

tenant that it is unfit for habitation. If, however, a house is unfinished, and the landlord undertake to finish it, there is an implied contract on his part to deliver it in a state of repair that renders it tenantable.

On the letting of a furnished house, there is an implied condition that the premises are in a state fit for habitation ; and if it prove to be unfit, the tenant is at liberty to throw it up when he makes the discovery that it is so: *Smith v. Marrable* (1843), 11 M. & W., p. 5. Doubt was subsequently cast upon this decision; but finally the rule was settled, in 1877, by the decision in *Wilson v. Finch-Hatton*, L.R. 2 Ex. D., p. 336. Chief Baron Kelly, in his judgment, at page 343, is thus reported : " Now, I am prepared to hold that the law as laid down in that case (*Smith v. Marrable*) is good and sound law ; and I may add that although some discussion may have taken place about that case, and although some doubts may have been thrown on the law as there propounded by judges of learning and eminence, still I have no hesitation in holding that it is an implied condition in the letting of a furnished house that it shall be reasonably fit for habitation. I am, therefore, of opinion that, both on the authority of *Smith v. Marrable* and on the general principles of law, there is an implied condition that a furnished house shall be in a good and tenantable condition, and reasonably fit for human occupation, from the very day on which the tenancy is dated to begin, and that where such a house is in such a condition that there is either great discomfort or danger to health in entering and dwelling in it, then the intending tenant is entitled to repudiate the contract altogether."

In the absence of agreement, there is no implied condition on the part of the landlord, in the case of an unfurnished house, that he will do any repairs during the tenancy, nor even that the house will endure during the term.

If the landlord has agreed to keep the premises in repair during the tenancy, there is no implied condition that, should he fail in the performance of the contract, the tenant may throw up the tenancy. In such a case, the tenant will have his remedy over against the landlord.

From a careful examination of the authorities, it would seem the only instance in which the common law rule has relaxed in