

contract to do a thing, not in itself unlawful, the contractor must perform it or pay damages for not doing it, although in consequence of unforeseen accidents the performance of his contract has become unexpectedly burdensome or even impossible."

That a contract should be held to be discharged because one party, as subsequent events prove, has made a bad bargain, could, of course, never be sustained as a proposition of law based on logic or convenience. But again and again the Courts have held a contract to be at an end when circumstances have subverted before the performance which render performance impossible. Logically, therefore, it would seem that the true position is this: If a man undertakes to perform a contract in clear, unconditional terms, he in effect undertakes to perform it, come what may. His contract is, indeed, to do or to procure the doing of the thing in question, and to pay damages if the thing for some foreseen or unforeseen circumstance is not done as agreed. That seems to be the true explanation. It is qualified only by this, that the thing to be done must be lawful. If a man purports to contract to do an unlawful act there is no contract. If the act would be lawful when the contract is made and becomes unlawful before performance, we have a refinement with which we need not deal.

The old case of *Paradine v. Jane* (1647), Aleyn, 26, and, indeed, all the covenant cases for repairing houses where lessees have been held bound to rebuild after fire, may be cited as illustrating the general principle that mere burdensomeness is not a ground for relieving a man from his contract. In *Paradine v. Jane* a lessee was sued for rent. He had been put out of possession by rebels, who kept him out so that he could not take the fruits of the demise or enjoy the property. Yet he was held bound to pay rent. It is obvious that a covenant to pay could be in fact discharged notwithstanding that the covenantor was out of possession.

The Courts have always been ready to find some ground on which to qualify the application of the general root principle