

The learned Chief Justice was of the opinion that, as against the defendants still before the Court, the action failed. Their position was that of lessors only, and it is well settled law that, in the absence of an express stipulation or a statutory duty, the landlord is under no liability to put the demised premises into repair at the commencement of the tenancy nor to do repairs during the continuance thereof, nor is there any implied warranty by the landlord that the premises shall be fit for the purpose for which they are taken: Halsbury's Laws of England, vol. 18, p. 501, para. 984; *Foa on Landlord and Tenant*, 5th ed., p. 140 et seq.

A warranty at or before the making of a lease that a house is in a fit state for habitation, whether as regards repair or drainage, may be given as an express contract, or may be implied from a representation as to the state of the house: Halsbury, vol. 18, p. 502, para. 986; and the plaintiff endeavoured to set up some such case, based upon an alleged conversation with the deceased George W. Constable; but the evidence did not establish any such case, and the plaintiff's solicitor's letters did not allege any such case.

If any such collateral agreement or warranty had been established, it would be only that of George W. Constable; and there was no evidence of any express authority from his co-defendants to make such agreement or give such a warranty, and there was nothing in the case from which any implied authority on his part could be inferred.

The same remarks would apply to any supposed case of misrepresentation by George W. Constable—that would give rise only to a common law action of deceit. At an early stage of the trouble, the plaintiff might have got relief from his bargain; but he refused the defendants' offer to give him back his money and let him go, and thereby he affirmed the lease.

The action should be dismissed with costs; and there should be judgment against the plaintiff on the defendants' counterclaim for \$1,399.62, with costs.