

The truth seems to be that in order to reconcile the two decisions a further limitation ought to be introduced into the rule as enunciated in the later case, and the matter would then stand thus: *primâ facie* the burden of repairing, restoring, and renewing is on the tenant who has entered into a covenant to repair. But he can relieve himself of that burden if he can shew that, owing to circumstances beyond his control, the work necessary would be a work wholly of reconstruction, provided he can establish, either that that work would go to what is substantially the whole subject-matter of the covenant, or (if it involve only a subordinate part of the demise) that that subordinate part would, after its reconstruction, necessarily present a different form to the form it had before. It will be noticed that in *Lurcott's* case the Master of the Rolls says that the question to be asked is whether it can fairly be said that the character of the subject-matter of the demise, or part of the demise, has been changed; and possibly he may have had the above considerations in view, though we are left without much guidance as to the nature of the "part of the demise" to which the rule applies.

It may be further observed that the ground on which the principle rests which absolves the tenant from liability when there has been a radical change of circumstances in the character of the whole subject-matter of the demise is said, in the same judgment, to be that such a change of circumstances could not have been within the contemplation of the parties when they entered into the covenant. It is, however, well settled that if demised premises are destroyed by fire, the tenant, unless specially protected by the terms of his lease, is bound, under his covenant to repair, to rebuild them. Why such an event should be considered more within the contemplation of the parties than the decay of the premises from the lapse of time, or from some structural defect, it is not, perhaps, easy to understand. One would have thought that in the usual course of things it would be, not more, but less within such contemplation.