Forum Juridicum: Liability of an Owner to Third Persons Injured by Structural Defects

James D. Davis

Repository Citation
Available at: https://digitalcommons.law.lsu.edu/lalrev/vol29/iss4/4

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.
Forum Juridicum

LIABILITY OF AN OWNER TO THIRD PERSONS INJURED BY STRUCTURAL DEFECTS*

James D. Davis**

It has been suggested that the liability of a lessor-owner to third person injured on leased premises is absolute. It is the purpose of this article to consider whether this proposition is true in the light of jurisprudential development of Article 2322 by Louisiana courts. Article 2322 of the Civil Code of 1870 provides:

"The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice in its original construction."

The article is a literal translation of Article 1386 of the French Civil Code. The French apply Article 1386 exclusively to situations where neighbors or passersby are injured outside a building by a fall or collapse of some part of the building. If article 1386 is applicable, liability appears to be absolute. Quite early, it was held that Article 2322 applied to situations where a person within a building was injured by a defect of the building, because Article 670 specifically applies to situations covered by the French article. At present, it is clear that Article 2322 and Article 670 are construed in pari materia so that both apply where persons outside a building are injured by a fall or collapse

---

* Editor's note: This paper was delivered at a seminar at the Law School some time ago, and only recently considered and revised for publication, to make it available for possible reprint in a collection of tort articles of enduring value.
** Member, Alexandria Bar.
1. Malatesta v. Lowry, 130 So.2d 785, 786 (La. App. 4th Cir. 1961) : "The jurisprudence teems with cases holding that a landlord is bound to know whether his building is safe for the purposes for which he rents or authorizes its use or is defective, rotten, or otherwise unsafe..." Green v. Southern Furniture Co., 94 So.2d 606 (La. App. 1st Cir. 1957) ; Comments, 20 LA. L. REV. 76 (1959), 7 LA. L. REV. 406 (1946), 16 TUL. L. REV. 448 (1942), 4 TUL. L. REV. 611 (1929).
3. The only difference in the two articles is the addition of the word "original" immediately preceding "construction" in Article 2322. LA. CIV. CODE art. 2322. The word "original" has no counterpart in French text.
of some part of the building. Article 2322 alone applies to situations where one inside a building is injured by a defect of the building.

From the terms of Article 2322 it does not appear that absolute liability is imposed upon the owner of a building. The article provides that the owner is liable for the damage caused by the ruins of his building when it is “caused by neglect to repair it.” The basis of liability, therefore, seems to be the neglect of the owner. “Neglect” or “negligence” is generally taken to mean a deviation below that standard of conduct of the reasonably prudent or careful man. Moreover, Article 2322 in Title V of the Civil Code deals with “Offenses and Quasi Offenses” and follows Article 2315, the general negligence article. Therefore, it would appear that Article 2322 was meant to be no more than a specification of Article 2315 dealing with the obligation ex delicto of the owners of buildings.

THE EARLY DEVELOPMENT OF THE LIABILITY OF A LESSOR-OWNER

It appears that Article 2322 has been molded to a large extent by its application to situations where a person who is not a lessee is injured by a defect of a leased building. Unlike the common law, the lessor of a building in Louisiana owes an obligation of warranty to his lessee by virtue of Article 2693 to “deliver the thing in good condition, and free from any repairs.” Article 2695 further provides that the lessor “guarantees the lessee

7. E.g., Lasyone v. Zenoria Lumber Co., 163 La. 185, 111 So. 670 (1927); Dunn v. Tedesco, 158 La. 679, 105 So. 264 (1925); Davis v. Hochfelder, 153 La. 183, 95 So. 398 (1923); Breen v. Walters, 150 La. 578, 91 So. 50 (1922).
9. Schoppel v. Daly, 112 La. 201, 36 So. 322 (1904) (recovery allowed solely on the basis of Article 2516); Cristadoro v. Von Behren's Heirs, 119 La. 1025, 44 So. 852 (1907) (Article 2322 explained as more than an application of the principle that “every person is responsible for the damages he occasions, not merely by his act, but by his negligence, his imprudence, or his want of skill”); Ciaccio v. Carbajal, 142 La. 125, 76 So. 583 (1917) (Article 2322 held to be the means by which the court finds a duty is owed to a third person). See Howe v. City of New Orleans, 12 La. Ann. 481, 483 (1857) (neglect to repair visible defect caused by fire held to be a breach of defendant's duty announced by Article 2322); Barnes v. Belrue, 88 La. 280, 282 (1886) (discoverability of defect discussed in considering owner's duty). From the facts of the last two cited cases, it was apparent that there had been a “subsequent neglect to repair” as well as a vice of construction. The court simply held that lack of knowledge on the part of the owner of the defect was no defense. By this tac it appears the court is imposing a duty on the owner to make a reasonable inspection of his building. In neither of the cases was there reference to the fact that under this article the French hold owners absolutely liable.
10. At common law social guests and persons on the premises only by consent of the owner or occupier are deemed licensees to whom the owner or occupier owes
against all the vices and defects of the thing, which may prevent its being used even in case it should appear he knew nothing of the existence of such vices and defects." By virtue of these articles the lessor is a guarantor of the safety of his tenant. The duty of the lessor arises by virtue of the lease contract and is owed only to the lessee. Thus Louisiana courts were faced with the anomalous situation of absolute liability owed to the lessee but no duty at all owed to a wife or child of the lessee. Early cases show that the courts seemed to be engaged in a search for a theory which would give rise to a duty on the lessor to persons injured on leased premises who were not parties to the lease. The common law was not helpful, for the lessor at common law owes his lessee only the duty to warn of dangerous conditions of which the lessor has knowledge. Further the landlord owes no duty to third persons injured on the premises. The third person must look to the occupier of the premises for indemnification of his injury. Accordingly, because there was no applicable theory at common law, Louisiana courts turned to articles of the Civil Code in search of the lessor-owner's duty.

In McConnell v. Lemley, the court held that Article 2322 applied only to neighbors and passersby and denied recovery to a guest of a tenant who was injured when a balcony collapsed. However, in Schoppel v. Daly the court applied Article 2316 to almost the same set of facts. In the Schoppel case, plaintiff was the wife of the lessee and was injured when the floor of the apartment collapsed with her. The court allowed recovery solely on the basis of Article 2316:

---

11. But see Comment, 7 LA. L. REV. 406, 407 (1947), wherein the writer suggests that it was not intended for the lessee to recover for personal injuries on the basis of the lease articles.


13. 48 La. Ann. 1433, 20 So. 887 (1896). In dicta the court states that Article 2322 applied only to situations where a person was injured outside a building. This point was overruled in Cristadoro v. Von Behren's Heirs, 119 La. 1025, 1031, 44 So. 853, 855 (1907): "It is to be noted, moreover, that what was thus said in the Lemly Case, about the responsibility of the owner not extending to a guest of the lessee was really in the nature of an obiter. . . . The real ground of the decision was, not that the owner, though not at fault, was not responsible, but that upon the evidence he was not in fault."

14. 112 La. 201, 36 So. 322 (1904).

15. LA. CIV. CODE art. 2316: "Every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill."

16. 112 La. 201, 212, 36 So. 322 (1904).
“We do not accede to the proposition that the liability of the owners of buildings for injuries resulting from their defective condition is limited to neighbors and passersby upon the street; that it does extend to persons who may be lawfully within the same.” (Emphasis added.)

In Cristadoro v. Von Behren’s Heirs, the holding of the McConnell case, that Article 2322 did not apply to persons within a building who were injured by a defect of the building, was overruled. The court left little doubt that the liability provided in Article 2322 was negligence:

“... This provision of the Code being nothing more than an application of the principle that every person is responsible for the damage he occasions, not merely by his act, but by his negligence, his imprudence, or his want of skill.” (Emphasis added.)

The holding of the Cristadoro case was extended in Ciaccio v. Carbajal. The court held that the duty of the lessor-owner extends to any third person lawfully on the premises.

THE TREND TOWARD ABSOLUTE LIABILITY

On the basis of these early cases, it seems that the lessor-owner owed a duty of due care based on negligence theory to third persons lawfully on the premises. How, then, has the liability on a lessor-owner to a third person changed into absolute liability?

As mentioned earlier, the lessor guarantees the physical safety of his lessee by virtue the lease articles — specifically Article 2693 and Article 2695. Since the lessor was already under an ab-

17. Id. at 212, 36 So. at 325.
18. 119 La. 1025, 44 So. 852 (1907).
19. Id. at 1027, 44 So. at 853.
20. Id.
21. 142 La. 125, 76 So. 583 (1917).
22. Ciaccio v. Carbajal, 142 La. 125, 128, 76 So. 583, 584 (1917): “We know of no provision of law making an exception to said articles 2315 and 2322 by which their scope should be limited so as not to include the members of a lessee’s family or the guests or other persons on the leased premises by invitation of the lessee. As to a person other than the wife the scope of the article was so extended in Cristadora v. Von Behren, 119 La. 1025, 44 So. 852 ...”

As to why Article 2322 should apply within the building and not just to persons injured outside it was said, id. at 129, 76 So. at 584: ... if article 2322 were thus restricted to ‘neighbors and passengers’ it would be made simply to repeat what had already been said in a previous article of the Code, and thus would be robbed of all utility. It would be made to say something it has not said, and which had already been said in express terms in a previous article.” The court quoted Article 670 and the Cristadora statement that Article 2322 is nothing more than an application of the principle stated in Article 2316.

23. See note 10 supra and accompanying text.
solute liability to his lessee to keep the leased premises in repair, there was little reason not to extend his liability to third persons on the premises. No greater duty in regard to repair of the premises is imposed upon the lessor by allowing third persons to recover for their injury. Further, the court would be faced with applying a different standard of care according to the identity of the person injured. If the husband, who is usually the lessee, was injured there would be a recovery while his wife or children who run greater risk of being injured by a defect of the premises because they are at home for a longer period of time, would not. Under Article 2322 it was unnecessary for the owner of a building to have knowledge of the defect causing injury. In *Barnes v. Beirne,* the defendant owner contended that he should not be liable to the plaintiff who was injured by a cornice which fell from the building because the defect was not apparent and because he had no knowledge of it. The court, finding that the defect could have been detected, cited Article 2322 and held:

"The law does not direct that any notice be given, or that any actual knowledge be shown, as a condition precedent for recovery."

Consequently, it appears that the duty of an owner of a building to a third person under Article 2322 was somewhat higher than that of ordinary care required at common law and under Article 2315. At common law the lessor-owner need only show that the building was defective, that the defect caused his injury, and the amount of his damages to make out a *prima facie case.* In *Hanover v. Brady,* the court made this clear:

"Although the liability of the house owner to a licensee or passerby is made to depend upon negligence, the mere fact that the building is defective is itself proof of that negligence, and this, whether the defect is apparent and easily discoverable, or is such as would not be noticed except upon careful inspection." (Emphasis added.)

Allowing the existence of a defect to itself prove breach of the lessor-owner's duty to third persons has blurred the distinction between the absolute liability of the lessor-owner to his

25. *Id.* at 282.
27. 148 So. 267 (La. App. 1st Cir. 1933).
28. *Id.* at 268.
lessee which stems from the lease articles and the liability of the
lessor-owner to third persons which stems from Article 2322. The
result has been that the courts use language which ap-
proaches absolute liability:

“It is true that the jurisprudence of this state has broadened
the language of Article 670 and 2322 of the Code to such an
extent that the owner of a building practically insures any
third persons, rightfully on the premises, against injury
caused by vices or defects of the building due either to con-
struction or failure to make repairs. And this is so even
though the property is in possession of a tenant and the
owner is not acquainted with the fact that some of the ap-
purtenances of the building are in need of repair.”

To determine why the Louisiana courts have used absolute lia-
bility terms in Article 2322 cases, it is interesting to note that in
most of these cases the defect which causes injury is due to decay
and dilapidation of the premises. In such cases, proof that
steps, floors, or bannisters were rotten and broke under the
weight of the plaintiff itself gives rise to the inference that the
dangerous condition existed for some time, and the further infer-
ence that a reasonable, prudent man should have known of it and
taken steps to repair. It is submitted, therefore, that application
of a quasi-form of res ipsa loquitor to situations where the plain-
tiff was injured because of a decayed condition would allow re-
covery without resort to the use of absolute liability language as
the Louisiana courts have done.

LIMITATION ON THE LIABILITY OF THE LESSOR-OWNER

Despite the usage of such absolute liability language, the
Louisiana courts have developed several limitations on such lia-
bility. Under Article 2322, the owner is liable only “for the dam-
age occasioned by its ruin” because of his negligence. Ruin has
generally been held to mean a defect arising from the decay of
the building. The French construe the word to mean a fall or col-
lapse of some part of the building. The same definition of ruin
obtained in early Louisiana cases. In Frank v. Suthon, the court
surveyed the existing jurisprudence and held ruin to mean “di-
lapidated condition.” Ruin was defined as the collapse, fall or

30. 9 LA. CIV. CODE ANN. art. 2322, nn.6-9, 34, 38 (West 1952).
33. Id. at 182.
giving way of the whole or some part of the building, in court seemingly considering collapse or fall to be synonymous with "dilapidated condition."

In many cases where the defect did not arise because of decay the court has held that the defect was not within the definition of ruin. In *Guidry v. Hamlin*, the defect which caused injury was the lack of pickets in a bannister on a balcony through which plaintiff's seventeen-month-old daughter fell to the courtyard below. The court found for the defendant lessor-owner:

"We conclude that, if there is any liability here, it is not under Article 2322 or under Article 670 since no part of the building broke, gave way, or was destroyed, and since the only complaint which appears is based on defective design and not on collapse due to defect in original construction."

No application of Article 2315 was made, apparently on the theory that non-application of Article 2322 and Article 670 precluded recovery for the plaintiff. The same result in the *Guidry* case can be reached on the negligence theory. Since the obligation of the lessor-owner is to provide premises free from structural defects it would appear that there is no duty owed persons on the premises for defects due to design. Thus, the lessor-owner would not be negligent, for he has breached no duty owed the plaintiff.

In another series of cases the lessor-owner's liability is limited by the requirement that the defect in the premises be "actionable." To be actionable the defect must be such as would likely cause injury to the normal prudent person. Accordingly, where a plaintiff tripped and fell because one board in the floor was \(\frac{1}{2}\) inch higher than the other boards the defect was not held an "actionable defect" and recovery was denied. Determination that a defect in premises is not an "actionable defect" appears to be another way of saying that the defendant lessor-owner is not negligent because there is no breach of duty by the lessor-owner.

Another means of escape from liability for minor defects is provided by Article 2716, which enumerates certain minor re-
pairs the tenant is required to make himself. There is no recovery for injuries caused by these defects whether the injury is to the lessee or to members of his family. 40 If the defect is within the scope of Article 2716 it is immaterial that the tenant was ignorant of the defect, for recovery of an injured tenant is still precluded. 41

A lessor-owner may also escape liability to his tenant or third person because the plaintiff used the premises in a manner not contemplated by the parties. For instance, the lessee or a member of his family may not use a balcony rail to raise and lower furniture; nor must the lessor-owner provide screens strong enough to prevent the fall of an infant. In such cases the tenant is barred from recovery by his own misconduct.

Similarly, contributory negligence on the part of a plaintiff bars recovery. If the defect is obvious and the danger of mishap is or should be in the plaintiff's mind recovery is barred. 42

It seems clear that the doctrine of contributory negligence presupposes negligence on the defendant's part for its application. If a defendant is under the duty of absolute liability he could not defend on the ground of contributory negligence since there is no negligence on defendant's part to which the plaintiff could contribute. Use of both theories is a contradiction of terms. Therefore, it would seem that in truth the defendant's liability to persons injured on his leased premises is not absolute but depends upon negligence.

Similarly, another doctrine has been adopted by Louisiana courts which is inconsistent with a theory of absolute liability for lessor-owners. In Mills v. Heidingsfield, 43 the court made a division of persons on leased premises into categories of invitee and licensee with a different duty owed to each by the lessor-owner. Where absolute liability is imposed upon the defendant

41. Moore v. Aughey, 142 La. 1042, 78 So. 110 (1918).
42. Prudhomme v. Berry, 69 So. 2d 620 (La. App. 2d Cir. 1953).
43. 192 So. 786 (La. App. 2d Cir. 1939).
there is no sliding scale of duty according to the identity of the person injured. Thus, where the court finds that the plaintiff was a licensee the defendant lessor-owner need only refrain from willfully injuring the plaintiff.\(^4\) Further, it appears that lack of knowledge of a latent defect is a defense for a lessor-owner, if it is found that the plaintiff was a mere licensee. It should be remembered that it is well settled that lack of knowledge of even a latent defect is no defense to the lessor-owner if the plaintiff is lawfully on the premises.\(^5\) An application of the licensee-invitee rule is found in \textit{Maletesta v. Lowry}\(^6\) wherein a salesman was injured by a fall on rotten steps. The court held:

"We hold plaintiff . . . was a licensee and not an invitee and was bound to take the premises as he found them, and there was no dereliction of duty on the part of defendant in that he neither injured plaintiff willfully or wantonly nor was he guilty of active negligence having no knowledge or notice of the latent defects existing in the property."\(^7\)

If liability of the lessor-owner for structural defects in leased premises is in fact absolute, it would seem that the identity of the injured plaintiff would be immaterial.

By application of the limitations on the lessor-owner's liability discussed above — ruin, actionable defect, unreasonable use of the premises, contributory negligence, Article 2716, licensee-invitee rule — it appears that Louisiana courts have not imposed absolute liability upon lessor-owners for injuries to third persons caused by structural defects. It is recognized by courts that there must be some means by which cases may be particularized and liability cannot be imposed indiscriminately on a lessor-owner in every case. Thus particularization has been accomplished by means of interpretations of various code articles and inclusion of a few negligence concepts.

Further evidence that a lessor-owner is not absolutely liable for structural defects is seen in the distinction maintained between a lessee and third persons. At one time Louisiana courts apparently felt no particularization was necessary for it was held that a third person lawfully on the premises stood in the shoes of the lessee. Liability of the lease articles was imposed

\(^{44}\) Malatesta v. Lowry, 130 So.2d 785 (La. App. 4th Cir. 1961).
\(^{45}\) Dunn v. Tedesco, 235 La. 679, 105 So.2d 264 (1958); Gaida v. Hourgettes, 67 So.2d 737 (La. App. 1st Cir. 1952); Davis v. Hochfelder, 153 La. 183, 95 So. 598 (1923).
\(^{46}\) 130 So.2d 785 (La. App. 4th Cir. 1961).
\(^{47}\) Id. at 787.
upon the lessor-owner apparently because the lease contemplated that third persons would come onto the premises. In *Crawford v. Magnolia* the Court of Appeal for the First Circuit held that the right of recovery of a plaintiff wife who was not the lessee was under Article 2695 because:

"The husband owes to the wife and his family the duty of providing them with a home, and . . . he contracts not only for himself, but also for his wife and his family. The wife and members of his family have an interest in the contract of lease in the form . . . of a quasi contract and a stipulation *pour autri*."

It appears, however, that the courts now hold that Article 2695 operates only in favor of the lessee. On the other hand, a series of cases have allowed third persons to recover for injuries caused by defects in the premises which did not fall within the meaning of ruin in Article 2322.

As illustrated in *Frank v. Suthan*, ruin has been construed to mean the decayed or dilapidated condition of a building. Moreover, in *Guidry v. Hamlin*, defects in the design of the building were held to be without the scope of ruin. Yet in *Davis v. Hochfelder*, the court allowed a recovery to a third person injured by the absence of a vent for a hot water heater on leased premises. The defendant lessor-owner did not raise the issue whether the defect was without the meaning of ruin. The court held:

"That the wife of the lessee may recover damages against the lessor for personal injuries received by her through violation of the lessor's primary obligation to keep his building safe is well settled in our jurisprudence." (Emphasis added.)

The court explained the holding of the *Davis* case in *Lasoyone v. Zenoria Lumber Co.* There the defect was a nail which protruded from the apartment wall. The defendant lessor-owner contended that the nail was not within the meaning of "ruin." The court held for the plaintiff, citing the *Davis* case:

48. 4 So.2d 48 (La. App. 2d Cir. 1941).
49. Id. at 50.
52. 188 So. 662 (La. App. 2d Cir. 1839).
53. 153 La. 183, 95 So. 598 (1923).
54. Id. at 184, 95 So. at 599.
55. 163 La. 155, 111 So. 670 (1927).
"The defect complained of was neither the result of the ruin of the building nor of a vice in original construction; nevertheless the court (in Davis) permitted the recovery under Civil Code, Article 2322, because of the violation on the part of the lessor of his primary obligation to keep his building safe." (Emphasis added.)

It seems clear that the court did not hold the protruding nail to be within the meaning of ruin. Rather, the court held that the issue need not be decided. Either the court felt that the duty imposed under the lease articles is part and parcel of Article 2322 or that Article 2322 operates as a conduit which carries the duty of the lessor-owner under the lease article to third persons. In either case, it would appear that for all practical purposes a third person stands in the shoes of the lessee in regard to the duty owed by the lessor-owner.

**Liability of an Owner**

*Green v. Southern Furniture Co.* suggested that the duty of an owner and a lessor-owner may be the same; however, the issue was expressly left undecided by the court. The defect which caused injury to plaintiffs who were passersby was a canopy which fell because of an accumulation of rain water on its roof. The water accumulated because the downspout was of inadequate size or because it was clogged. The principal cause of the canopy's collapse was that an iron railing which supported the canopy pulled loose from the rotted piece of lumber to which the railing was attached. The court held that the owner-lessee of the building was liable to the plaintiffs apparently on the basis of an owner's liability under Article 2322 and 670. The court stated that under Louisiana civil law "the owner-lessee is held to strict liability, or liability without fault, for personal injuries sustained by others through the defective condition of the leased premises." The court, raising the question whether liability of a lessor was coextensive with that of an owner, stated that the issue need not be decided where the lessor's liability "can be predicated upon its legal liability as owner of the leased premises." (Emphasis added.) It appears that if there is strict liability of the owner of a building it stems solely from Articles 2322 and 670. It is well to note that the defect causing injury was

56. Id. at 187, 111 So. at 672.
57. 94 So.2d 508 (La. App. 1st Cir. 1957).
58. Id. at 510.
due to the rotten condition of the building; therefore, an inference of negligence on the part of the owner was proper since there is no doubt that the rotten condition existed for some time before the accident. The court found that the defect could not have been discovered by inspection and that neither the owner-lessee nor the lessee had knowledge of the condition. However, it appeared that the canopy had been constructed in 1916, some nineteen years before it collapsed on the plaintiffs in 1935. Under these facts, it is submitted that a common law court could find that failure to carefully test and inspect the canopy was negligence.

In *Murphey v. Fid. & Cas. Co. of New York*, "ruin" of Article 2322 was broadened to include defects of an electrical wiring system in a commercial building. The court held that subsequent neglect to repair such defect imposed liability on the owners of the buildings involved for the death of an air-conditioning repairman who was working on a unit adjacent to the exposed electrical wiring. The defendants were not lessor-owners; therefore, it appears that liability was predicated solely upon their status as owners. The court defined "ruin" broadly:

"Ruin as used in LSA-C.C. Article 2322 is applicable to defects in the parts or appurtenances to a building, charging the owner with responsibility for the damage occasioned thereby."

The court relied on the *Davis* and *Lasoyone* cases as authority for its definition of ruin. In those cases the court expressly stated that recovery for the defects not caused by decay was based on the obligation of a lessor to keep his building safe. In neither case was there a broadening of the definition of ruin to include defects not due to decay. It appears, therefore, that liability under lease articles is imposed upon an owner by re-definition of ruin in Article 2322. The language of the *Green* case, that an owner is strictly liable because of the defective condition of his premises, is construed with the broad definition of ruin to include any defect in a building. It appears that liability of an owner of a building is synonymous with that of a lessor.

Where defects in a building are due to decay or dilapidation there has in fact been little, if any, difference in result, whether

---

60. 138 So.2d 132 (La. App. 2d Cir. 1962).
61. Id. at 137.
the defendant was an owner or a lessor-owner. Against either defendant the third person need only show the existence of the decayed condition and that it caused his injury to make out a *prima facie* case. Where the defendant was a lessor-owner, a *prima facie* case is made out by a third person even if the structural defect was not caused by decay on the basis of the lease articles. In neither case is it necessary for the third person to prove that the defendant had knowledge or should have had knowledge of the defect. But where the defendant is an owner, and not a lessor, it appears that the defects which are not due to decay do not give rise to an inference of negligence. Consequently, the plaintiff must prove his case just as any tort case must be proved. More specifically, the plaintiff must show that the defendant owner had knowledge or should have had knowledge of the defect. In *Riche v. Thompson*, as he passed the defendant owner's store a school boy dislodged a sign hanging over the sidewalk. The court held that the owner of a building is not an insurer against injury of all who might pass or enter and is required only to exercise *ordinary* and *reasonable* care for their protection. Plaintiff was held bound to prove negligence on the part of the defendant and proof that the sign fell and caused injury did not make out a *prima facie* case. The court held that the manner in which the sign was hung was the "remote cause" of the accident and denied recovery.

Unless the distinction between defects caused by decay and those which arise from some other cause is maintained, Louisiana courts are faced with the conclusion that Article 2322 provides different standards of care according to whether the plaintiff is injured outside or inside the building and according to whether the defendant is a lessor-owner or simply an owner.

In *Southern Farm Bureau Cas. Ins. Co. v. McKenzie*, which was expressly overruled by the *Murphey* case, the court recognized that a different standard of care obtained where the defendant was a lessor-owner by virtue of confusion of liability *ex contractu* under the lease articles with negligence liability of Article 2322. The facts of *McKenzie* are remarkably similar to the *Murphey* case. A sheet metal worker who was installing ducts for an air-conditioning system in the attic of a home was electro-

---

66. 6 So.2d 566 (La. App. 2d Cir. 1942).
67. 252 F.2d 195 (5th Cir. 1958).
cuted by an exposed splice in electrical wiring. The court held that a defect in electrical wiring was not within the meaning of ruin because ruin was defined to mean a fall or collapse. The court in the McKenzie case distinguished the Davis case, the Lasoyone case, and like lessor-owner cases, on the ground that the courts there dealt only with the liability of a lessor-owner, not a homeowner. Article 2315 was then applied and the court held that the owner was not negligent because he had no knowledge of the defective wiring. Implied in this holding was the notion that the homeowner was under no duty to make an inspection of his premises to discover dangerous conditions. It is submitted that recovery on the facts of the case would in many cases be allowed in common law jurisdictions. Even a social guest of a homeowner is owed the duty of reasonable inspection and disclosure of dangerous conditions he would be unlikely to discover himself. The decedent in the McKenzie case can be classed as a business guest to whom is owed the affirmative duty of ordinary care.

CONCLUSION

The language of the Green case that an owner is absolutely liable for structural defects of his building together with the holding of the Murphey case that ruin of Article 2322 means any defect of a building appears to impose a broad rule of absolute liability on the owners of buildings coextensive with that of lessors. It is submitted that such rule will lead only to further complications in the area of liability of owners and lessor-owners to third persons. Assuming for the moment that such a result can be supported by the jurisprudence, it should be clear that the rule provides no basis for the particularization of each case. "Actionable defect," contributory negligence and other devices which unnecessarily complicate the law will not be used in dealing with the liability of an owner. Further, emphasis on the definition of a word in a code article and application of conflicting rules obscures the balancing of interests of the parties necessary for correct decision of widely varying factual situations. It seems clear that more precise analysis could be achieved by application of negligence theory of Article 2315.71

---

68. Davis v. Hochfelder, 153 La. 183, 95 So. 598 (1923).
71. LA. CIV. CODE art. 2315: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it. . . ."