

Principles of recent War Cases

personally reside in the premises and that as his residence there was prohibited the foundation of the contract was gone. It was held that the personal residence in the flat was not, to use the language of *Vaughan Williams L. J.*, in *Krell v. Henry*, "the foundation of the contract." *Lush J.* remarked: "No doubt it probably was his purpose in taking the flat, but that is not the sense in which the expression 'foundation of the contract' has been used in this connection." [*London and Northern Estates Co. v. Schlesinger*, 1916, 1 K.B. 20]

London & Northern Estates Co. v. Schlesinger

The principles in *Taylor v. Caldwell* and in *Krell v. Henry* were adverted to in another case. The defendants by an agreement undertook to carry cement for the plaintiffs for six years by sea from the Thames to the Forth. The defendants did a large trade themselves in carrying coal from the Forth to the Thames. After the outbreak of war the Government requisitioned a number of the defendants' vessels, and the ports from which the defendants usually carried coal were closed, restrictions causing delay were placed on ships going from the Thames to the Forth and the voyage was dangerous. The defendants contended that the contract was entered into in times of peace and the continuance of peace was the basis and substratum of the contract, and that as the basis and substratum had become entirely changed the agreement was impossible of performance. These contentions were

Associated Portland Cement Co.'s case