while the defendant's bid was so far below that of plaintiff, as to the remaining single item as to make the aggregate of his bid $35,000, in round numbers, less than that of plaintiff. It is alleged that plaintiff was prepared to bid, and, but for the secret agreement, would have bid, for such work, at a figure some $40,000 less than that at which the contract was let. As to this, it is argued, in plaintiff's behalf, that he was under no obligation to bid upon said work, and might refrain from doing so, at his option. But when he seeks to recover for withholding such bid, it is another matter. The tendency of such a recovery will be to encourage combinations among bidders, destroy competition, defeat the object the legislature had in view in requiring such work to be awarded upon bids, and greatly increase the public burdens. If there was nothing more in the case than an agreement not to bid, there could be no recovery under the contract based upon such a consideration. But when the parties presented themselves as competitors for the work, they were guilty of a fraud. The tendency of what was thus done was to cause the water committee to believe that the bid of defendant was a favorable one for the city. Moreover, plaintiff's pretended bid had the effect of a representation to the committee that, in plaintiff's opinion, the work could not be profitably done for less than a figure $35,000 higher than that bid by defendant, although, as a matter of fact, plaintiff believed such work could be done, and, except for the collusive agreement with defendant, would have offered to do it, for an amount $75,000 less than that at which the contract was let. Upon all the cases cited or to be found, and in any view of the case consistent with public policy and the principles of equity, there can be no relief in such a case.

It is not necessary to discuss the minor questions raised by the exceptions to parts of the answer. The third, ninth, tenth, and thirteenth exceptions, for impertinence and scandal, are allowed. All other exceptions are overruled.

MOORE v. STELJES.

(Circuit Court, S. D. New York. July 8, 1895.)

LANDLORD AND TENANT—DEFECTIVE PREMISES—INJURY TO TENANT'S CHILD.

A landlord letting a house with a warranty of the safety and sufficiency of the ceiling is liable (not on the warranty itself, but on the ground of negligence) for an injury to the tenant's infant child, resulting from the fall of the ceiling upon it.

This was an action at law by Rachel Moore against Martin Steljes to recover damages for personal injuries. Defendant demurs to the complaint.

Edwin G. Davis, for plaintiff.
Coleman & Donahue, for defendant.

WHEELER, District Judge. According to the complaint, which is demurred to, the ceiling of premises hired of the defendant by the plaintiff's father for himself and family, including the plaintiff, an

infant,—the safety and sufficiency of which the defendant warranted, —through his negligence, fell upon the plaintiff, to her great injury. The demurrer has been argued for the defendant as if the suit was brought upon the warranty; but the hiring and warranty seem to be material only as showing that the plaintiff was rightfully on the premises, and that the negligence of the defendant continued to the time of, and caused, the injury, and did not become, after the hiring, the negligence of the father. The gist of the action is this continuing negligence, and the question is whether the allegations of the complaint maintain it. This passage from Wood, Landl. & Ten. (13th Ed.) 735, is quoted in defendant's brief to show that they do not:

"As regards the liability of landlords to third persons, it may be taken as a general rule that the tenant, and not the landlord, is liable to third persons for any accident or injury occasioned to them by the premises being in a dangerous condition; and the only exceptions to the rule appear to arise when the landlord has either (1) contracted with the tenant to repair, or (2) where he has let the premises in ruinous condition, or (3) where he has expressly licensed the tenant to do acts amounting to a nuisance."

Warranting the safety and sufficiency of the ceiling would hold the defendant to the duty of maintaining it, as much as contracting for its repair, and bring this case within the first exception. A ceiling that will fall is ruinous, and the letting expressly assuming the risk would be a letting in a ruinous condition, and bring the case within the second exception. Payne v. Rogers, 2 H. Bl. 349, was an action against the owner of a house in the occupation of a tenant, for an injury owing to want of repair of supports under the pavement. Objection was made that it should have been brought against the occupier, but the action was maintained because, although the tenant might be liable, the landlord would be liable in the first instance, and to save circuity of action. Shear. & R. Neg. § 502, say:

"Nor does the entire surrender of control over land to a lessee relieve the owner from liability to third persons for defects which existed in it when he parted with his control."

Want of privity between the plaintiff and defendant is most strenuously relied upon. It was, also, in Devlin v. Smith, 89 N. Y. 470, where one who built a scaffold under contract with a painter, defectively, was held liable, against this objection, to an employé of the painter, for injuries received in consequence of the defect. Rapallo, J., said:

"The liability of the builder or manufacturer for such defects is, in general, only to the person with whom he contracted. But, notwithstanding this rule, liability to third parties has been held to exist when the defect is such as to render the article in itself imminently dangerous, and serious injury to any person using it is a natural and probable consequence of its use."

The premises were let to the father for occupation by his family, including the plaintiff, and injury to her would be a natural consequence of the dangerous ceiling; and the warranty was made in view of this consequence. And, although the plaintiff could not maintain an action upon the warranty, it serves to fix the negligence which caused the injury to her upon the defendant. Demurrer overruled.

HART et al. v. MINCHEN et al.

(Circuit Court, S. D. Iowa, C. D. January 2, 1895.)

No. 3,576.

GUARANTY—NOTIFICATION OF ACCEPTANCE—INTERPRETATION OF LETTER.

N., an Iowa merchant, having been refused credit by complainants in Chicago, procured from defendant a letter addressed to them, and offering to guaranty payment of such purchases as N. might make for his fall and winter trade. On the strength of this letter, plaintiffs sold N. goods, and, on the same day, wrote to defendant, acknowledging the receipt of his letter "guarantying whatever N. may purchase of us for his fall and winter stock," and saying, "His purchases up to this time amount to $3,390.50, which we are getting ready for shipment." *Held* that, in view of the situation of the parties, this letter was a valid notice of acceptance of the offer of guaranty, so as to make the guarantor liable for the amount of the purchases.

This was an action at law by Harry Hart, Max Hart, Joseph Schaffner, and Marcus Marx against William T. Minchen and others, on an alleged contract of guaranty.

Stone & Dawson and Tenney, McConnell & Coffeen, for plaintiffs.

A. U. Quint and L. W. Ross, for defendant Minchen.

WOOLSON, District Judge. The following facts are found, as herein proven:

Plaintiffs were in August, 1893, and have ever since been residents and citizens of the state of Illinois, and defendant Minchen at said date was, and now is, a resident and citizen of the state of Iowa. At said date, defendant Jonas Nichols was also a citizen and resident of the state of Iowa, and engaged in business as a clothing merchant in Carroll, Iowa. Prior thereto, for some years, Minchen and Nichols had been in said clothing business, as copartners, at said Carroll. Nichols, on May 2, 1893, succeeded to this business. In August, 1893, said Nichols was desirous of purchasing an additional stock of clothing from plaintiffs, who then composed the firm of Hart, Schaffner & Marx, with place of business at Chicago, Ill. Defendant Minchen at said date held a note, payable on demand, signed by said Nichols, for $19,000. Of this $19,000, $2,000 represented advances. Nichols had applied to plaintiffs for a purchase of goods, but, as he informed Minchen, his credit had been "written down" so that he could not buy goods. Whereupon, on August 14, 1893, defendant Minchen wrote, and delivered to defendant Nichols, the following:

Hart, Schaffner & Marx, Chicago—Gentlemen: I will guaranty the payment of such purchases as Jonas Nichols may make of you, in the line of merchandise in [which] you deal, for this fall and winter trade.

Yours, respectfully, W. T. Minchen.

Nichols took this letter, in person, to Chicago, and delivered it to plaintiff's firm, and on the credit of this letter said firm sold and delivered to said Nichols goods amounting to $3,442.75. These sales and deliveries extended from August 24, 1893, to September