

SELECTIONS.

unless protected by an express agreement; the only exception being sales of provisions for domestic use, as in *Van Bracklin v. Fonda*,²² and a demise of ready furnished lodgings, as in *Smith v. Mar-
rable*.²³

In *Staples v. Anderson*,²⁴ and *Carnfout v. Fowke*,²⁵ it was a good defence to an action for rent that the landlord knew that the house had formerly been occupied as a brothel and concealed that fact from the tenant, who was compelled to remove in consequence of the annoyance. The Court held this to be a fraudulent concealment.

In *Minor v. Sharon*,²⁶ the landlord knew that the house was infected with the small-pox so as to be unfit for occupation, and to such an extent as to endanger health, and concealed this fact from the tenant. The tenant engaged the house and occupied it. He and his family took sick by reason of the infection. He was ignorant of the dangerous condition of the house, and no act on his part contributed to the sickness. The Court held the landlord guilty of actionable negligence and liable for all the injury the tenant sustained; stating, that as the landlord knew the house was infected, it was his duty to inform the tenant to refrain from renting it until it was properly disinfected, and as he did not do this, he was guilty of negligence. Although this case is cited to sustain the proposition as to the want of repairs, in fact it rests on the doctrine of negligence, which is sustained in the following cases.²⁷

In some English cases,²⁸ and especially *Izon v. Garton*,²⁹ the tenant was released from the rent on the ground, first, that the landlord erred or fraudulently misrepresented the premises; or, secondly, that the premises were found or became uninhabitable by the wrongful act or default

of the landlord himself. This conclusion was reached and sustained in *Hart v. Windsor*,³⁰ after a review of all the prior cases, and was adopted and followed in *Surplice v. Farnsworth*,³¹ and in New York, Maine and Massachusetts.³²

The case of *Dutton v. Garrish*,³³ asserts the same doctrine, but this was a case on a written lease, and the Court would not admit parol testimony to show that the landlord warranted it fit for occupation and to continue so, nor draw an implied warranty from a written lease. So in a late case in New York,³⁴ the tenant moved out of a house which had been declared by the board of health to be unhealthy on account of the bad condition of the plumbing, notice to that effect having been given to the landlord. The landlord brought suit for his rent, and the defence claimed that there had been a constructive eviction by reason of the unhealthy condition of the premises. The Court held that if the health of the tenant or his family is imperilled by the neglect of the landlord to make necessary repairs in the plumbing of the house the tenant is in effect deprived of the beneficial enjoyment of the premises, and may therefore move out without paying rent. This case asserts the proposition in conformity with a number of cases, and with the proposition set forth in the beginning, that if the premises become unhealthy because of the landlord's neglect to repair, after notice, it is a constructive eviction of the tenant, and he is not liable for the rent.—*Central Law Journal*.

²⁰ 12 M. & W., 68.

²¹ 7 M. & G., 576.

²² *Foster v. Peyser*, 9 Cush. 242; *Libbey v. Talford*, 48 Me. 316; *Post v. Vetler*, 2 E. D. S. 248; *Ins. Co. v. Scott*, 2 Hilton, 550; *Gardner v. Keteltas*, 3 Hill, 530.

²³ 9 Cush., 89.

²⁴ Not reported.

²⁵ 12 Johns., 468.

²⁶ 1 Carr. & M., 479. See *Cleves v. Willoughby*, 7 Hill, 83.

²⁷ 3 Robt., N. Y. 327.

²⁸ 6 Mees. & W., 359.

²⁹ 112 Mass., 477.

³⁰ *Sweeney v. R. Co.*, 10 Allen, 368; *Carleton v. Iron & Steel Co.*, 99 Mass, 216; *French v. Vining*, 102 Mass. 132.

³¹ *Cowie v. Goodwin*, 9 C. & P. 378; *Salisbury v. Marshall*, 4 C. & P. 65; *Collins v. Barrow*, 1 Mood & Rob. 112; *Shepherd v. Pybus*, 3 M. & G. 867; *Edwards v. Heatherington*, 6 D. & R. 117.

³² 5 Bing. (N. C.), 501.