

Reference to *Smith v. Marrable* (1843), 11 M. & W. 5; *Edwards v. Etherington* (1825), Ry. & M. 268, 7 Dowl. & Ry. 117; *Collins v. Barrow* (1831), 1 Moo. & Rob. 112; *Sutton v. Temple* (1843), 12 M. & W. 52; *Hart v. Windsor* (1843), 12 M. & W. 68; *Chappell v. Gregory* (1864), 34 Beav. 250, 253, 254; *Searle v. Laverick* (1874), L.R. 9 Q.B. 122, 131; *Westropp v. Elligott* (1884), 9 App. Cas. 815, 826; *Wilson v. Finch-Hatton* (1877), 2 Ex. D. 336, 342, 343, 344; *Manchester Bonded Warehouse Co. v. Carr* (1880), 5 C.P.D. 507, 510, 511; *Murray v. Mace* (1874), 8 Ir. R. C.L. 396; *Bunn v. Harrison* (1886), 3 Times L.R. 146.

Notwithstanding what was said in the case last-mentioned, *Sutton v. Temple* and *Hart v. Windsor* ought to be followed; and, if followed, there was nothing to exclude from the application of the rule there laid down the case of an unfurnished house let for immediate habitation; and it followed from the rule that the doctrine of such cases as *Hamlyn & Co. v. Wood & Co.*, [1891] 2 Q.B. 488, did not apply.

Reference also to *Bird v. Lord Greville* (1884), Cab. & El. 317; *Harrison v. Malet* (1886), 3 Times L.R. 58; *Charsley v. Jones* (1889), 53 J.P. 280, 5 Times L.R. 412; *Sarson v. Roberts*, [1895] 2 Q.B. 395; *Campbell v. Wenlock* (1866), 4 F. & F. 716.

The case at bar came within the exception established by *Smith v. Marrable* and *Wilson v. Finch-Hatton*, and there was to be implied a warranty or condition in the contract between the parties that the theatre was fit for immediate occupation and use as a moving picture theatre.

The demise resembled that of a furnished house—it was of a furnished theatre, realty and contents, the whole let as a going concern and for immediate occupation and use as a theatre. The condition or warranty that it was fit for occupation as such was broken.

The appeal should be dismissed with costs.

No case was made for disturbing the disposition made of the claim for damages; and the cross-appeal should also be dismissed with costs.