

Q. The landing you say was about 20 feet long? A. Yes, sir.

Q. As you came up the steps you would arrive on this 20-foot landing? A. Yes, sir.

Q. And then at the end of that landing, there were steps going down to the back of the building? A. Yes, sir. 40

Joseph McNamara, cross.

Q. Was there any guard of any kind? A. No, sir.

Q. To prevent you from walking right clean through on to the rear stairs? A. No, sir. Just the walls to feel as you went by.

10

Cross examination by Mr. Gray:

Q. How long did you live there? A. About a year.

Q. About a year before the accident? A. Not quite; about eight months, I imagine. I don't remember rightly.

Q. You came home every night; that was your regular home then? A. Yes, sir.

20

Q. This particular night, what time did you get in? A. About a quarter after nine, ten after or a quarter after nine.

Q. Were you just in? A. I had been to the corner, in a store down there, I was after getting some cigarettes.

Q. Had that been your habit every night, to go out and come back at just nine o'clock? A. Some nights maybe a little later.

30

Q. How do you know this was about a quarter after nine? A. Well, I left the store about five after nine, I imagine it takes about five minutes to leave the store and get up to the house.

Q. How do you know the time? A. I seen the time in the clock.

Q. Do you know what time you left there the night before the accident? A. I do, yes. Close on ten o'clock, the man closed down there.

40

Q. Yes, what time was it the night before the accident; not the night of the accident? A. The night before I guess it was about a quarter to ten.

Joseph McNamara, cross.

Q. How could you remember these two occasions? A. By looking at the time.

Q. Do you remember what time? A. I make a habit, pretty near, of looking at the time. At close on ten, I feel like looking.

Q. How did you happen to go home at five minutes after nine that particular day? A. I had no particular occasion to leave at that time; just left. 10

Q. You remember now, over two years after that it was five minutes after nine? A. Yes, sir.

Q. You remember the night before the accident it was a quarter to ten? A. Because I make a habit of going in around ten o'clock.

Q. Why did you happen to be so early this night? A. No particular reason. 20

Q. You think it took you about five minutes to go home? A. I imagine so; it is only about half a block from my house to the store.

Q. How long had you been home when your mother came in? A. I imagine about ten minutes.

Q. She had not been home before, that night? A. Well, I had been out; when she left the house I don't know. I don't imagine she was so long, because she just went to the store to get some things for next morning.

Q. You are quite sure she was there— A. I would not say I am certain because a friend of mine that night— 30

Q. What time did you get home that night from work? A. About a quarter to five.

Q. What time did you go out after your dinner? A. Seven o'clock.

Q. Who else was home that night? A. My brother and I.

Q. You got your dinner, then went out after? A. My mother got dinner for me. 40

Joseph McNamara, cross.

Q. Was she home at a quarter to five? A. At half past four.

Q. What time did she go out to go to work? A. She goes out about seven o'clock.

10 Q. Then you went out right after that? A. Yes, sir.

Q. Was it dark when you went out? A. It was not dark at that time.

Q. When you came back, it was about ten minutes after nine; was it dark then? A. Very dark.

Q. Very dark night; do you remember? A. The hall was dark; it was not a very dark night. The hall was very dark.

Q. You got up all right? A. After I had felt my way along, yes, sir.

20 Q. Then you opened the front door, felt up this landing, got up the stairs; did you feel your way upstairs? A. It was not the back door; that is the bedroom.

Q. That is where you saw your light, so you didn't fall down your stairs? A. There is no light shows on the bedroom door; there is no light there at all.

30 Q. You got up there without falling? A. I did, yes, sir.

Q. You got this door open without falling? A. After tripping a few times coming up the stairs, I made sure I wasn't going to fall.

Q. You came out after hearing your mother fall? A. When we heard the crash, sure I came out and lit a few matches.

Q. Where was she? A. After I lit a match I made a few steps.

Q. Going down the back steps? A. On one side.

40 Q. Was there any light burning upstairs at all? A. No, sir.

Joseph McNamara, cross.

Q. Up on the third floor? A. No, sir.

Q. Had you ever complained of the lack of light?

A. I did to my mother.

Q. You never complained to anybody else? A. No, sir.

Q. Were there many occasions when there wasn't any light there? A. There were many occasions when there wasn't any lights there. 10

Q. You had trouble seeing there? A. It was more out than it was lit.

Q. That relates to all three floors? A. Yes, sir.

Q. You never complained to anybody about it except your mother? A. My mother complained to the owner.

Q. Did you hear her? A. I did on different occasions. 20

Q. Who did she complain to? A. The man that owned the restaurant.

Q. Mr. Varvatos? A. I guess that is his name.

Q. Do you know what she said? A. She said, "Don't you think you had better have a light there before someone gets killed?"

Q. What did he say? A. He said, "Yes, he lights it."

Q. Did he? A. He said, "I will see it is lit from now on." 30

Q. You heard him say that? A. Yes, sir.

Q. Was it lit from then on? A. No, sir.

Q. Do you know where your mother keeps her key? A. Why, on the door.

Q. Whereabouts on the door? A. Up on the frame of the door.

Q. And that is where, in relation to the back stairs? A. Yes, sir?

Q. Right by the back stairs? A. Yes, sir. 40

Edward McNamara, direct.

Q. You didn't strike any matches coming up when you came in? A. No.

Q. Only when you came out to see what happened? A. Yes, sir.

10 Q. It was light enough for you to get up to your apartment without the light of matches? A. Just for about two steps.

Q. You didn't hold any matches over the stairs? A. Not until after everything was over.

Q. I mean when you were coming in yourself, you didn't light any matches to go upstairs, did you? A. When I looked there I lit a match.

Q. That is the first time you lit a match? A. Yes, sir.

20 Q. You got up all right? A. Yes, sir.

EDWARD McNAMARA, sworn for the plaintiff:

Direct examination by Mr. Brenner:

Q. You are a son of Catherine McNamara? A. Yes, sir.

Q. Were you home the night that she was injured? A. Yes, sir.

30 Q. Did you come in after her or before? A. I didn't go out at all that night.

Q. You were staying home? A. Yes, sir.

Q. What was the first thing that attracted your attention to the fact that something was wrong? A. I heard the crash going downstairs.

Q. What did you do? A. I slipped on my pants and went down with my brother.

Q. Did you find your mother at the foot of the steps? A. Yes, sir.

40 Q. Helped her up in the house? A. Yes, sir.

Q. Put her to bed? A. Yes, sir.

Q. You had lived there with your mother for

Edward McNamara—cross—redirect.

the length of time she was a tenant in the place?

A. Yes, sir.

Q. During that time, did you notice whether the lights were more often lit or not lit? A. They were mostly out than lit.

Q. When there was a light, where was it lit? A. 10
Well, it would be lit in our hallway.

Q. The same floor that you were on? A. Yes, sir.

The Court: He said "our hallway."

Q. Was there any place for light on the ground floor? A. None at all.

Cross examination by Mr. Gray:

Q. You say you were not out that night? A. 20
I wasn't out that night.

Q. Did you happen to look to see whether there was a gas jet on the ground floor, or not, the street floor? A. When we were going out, we can mostly see what is on the walls.

Q. You never looked particularly to see whether there was a jet, did you? A. Not exactly, no.

Q. There may have been one there that had been closed over with paper or something? A. If it was papered over, I could not tell. 30

Q. You don't know definitely because you never took the trouble to look to see if there was a light there? A. No.

Q. That is all you know? A. Yes, sir.

Redirect examination by Mr. Brenner:

Q. Did you ever see a fixture there? A. Never seen a fixture.

Q. You went up and down that stairs every day? A. Every day. 40

Mr. Brenner: We rest.

Motion for Nonsuit.

Mr. Gray: I respectfully move for a nonsuit as to my client, Mechanics Trust Company.

10 It is quite apparent that this plaintiff here had no contractual obligation with the defendant, Mechanics Trust Company, and that if she fell, it was either due to her own negligence in going where she could not see where she was going, and in reaching for this key that was near this stairway, and knowing, not only that the lights were out this night, but had been out more than they had been lighted; despite that, she went ahead.

20 From the testimony it appears that she was a tenant of this man Varvatos, and it seems quite apparent that she recognized Varvatos as the owner and as her landlord, because she never had any interview with my client, Mechanics Trust Co. She never made a complaint to my client or anything of that kind.

The Court: Suppose he had been simply acting as renting agent?

Mr. Gray: But there is testimony that she complained to him as owner.

30 The Court: I don't think it makes any difference who she thought was the owner. I think the Tenement House Act shows very definitely who shall be liable. I think this case turns on the question of whether or not the whole premises were leased.

Mr. Gray: On the question of contributory negligence your Honor will grant me an exception.

The Court: Yes, certainly.

Mr. Gray: With the consent of Mr. Brenner as to the formal part of this lease, the acknowledgment and so forth, I offer it in evidence.

40 I think it is quite material, because this lease is dated November 28th, 1924, and is between

Motion for Direction of Verdict.

Mechanics Trust Co. of New Jersey and Spios S. Kukos, Morris Varvatos and Henry Varvatos, the tenants.

(Accepted and marked as Defendant's Exhibit D-1.)

10

Mr. Gray: I would like to read it to the jury. It is a landlord and tenant agreement covering 17 West 8th Street, Bayonne.

(D-1 read to the jury.)

Mr. Gray: Reserving the right to put in medical testimony, we rest.

(All parties rest.)

Mr. Gray: I now move for a direction of verdict in favor of Mechanics Trust Company on the ground that that defendant had surrendered entire control of this building by this lease which has been put in evidence and has been read to the jury.

20

The Court (after argument): I will grant the motion. I can't see that the owner is liable. I think he is liable for structural defects at the time of the leasing of the property, but I don't feel that he is liable in this situation.

30

Mr. Brenner: Your Honor will allow me an exception.

The Court: You may have an exception.

(Case submitted without summation.)

40

The Court's Charge.

The Court then charged the jury as follows:

The Court: Gentlemen of the Jury:

10 The defendants Morris Varvatos, Henry Varvatos and Spios S. Kukos filed an answer in this case, but have not defended, and counsel who filed the answer have withdrawn from the case.

The plaintiff in regard to those defendants, having made out a *prima facie* case and no defense having been offered, is entitled to a verdict at your hands, and your sole duty will be to determine the amount of that verdict as against these defendants.

20 The plaintiff is entitled to be recompensed, fairly recompensed for the pain and suffering which she underwent as a result of this accident.

She is entitled to be fairly recompensed for the injuries she sustained as the natural and proximate result of this accident, and it will be your duty to determine what she is entitled to as against these defendants.

The Court is directing you now to return a verdict of "no cause for action" as against the defendant Mechanics Trust Company.

30 The plaintiff said that she was eleven weeks in the house, nine weeks of which she spent in bed; she says that her knee was badly hurt, two ribs broken, her face black and blue. There is no testimony of having lost any wages, or of any bill of a doctor. So it will be your sole duty to determine the amount she is entitled to from these defendants, Morris Varvatos, Henry Varvatos and Spios S. Kukos.

40 (The jury retired.)

Exhibit D.—Lease.

THIS AGREEMENT made the twenty-eighth day of November, one thousand nine hundred and twenty-four, between Mechanics' Trust Company of New Jersey, a corporation of said State, party of the first part, Landlord, and Morris Varvatos and Henry Varvatos, parties of the second part, tenants. 10

WITNESSETH; that the said Landlord has agreed to let and does hereby let, and the said tenants have agreed to take, and hereby does take, all that certain store, known as No. 17 West Eighth Street, and two floors above No. 17 and No. 15 West Eighth Street, being the entire building known as No. 15 and 17 West Eighth Street, except the store of No. 15 West Eighth Street, in the City of Bayonne, N. J., for the term of five years, commencing the first day of January, one thousand nine hundred and twenty-five, and ending the thirty-first day of December, one thousand nine hundred and twenty-nine, at the monthly rental of One Hundred and seventy-five Dollars a month, payable on the first day of January next and on the first day of each and every month thereafter. 20

This agreement is upon the following condition, all and every of which the tenants agree to perform and keep. That they will pay the rent at the times aforesaid. That they will not let, sell, underlet or assign the premises, or any part thereof, and that they will not use them, nor permit any part thereof to be used for any business or purpose extra hazardous, without the written consent of the landlord. That they will permit the landlord or its agent, to enter the said premises at reasonable hours in the day time, to examine or to make such 30 40

Exhibit D—Lease.

repairs and alterations therein as shall be necessary for the preservation thereof; and to exhibit them after the first day of October, 1929, to persons, and to put notices "to let" on the walls thereof. If the premises or any part thereof, shall become vacant, or deserted, during the said term, the
10 tenants authorize the landlord or its agent to re-enter, without being liable to any prosecution thereof, and to re-let them, and receive and apply the rent first to the payment of the expenses of re-entering, and then to the payment of the rent due by these presents. To preserve the said premises, and surrender them at the time aforesaid, in as good condition as the proper use thereof will admit, damages by the elements excepted. And it is
20 agreed that this instrument, on the breach of any of its conditions, shall, and, at the option of the landlord, may be rescinded; and that he may recover immediate possession of the premises, "for holding over after the expiration of the term" without any other than this notice of the intention of the landlord to re-enter.

It is also agreed by and between the parties hereto that the said tenants shall pay all water charges levied by the City of Bayonne against said premises and shall also make all interior repairs or improvements that they may require, and keep the property in as good condition as it now is, subject to the approval of the party of the first part (said landlord).
30

It is also agreed that in case the landlord desires to secure possession of the above mentioned premises at the end of the term of five years, as above, it shall notify the tenants on or before December 31st, 1928, of such desire to terminate, and
40 in case no such notice is served, then the tenants

Exhibit D—Lease.

shall have the right to continue this lease for a further term of two years from the date of expiration of this lease, on the same terms and conditions as above set forth.

IN WITNESS WHEREOF, the said Landlord has caused these presents to be signed by its President and its corporate seal to be hereto affixed and the said tenants have hereunto set their hands and seals the day and year first above written.

10

SIGNED, SEALED and delivered
in the presence of:

MECHANICS TRUST COMPANY OF N. J.,
by MAX MORALLER, Secy. (L. S.)
MORRIS VARVATOS (L. S.)
HENRY VARVATOS (L. S.)

20

State of New Jersey, }
County of Hudson, } ss.:

BE IT REMEMBERED that on this fourth day of December, one thousand nine hundred and twenty-four, before me, a Notary Public of New Jersey, personally appeared Max Moraller, who being by me duly sworn, did depose, say and prove that he is the Secretary of the corporation, lessor in the within lease, and is subscribing witness thereto, that the seal to said lease affixed, as deponent well knows, is the corporate seal of said corporation, and that said seal was affixed and said lease signed and delivered by De Witt Van Buskirk, who at the time of such signing was the President of said corporation, as the voluntary act and deed and by authority of such corporation, and that at his re-

30

40

Postea.

quest, deponent thereupon signed the same as subscribing witness.

MAX MORALLER.

10 Sworn to and subscribed before me }
this 4th day of December, 1924. }

FANNIE MORRIS,
Notary Public of New Jersey.

Postea.

(Filed .)

HUDSON COUNTY CIRCUIT COURT.

July 23, 1929.

20

CATHERINE MACNAMARA,
Plaintiff

v.

MECHANICS TRUST COMPANY OF
NEW JERSEY, MORRIS VARVATAS,
PETER VARVATAS and SPIOS S.
KUKOS,

Defendants.

Action at Law.

30

This case was tried before Judge A. Dayton Oliphant with a jury at the April circuit on June 18, 1928.

The judge granted a directed verdict in favor of the defendant, Mechanics Trust Company of New Jersey and against the plaintiff, Catherine MacNamara.

A. DAYTON OLIPHANT,
Circuit Court Judge.

40

On motion of

CHARLES STOCKDELL GRAY,
Attorney of Defendant.

Judgment Entered July 23, 1928.

(Filed .)

HUDSON COUNTY CIRCUIT COURT.

<p>CATHERINE MACNAMARA, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>MECHANICS TRUST COMPANY OF NEW JERSEY, MORRIS VARVATAS, PETER VARVATAS and SPIOS S. KUKOS, <i>Defendants.</i></p>	<p>Action at Law. Charles Stockdell Gray, Atty.</p>	<p>10</p>
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Judgment on verdict in the above entitled matter was entered in this court on the 23rd day of July in the year of our Lord, One Thousand Nine Hundred and twenty-eight in favor of the defendant, Mechanics Trust Company of New Jersey and against the plaintiff, Catherine MacNamara in an action at Law. 20

Judgment entered and signed this 23rd day of July, 1928.

A. DAYTON OLIPHANT,
Judge. 30

Notice and Grounds of Appeal.

(Filed June 30, 1929.)

HUDSON COUNTY CIRCUIT COURT.

10

CATHERINE McNAMARA,
Plaintiff-Appellant,

v.

MECHANICS TRUST COMPANY OF
NEW JERSEY, MORRIS VARVATAS,
PETER VARVATAS and SPIOS S.
KUKOS,

Defendants-Appellees.

Action at Law

20

To Charles Stockdell Gray, Esq., Attorney of Defendant Mechanics Trust Company of New Jersey:

TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals of the State of New Jersey in the last resort in all causes in New Jersey from the whole of the judgment entered in this case upon the following ground:

30

The Trial Court directed a verdict against the plaintiff and in favor of the defendant Mechanics Trust Company of New Jersey when thereunto moved by counsel for such defendant, whereas said Court should have submitted to the Jury for decision the questions involved in the issues.

BRENNER & KRESCH,
Attorneys of Plaintiff-Appellant.

40

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New Jersey Court of Errors and Appeals

CATHERINE MCNAMARA,
Plaintiff-Appellant,

v.

MECHANICS TRUST COMPANY OF
NEW JERSEY,
Defendant-Appellee,

and

MORRIS VARVATAS, PETER VARVA-
TAS and SPIOS S. KUKOS,
Defendants.

*Action at
Law.*

*On Appeal
from Hudson
County
Circuit
Court.*

BRIEF OF DEFENDANT-APPELLEE.

Statement of Facts.

This is an appeal from a direction of a verdict to a defendant who was the owner of premises, the whole of which, except one store, had been leased to the other defendant. The plaintiff is the tenant of the lessee, the other defendant, and as set forth in the complaint, fell down the stairs because of an alleged failure to have a light burning. This is the ordinary negligence case, brought entirely on a theory of negligence, as will be seen by the pleadings.

The defendants, Mechanics Trust Company, own the premises at 15-17 West 8th Street, Bayonne, New Jersey, and on November 28th, 1924, they entered into a written lease with Morris Varvatas and Henry Varvatas for five years, excepting the store known as 15 West 8th Street. It is three stories high, with two stores on the ground floor, two apartments on the second floor and two on the third (Exhibit D, pp. 47-50), and

constitutes a tenement house. About January 1, 1926, the plaintiff rented an apartment on the second floor from Varvatas (p. 15, l. 20) the lessee, paying \$25 a month, and with whom she had all her dealings (p. 14, ll. 20-30; p. 24, l. 30; p. 25, ll. 1-18).

On the night, August 10, 1926, having lived there about eight months (p. 14, ll. 25-30), the plaintiff entered the premises at half-past nine (p. 16, l. 40; p. 17, ll. 1-18). She had gone completely upstairs, and went along the second floor and was reaching for her key when she fell down the back stairs, but not the ones which she came up (p. 17, ll. 20-21; p. 18, l. 13; p. 18, ll. 20-28). The gas jet on the second floor where the accident occurred, was not lighted (p. 18, ll. 29-33; p. 19, l. 1). The landing from which she fell and over which she had proceeded the entire distance, after coming up the stairs, was 20 feet long (p. 37, ll. 33-40). The defendant-appellee, on cross examination, brought out the fact that she had gone up the first stairs, gone over the 20-foot landing and by the direct testimony of the plaintiff, the failure to have a light on the ground floor was not the cause of the accident. The only testimony with reference to a construction on which the appellant seems to base his case at this time, was admitted only for the purpose of explaining how the accident happened, and not for the purpose of showing construction. The defendant-appellee then placed in evidence the lease (Exhibit D., p. 47) and moved for a direction of verdict, which motion was granted. The case was allowed to go to the jury as against the other defendant, and the jury returned a verdict in favor of the plaintiff as against these other defendants.

ARGUMENT.**Point I.**

The ruling by the trial court in directing a verdict for the defendant-appellee was correct.

The appellant rests his argument on the ground that the Tenement House Act specifically charges the owner with the duty of keeping certain lights burning certain hours. The act itself says "In every tenement house now existing or hereafter erected, a proper light shall be kept burning by the owner in the public hallways near the stairs upon the entrance floor; and in every tenement house over two stories high, such a light shall also be kept burning upon the second floor above the entrance floor of such house every night throughout the entire year, and upon all other floors of such tenement house from sunset each day until 10 o'clock each evening."

Your appellee respectfully submits that the owner referred to in the above statute is that person who has complete control of the premises or tenement house in the eyes of the law. That person is Morris Varvatas and Henry Varvatas, who under their lease of all of the premises, had complete control of them.

The Court of Errors and Appeals in *Pesin v. Jugovich*, 85 N. J. L. 256, confirms this interpretation of the word "owner." It places upon a lessee for a term of years of the whole of a tenement house, the duty to keep burning proper lights as required by Section 126 of the Tenement House Act. In that case, at page 258 the Court says: "The defendant, being the lessee for a term of years of the whole of the tenement house in question, occupying one floor himself and subletting the others, was under a duty to keep

burning a proper light in the public hallways thereof from sunset until 10 o'clock each evening as required by Section 126 of the Tenement House Act." The Court further says, on page 259: "The plaintiff had a right to presume that the defendant, *the lessee*, had performed the duty cast upon him by the Tenement Houst Act to keep the lights burning."

It will be seen therefore, that this Court has already passed upon the precise question and determined that the lessee—when there is a lessee of the premises—is the "owner" referred to in Section 126 for the purpose of maintaining lights.

This duty, cast upon the lessee for a term of years as the owner, cannot be imposed upon the lessor, since the lessor has no right to enter upon the lessee's possession of the premises, and would be a trespasser if he did so. (*Ingwersen v. Rankin*, 47 N. J. L., pages 18-22). The lessee, for a term of years, is the owner of the leased premises in the eyes of the law, for he has all the rights and incidents of ownership and possession under his lease, even to the extent as noted in the above case, of preventing the lessor from entering upon the premises.

The utter absurdity of making the actual fee owner of record liable for the maintenance of a light every night is apparent when we consider long term leases, for example a ninety-nine year lease, which would require the third and fourth generations every night to make inquiry as to lights. Our courts apparently realize this, in the opinion of *Pesin v. Jugovich*, *supra*.

Point II.

During the course of the trial, certain testimony was admitted for the purpose of showing how the accident happened, not to show any improper construction, because that was expressly ruled out by the Court (p. 16, ll. 14-29; and p. 20, ll. 21-29), which seems to indicate that perhaps there was no gas jet on the ground floor, although there is no allegation in the complaint with reference to faulty construction or failure to provide an outlet, or the creation or maintenance of any nuisance (pp. 2, 3, 4, 5, 6 and 7), and the foundation of the entire cause of action is negligence. There was no amendment or request therefor to the complaint during the course of the trial. Nevertheless the appellants apparently realizing their position with reference to the first point as above, seemed to grasp at this testimony, despite the fact that there was no binding proof with reference to the outlet. The futility of this point can be seen even though the testimony was not admitted for that purpose, and conceding that it was properly admitted under the complaint; there is neither *allegation* nor *proof that it existed at the time of the making of the lease*, and the well settled rule in this State is that the nuisance, if there be one, must have existed at the time of making of the lease. (*Ingwersen v. Rankin*, 47 N. J. L. 18.)

If it is to be admitted that the failure to have an outlet at the entrance was a nuisance for which the lessor was responsible, we submit that there is no proof that the failure to have a light at the entrance was the cause of the fall which the plaintiff sustained. She fell from the rear stairs on the second floor, and therefore her fall did not occur until she had ascended the front stairs from the entrance to the second

floor and then proceeded along a 20-foot hallway and fell down the rear stairs at the end of this hallway. Whether there were lights at the entrance or not would neither help nor hinder her in her progress at the end of this 20-foot hallway on the second floor. In fact the plaintiff's own testimony shows that the failure to have a light on the ground floor was not the proximate cause of the accident (Case, p. 20, ll. 1-10; p. 27, ll. 28-38). To hold this defendant responsible the failure to have a gas jet on the first floor must be shown to have been the proximate cause of the injuries. (*D. L. & W. R. R. v. Salmon*, 39 N. J. L. 308, where the Court lays down the following general rule. "The general rule is, that damages, to be recoverable, must be the natural, and also the proximate consequence of the wrongful act.")

Your defendant-appellee respectfully submits that the granting of a motion for a directed verdict was proper in the present case, since the liability to maintain and keep proper lights burning was upon the lessee for a term of years of the premises and not upon the lessor, Mechanics Trust Company of New Jersey, and the failure, if any, to have an outlet on the ground floor was not the proximate cause of the accident.

Respectfully submitted,

CHAS. STOCKDELL GRAY,
Attorney of Defendant-Appellee.

120

New Jersey Court of Errors and Appeals

CATHERINE MCNAMARA,
Plaintiff-Appellant,

v.

MECHANICS TRUST COMPANY OF
NEW JERSEY,
Defendant-Appellee,

and

MORRIS VARVATAS, PETER VARVA-
TAS and SPIO S. KUKOS,
Defendants.

Action at Law.
On Appeal from
Hudson County
Circuit Court.

BRIEF OF PLAINTIFF-APPELLANT.

Statement of Facts.

Defendant, Mechanics Trust Company of New Jersey, was the owner of premises known as 15 and 17 West 8th Street, Bayonne, New Jersey, which on November 28th, 1924, it rented to Morris and Henry Varvatos under written lease for a term of five years, the lease, however, excepting from its operation the store known as 15 West 8th Street (Lease, Exhibit D, pp. 47-50).

The building was three stories in height and consisted of two stores on the ground floor and four living apartments above, two being on the second floor and two being on the third floor (Case, p. 14, lines 31-35).

It is not disputed that the structure was a tenement house and came within the provisions of

the statute commonly designated as the "Tenement House Act."

About January 1st, 1926, plaintiff rented an apartment from the lessees (Case, p. 14, lines 20-30).

The entrance to the building was gained through a hall leading from Eighth Street (Case, p. 14, lines 38-40), between the two stores on the ground floor, and was used in common by tenants occupying the apartments on both upper floors (Case, p. 15, lines 1-13).

The apartments on both floors ran along the sides of the building from the front, facing on Eighth Street to the rear thereof (Case, p. 15, lines 13-32). After ascending the first flight of stairs, a landing was reached on the second floor extending back a distance of some 20 feet to a door leading to a bedroom in the apartment (Case, p. 15, lines 32-40). The doorway was at the end of the landing and leading therefrom was another stairway which could be descended for the purpose of reaching the yard in the rear of the building (Case, p. 16, lines 10-40).

On the night of August 10, 1926, the plaintiff came to her apartment after leaving her place of employment and shortly thereafter again left it to make some purchases needed for the following morning and returned somewhere between the hours of 9 and 9:30 at night (Case, p. 17, lines 1-15).

Upon her return she observed that there was no light at the place of entrance (Case, p. 17, lines 29-31). She, however, ascended the stairs and by feeling her way finally came to the bedroom door referred to. Evidently she had miscalculated the distance and, while reaching for her key, stepped beyond the edge of the landing, was unable to retain her balance and fell down the back stairs (Case, p. 18, lines 10-28).

There was a gas outlet in the hallway of the second floor which on the night of the accident had not been lit, but in the hallway on the ground floor there was neither a gas nor electric outlet and no means provided by which a light could be maintained (Case, p. 18, lines 28-40; Case, p. 19, lines 1-10).

On previous nights the lessees, whom the plaintiff refers to as "The Greeks," who conducted a restaurant on the ground floor and occupied an apartment on the third floor, lit a light in the hallway leading to the apartment on that floor, which would throw some little light to the second and first floors. On the night in question there was no light of any kind in any of the hallways, leaving the same, as described by the plaintiff, "terribly dark" (Case, p. 19, lines 15-40).

The testimony relative to type of building, the layout thereof and condition thereof at the time of the accident was corroborated by Tessie Lair (Case, p. 30), a waitress in the restaurant referred to, and the two sons of the plaintiff, Joseph McNamara (Case, p. 36) and Edward McNamara (Case, p. 42).

No attempt was made to controvert the testimony as above summarized, the defendant, Mechanics Trust Company, offering in its case only the lease and resting (Case, p. 45, lines 1-20).

Motion for direction of verdict was then made, the ground urged being that as the Trust Company had surrendered the control of the building under the lease there was no duty owing from it to the plaintiff to maintain a light or lights in the hallways and any right of recovery that she might have was solely against the lessees. This motion was granted in so far as this particular defendant was concerned and an exception noted (Case, p. 45, lines 20-40). A verdict was returned

by the jury in favor of the plaintiff as against the other defendants.

The action of the Trial Court in withdrawing the case from the consideration of the jury is the sole ground urged for reversal (Case, p. 52).

Argument.

As previously stated, there is no dispute concerning the fact that the building in which the plaintiff had her apartment was a tenement house and that the provisions of the statute commonly designated as "The Tenement House Act" were applicable thereto.

Relative to lights, this statute requires:

"In every tenement house now existing or hereafter erected, a proper light SHALL be kept burning BY THE OWNER in the public hallways near the stairs upon the entrance floor; and in every tenement house over two stories high such a light shall also be kept burning upon the second floor above the entrance floor of such house every night throughout the entire year and upon all other floors of such tenement house from sunset each day until ten o'clock each evening * * *."

4 C. S. 5341, Sec. 126.

This provision of the statute imposes a duty, the breach of which permits an inference of negligence.

Kargman v. Carlo, 85 N. J. L. 632-637, 90 Atl. 292.

It was held by the Trial Court, however, that the entire building having been leased, the owner was absolved from responsibility. Upon the determination of this question the present appeal must stand or fall.

Nowhere in the act can any provision be found which permits an owner to shift, delegate or transfer obedience to the statutory mandate. To the contrary it is definitely prescribed therein that "A proper light *SHALL* be kept burning *BY THE OWNER.*"

The legislative intent is indicated by the act itself which directs that in interpreting the word "shall" it is to be considered as "mandatory."

4 C. S. 5324, Sec. 15.

Aside from the statute, examination reveals no authority definitely fixing a landlord's responsibility to a tenant of a lessee for negligence arising from a statutory violation.

The law is well settled, however, that if a nuisance is created or permitted to remain by a property owner there is no escape from responsibility by a subsequent letting.

Ingwersen v. Rankin, 47 N. J. L. 18.

Our Courts have gone to the extent of saying:

"In those cases in which the nuisance exists at the time of the creation of the Estate for years and the lessee does nothing except to maintain the demised premises in the condition in which he received them, the person who suffers from the nuisance must look to the landlord and not to the tenant for redress."

Meyer v. Harris, 61 N. J. L. 83-99.

It may be argued that the failure to provide a means for lighting could not be considered a nuisance.

Nuisance has been defined as an annoyance, or

"Anything which works hurt, inconvenience or damage or which essentially interferes with the enjoyment of life or property."
29 Cyc. 1152.

It certainly can not be said that continuously permitting a hallway to remain in absolute or almost absolute darkness would not bring about an annoyance, and in the instant case it most positively worked a hurt, inconvenience and damage.

In one of the most recent decisions by this Court it was alleged that the failure to remove an encroachment of a building upon the public highway pursuant to City Ordinance requiring removal of encroachments was a nuisance.

Krieg v. Timkin, 131 Atl. 905, 102 N. J. L. 307.

Although the decision was reversed for trial errors, this Court seemed to sanction the idea that the violation of a City Ordinance constituted a nuisance. Following this to a logical conclusion the continued violation of a State statute adopted for the preservation of the safety of occupants of a tenement house should likewise be considered a nuisance.

In opposition to this suggestion will probably be cited the decision in *Pesin v. Jugovich*, 85 N. J. L. 256, in which it was held that a lessee subletting to others was liable for the violation of the Tenement House Act relative to lights. In that case, however, the defendant who was the lessee conceded liability in so far as lighting was concerned, but denied liability upon other grounds. No attempt was made to recover as against the owner of the property and the question of the owner's responsibility was, therefore, not passed upon.

In the consideration of that case it must be further borne in mind that there was no evidence of a lack of means for providing a light. In the present case there is uncontradicted evidence that there was no outlet of any kind in the lower hallway which would permit the attachment of either

a gas or electric fixture and no pipe or wire through which gas or electricity could be conveyed.

Upon the leasing of the premises by the owner to Varvatos there was no understanding either express or implied that the building was to be altered or renovated, but to the contrary the lease stipulated that the premises should be returned in the same condition as proper use thereof would permit (Lease, Case, p. 48).

Under like circumstances it was said in *Meyer v. Harris, supra*:

“The law imposes upon an ordinary tenant for years, the duty of keeping the demised premises in repair and of returning them to his landlord at the end of his term in approximately the same condition in which he received them. If he fails to do this and suffers the estate to go to decay for want of necessary repairs, the law makes him liable to his landlord as for a permissive waste. So, too, if he does any act which injures the inheritance his lessor may recover against him as for a voluntary waste.” (Citing *Moore ads. Townsend*, 4 *Vroom* 284; *Newhold v. Brown*, 15 *Id.* 266.)

“This being so, it follows as a necessary result that a lessee is under no obligation to a third person either to tear down or to suffer to fall into decay a structure upon the demised premises which in the state in which it was at the commencement of the term, was a nuisance to such person. The law does not impose upon any one the duty of performing an act for the benefit of one person which will necessarily subject him to liability at the hands of another.”

By way of brief summary it is, therefore, contended that in conformity with the statute it was the duty of the owner to provide a light or at least to provide the means of supplying with gas

or electricity a fixture or fixtures which could have been installed by the lessee, and that the failure to so do could be considered a nuisance, giving a right of recovery to the injured plaintiff; and that the Trial Court, therefore, erred in removing the matter from the determination of the jury.

To hold to the contrary would permit a property owner to violate the mandatory provisions of a statute adopted for the protection of a tenant by leasing premises in their entirety to an irresponsible lessee and thereby rid himself of responsibility and open the door to fraud.

Respectfully submitted,

BRENNER & KRESCH,
Attorneys of Plaintiff-Appellant.

Alfred Brenner
of Counsel



