ground that the defendants were violating the Valentine Act. This Act makes it illegal for any persons or associations to combine "to create or carry out restrictions in trade or commerce," and "to fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce or commerce, intended for sale, barter, use, or consumption, in this state." Injunctions have been granted under similar acts where the labor organization has attempted to enforce unlawful demands by picketing: Price fixing, *Standard Engraving Co.* v. *Voltz*, 200 App. Div. 758, 193 N.Y. Supp. 831 (1922); *Ellis* v. *Journeymen Barbers International Union of America et al.*, 194 Iowa 1179, 191 N.W. 111 (1922); Boycott to force a person to join the organization illegal: *Gildhausen Co.* v. *Busse*, 19 Ohio N.P. (N.S.) 265 (1916); Picketing, to force a person to close his shop on Saturday night: *Hellman* v. *Association*, 23 Ohio N.P. (N.S.) 177 (1919).

The labor organization in the *Markowitz* case, *supra*, violated the Valentine Act in making an illegal demand upon the Markowitz brothers. This demand, had it been complied with would have had the effect of creating a price standard, and of eliminating competition, both of which are prohibited by the Act. C. R. JOHNSON.

LANDLORD AND TENANT

LANDLORD-TENANT RELATIONSHIP — LIABILITY TO INVITEES OF TENANT — CONTROL

A woman brought her child to the lessee's photographic studio for a picture in the nude. The child fell from a chair in the lessee's dressing room and was severely burned by contact with a steam pipe which had nothing to identify it as such except its heat. There was evidence to show that the pipe was excessively hot and that it was used to convey heat to other parts of the building. The terms of the lease put the lessor in exclusive control of janitor service, heating, lighting, and repairs and gave him the right of access to the demised premises at all times. The plaintiff brought an action against the lessor for damages. The judgment for the plaintiff was sustained in the Court of Appeals on three grounds only the first of which will be discussed in this note. *R.K.O. Midwest Corp.* v. *Berling*, 51 Ohio App. 85, 199 N.E. 604 (1936). The bases of decision were: first, the lessor's liability is predicated on continued control of the premises; second, the lessor and the lessee

co-operated in creating a condition which any reasonably prudent person must have known could cause injury; and third, a landlord is liable for injuries sustained by third parties through a nuisance existing at the time of the demise.

The general rule is that a lessor out of possession and control is not liable to any person rightfully on the premises in the absence of deceit, or agreement, or liability created by statute. *Stackhouse* v. *Close*, 83 Ohio St. 339, 94 N.E. 746 (1911); *Marqua* v. *Martin*, 109 Ohio St. 56, 141 N.E. 654 (1923); *Berkowitz* v. *Winston*, 128 Ohio St. 612, 193 N.E. 343, 1 Ohio Op. 269 (1934); *Looney* v. *McLean*, 129 Mass. 33, 37 Am. Rep. 295 (1880); *Baird* v. *Shipman*, 132 Ill. 16, 23 N.E. 384 (1890); *Farley* v. *Byers*, 106 Minn. 260, 118 N.W. 1023 (1908).

An invitee of the lessee or a member of the lessee's family stands in the lessee's place with respect to his right to recover from the lessor. *Smith* v. *Wolsiefer*, 119 Va. 247, 89 S.E. 115 (1916); *Hogan* v. *Metropolitan Bldg Co.*, 120 Wash. 82, 206 Pac. 959 (1922); *Bender* v. *Weber*, 250 Mo. 551, 157 S.W. 570 (1913).

The cases are in sharp conflict as to the effect of the lessor's agreement to make repairs. The majority view is that an agreement to keep the premises in repair does not imply a reservation of control by the lessor so as to make him liable for personal injuries. *Hollingsworth* v. *Mueller*, 3 Ohio L. Abs. 119 (1924); *Schradski* v. *Butler*, 22 Ohio Dec. 701 (1911); *Roberts* v. *Fulton*, 24 Ohio C.C. (N.S.) 233 (1916); *Willis* v. *Snyder*, 190 Iowa 248, 180 N.W. 290 (1920); *Spero* v. *Levy*, 86 N.Y.S. 869 (1904). But some jurisdictions follow the minority rule that an action will lie to recover for personal injuries when based upon the failure of the landlord to repair according to his contract. *Purcell* v. *English*, 86 Ind. 34, 44 Am. Rep. 255 (1882); *Glenn* v. *Hill et al.*, 210 Mo. 291, 109 S.W. 27 (1908); *Barron* v. *Liedloff*, 95 Minn. 474, 104 N.W. 289 (1905).

The landlord is liable for failure to use reasonable care in the maintenance of those parts of the building that are intended for the common use of the tenants, such as entrances, stairways, and halls, *Hawkes* v. *Broadwalk Shoe Co.*, 207 Mass. 117, 92 N.E. 1017 (1910); porches, *Hinthorn* v. *Benfer*, 90 Kan. 731, 136 Pac. 247 (1913); *Knapp* v. *Schwartz*, 2 Ohio L. Abs. 520 (1924); landings and outside stairways, *Hinthorn* v. *Benfer*, *supra*; space between floors of an apartment house, *Fleischer* v. *Dworsky*, 153 N.Y.S. 951 (1915); roofs, *Payne* v. *Irvin*, 144 Ill. 482, 33 N.E. 756 (1893); elevators, *Tippicanoe Loan & Trust Co.* v. *Jester*, 180 Ind. 357, 101 N.E. 915 (1913); *Stackhouse*

v. *Close*, 83 Ohio St. 339, 94 N.E. 746 (1911); party walls, *Yarra* v. *Lynch*, 226 Mass. 153, 115 N.E. 238 (1916).

Where agencies and appliances are retained in control of the lessor there is an implied obligation to keep them in a reasonably safe condition, *Lewin* v. *Pauli*, 19 Pa. Super. 447 (1902); *Starr* v. *Sperry*, 184 Iowa 540, 167 N.W. 531 (1918); *Hirsch et al* v. *Radt*, 228 N. Y. 100, 128 N.E. 653 (1920); a qualified possession and general supervision is such control as to render the lessor liable, *Marr* v. *Dieter*, 27 Ga. App. 711 (1921); *Cossgrove* v. *Atlantic Coast Line R. R. Co.*, 30 Ga. App. 462 (1923); and where a heating plant, sewer system, or lighting apparatus is installed for the common use and benefit of tenants there is a duty to use ordinary care and such apparatus will be deemed under the lessor's control, *Hager* v. *Cleveland Trust Co.*, 29 Ohio App. 32 (1928); *Devine* v. *Ficklin*, 192 Ill. App. 592 (1915); *Queeny* v. *Willi*, 225 N. Y. 374, 122 N.E. 198 (1919); *Wardman* v. *Hanlon*, 280 Fed. 988 (1922).

Most of the cases dealing with heating apparatus involve liability for not supplying sufficient heat. In this case the injury was caused by excessive heat. Since it was entirely within the control of the tenant as to who should enter the room where the pipe was located, the argument for holding the landlord on the basis of control is somewhat weakened. Imposition of liability on the ground of control by the landlord extends his liability beyond the preceding cases. But since the heating system was entirely within the control of the lessor the extension seems reasonable.

JACK G. DAY

MORTGAGES

DOWER IN PURCHASE MONEY MORTGAGE

One J. T. Hutchinson purchased real estate, paying part cash and giving a mortgage for the balance. The cash payment was borrowed from a trust company and secured by a mortgage on the same property. Three years later the mortgage given to the vendor was paid. Thereafter a new loan of $15,120 was made by the trust company, $13,440 of which was used to pay off the balance due on the original loan. Hutchinson died in 1929 and the trust company as executor sold the estate for $22,500. The widow of the deceased claims that dower should be based on the $22,500, whereas the executor claims it is payable out of $9,060, this being the difference between $22,500 and the