

that, although the plaintiff was not entitled to recover for breach of contract, she nevertheless had a right of action in tort. The goods were lawfully on the premises of the defendants, having been brought there and accepted by the defendants as part of the servant's luggage, and the injury having occurred through an act of misfeasance, and not a mere nonfeasance, the defendants were directly liable therefor to the plaintiff, notwithstanding the defendants' contract was with the servant.

LANDLORD AND TENANT—LEASE OF FURNISHED HOUSE—IMPLIED CONDITION OF FITNESS FOR HABITATION.

In the case of *Sarson v. Roberts*, (1895) 2 Q.B. 395, the plaintiff leased furnished apartments in the defendant's house; subsequently, and while the plaintiff was in occupation, the defendant's grandchild, who was living in the same house, fell ill of scarlet fever, and the plaintiff's wife and child were infected and took the fever, and the plaintiff was put to expense for medical attendance and nursing, and he claimed to recover such expenses as damages for breach of an implied contract that the premises would continue fit for habitation. The action was tried before a County Court judge, who gave judgment for the plaintiff; but the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) set aside the verdict and judgment, and dismissed the action on the ground that although according to *Smith v. Marrable*, 11 M. & W. 5; and *Wilson v. Finch-Hatton*, 2 Ex. D. 336, there is an implied contract that a furnished house is fit for habitation at the commencement of the tenancy, there is no implied contract that it will continue so during the currency of the time.

LANDLORD AND TENANT—DISTRESS—WAIVER OF RIGHT OF RE-ENTRY—ACTION TO RECOVER POSSESSION—C.L.P. ACT, 1852 (15 & 16 VICT., c. 76), s. 210—(R.S.O., c. 143, s. 17).

*Thomas v. Lulham*, (1895) 2 Q.B. 400, was an action by a landlord to recover possession of the demised premises for non-payment of rent, under C.L.P. Act, 1852 (15 & 16 Vict., c. 76), s. 210 (see R.S.O., c. 143, s. 17). The defendant contended that the plaintiff, having distrained for the rent in arrear, had thereby waived his right to recover possession under the C.L.P. Act, notwithstanding that the plaintiff had failed to realize the full amount due by the distress, and there still re-