

SELECTIONS.

and denied in America and the rule laid down that the fact that the premises are unwholesome will not entitle the tenant to quit them (1) where he knew or could have known the fact and (2) where the landlord has not been guilty of fraud or misrepresentation and is in no default.¹¹

In substance these authors hold that a landlord is not obliged to repair unhealthy premises made so by want of repairs, and is not obliged to disclose the fact that the premises are unhealthy if the tenant knew or could have known it.

Analysis of the Cases.—In *O'Brien v. Capwell*¹² the Court said that the "law is well settled that where there is no fraud or false representation or deceit, no express warranty or covenant to repair, there is no implied obligation or covenant that the premises are suitable or fit for occupation or for the particular use which the tenant intends to make of them, or that they are in a safe condition for use, or that they will continue so." In *Robbins v. Mount*¹³ the Court said if there is no express agreement, there is no obligation on the part of the landlord that the premises shall continue fit for the purposes for which they were demised, or that they are in a tenantable condition, or that they will continue so. The same Court went further and held that there was no obligation to repair unless there is an express agreement or a fraudulent or mistaken misdescription.¹⁴ This has been adopted in other cases.¹⁵ *Scott v. Simons*¹⁶ was an action for damages for injuries caused by the negligence of the landlord improperly constructing a drain and suffering it to remain defective whereby the tenant's goods were damaged by overflow of water for which cause the tenant left the premises. The Court held that the landlord was not liable, because he was only liable to repair the drain under an express covenant, the obligation to repair not being implied. In *Westlake v. De-*

*Graw*¹⁷ the premises were infected with sickening and noxious smells arising from dead rats. The landlord knew of the smells but did not disclose it to the tenant. The smell produced sickness. The landlord was informed and sent a carpenter to remove the cause, but the tenant abandoned the house before the carpenter got to work. The Court held the tenant liable for the rent. The Court must have placed the liability on the speedy removal of the cause by the carpenter, because it was certainly a fraudulent concealment of the facts for the landlord not to disclose the infection which he knew. The question of an implied covenant to repair did not arise. If this is the ground, it is contrary to *Whitehead v. Clifford*,¹⁸ *Wallace v. Lent*,¹⁹ and *Sutton v. Temple*.²⁰ The Court in *Wallace v. Lent* held that it was a good defence to an action for rent that the landlord did not tell the tenant of a stench in the house which he knew existed, and which subsequently caused the tenant's sickness; stating that "If the landlord knew of any cause which renders the house unhealthy he must disclose it. If he does not it is procuring an innocent person to rent a house which he knows is unfit." In *Sutton v. Temple* the Court announced the same doctrine, but held the tenant liable because the landlord did not know of the poisonous substance or smell.

In *Weeks v. Bawerman*,²¹ the defence to the suit for rent was that the premises had been occupied as a brothel, which fact the landlord did not disclose to the tenant, and in consequence the tenant was insulted and annoyed by lewd persons calling at all hours of the night to such an extent that he had to leave and could not quietly and peaceably occupy the premises; the Court held that this was no defence; that the landlord was not bound to disclose the uses to which the premises had been previously put, and that there was no implied warranty that the premises were suitable for the purposes rented. "*Caveat emptor*" applies to this case, and to all transfers of property, and purchasers take the risk of its quality and condition

¹¹ Citing *Westlake v. De Graw*, 25 Wend. 669; *Foster v. Peyser*, 9 Cush. 242; *Dutton v. Gerrish*, 9 Cush. 89.

¹² 59 Barb. 504.

¹³ 4 Rob. (N. Y.) 553.

¹⁴ *Cleves v. Willoughby*, 7 Hill, 83.

¹⁵ *Howard v. Doolittle*, 3 Duer. 464; *Mumford v. Brown*, 6 Cowen 475; see *Chitt. Cont.* 383; *Taylor L. & T.* 166.

¹⁶ 54 N. H. 429.

¹⁷ 25 Wend., 669.

¹⁸ 5 Taunt., 503.

¹⁹ 1 Daly, 482.

²⁰ 12 M. & W., 52.

²¹ 1 Daly, 100.