both know this, and deal with each other for this object and purpose. If the premises at the time of renting are not healthy they are not fit to live in, and hence do not comply with the contract. If, after rented, they become unhealthy for want of repairs, they then become unfit to continue to live in, and hence unless made healthy the contract is not complied with.

The Conflict of Decisions.—The following cases[1] hold that the unhealthy condition of the premises at the time of renting, or becoming so during occupancy, is a constructive eviction and is ground to be released from the payment of rent, and hence assert the affirmative of the first proposition that the landlord must keep the premises in a healthy condition. On the other hand the subsequent cases[2] assert the contrary, and within some instances an incidental limitation.

Looking at these two different positions, one the opposite of the other, there should be no reason why the tenant is not relieved from the payment of rent when the premises become untenantable, or unhealthy for want of repairs, because of the fault or neglect of the landlord. The landlord's liability for personal acts of negligence or fraud should not be mixed with his duty to repair. The liability is separate and distinct.[3] The landlord is bound to repair where the law imposes the duty,[4] and where he has done, or omitted to do any act rendering the demise untenantable,[5] and such a condition certainly exists, when the landlord allows or permits such want of repairs as to make the tenement unhealthy.

Statement of the Law.—It is stated by Wood[6] that "Where certain defects exist that are likely to injuriously affect the health of the tenant or his family it is the landlord's duty to disclose the facts, and failing to do so he is liable to the tenant for all the damages resulting to the tenant which are the immediate and proximate result of such failure. There is a strong tendency to hold that the tenant is absolved from the lease (or rent) if there are latent defects in the premises or causes not readily discoverable on examination which render the premises unfit for occupancy, of which the landlord knew and did not inform the tenant; but this is not well established and is contrary to the weight of authority."

It is stated by Parsons[7] that a landlord is under no implied obligation to repair and that the uninhabitableness of a house is not a defence to an action for rent. But if the landlord does a positive wrong such as an erroneous or fraudulent misdescription of the premises or if it is made uninhabitable by the landlord's own acts the tenant can leave the premises. It is stated by Story,[8] that the landlord impliedly covenants that the premises are fit for beneficial occupation, as where the wall of a privy gave way and overflowed the kitchen with filth, and impregnated the water in the pump, and the landlord did not remove or repair it after notice, he cannot recover rent,[9] or where a furnished house was let and the beds were infested with bugs to such an extent as to render them unfit for occupation, the landlord cannot recover rent.[10] But this doctrine has been overruled in England

[1] Smith *v.* Marrable, 1 M. & W. 5; Edwards *v.* Hetherington, 7 D. & R. 117; Collins *v.* Barrow, 1 Moo. & R. 112; Salisbury *v.* Marshall, 4 C. & P. 65; Cowie *v.* Goodwin, 9 C. & P. 378; Gilhooley *v.* Washington, 4 N. Y. 217; Gallagher *v.* Waring, 9 Wend. 20; Van Bracklin *v.* Fonda, 12 Johns. 468; Gray *v.* Cox, 4 B. & C. 108; Laing *v.* Fidgeon, 6 Taunt. 108; Howard *v.* Holy, 23 Wend. 350; Pickering *v.* Dawson, 4 Taunt. 779; Jones *v.* Bright, 5 Bing. 533.

[2] Smith L. & T. 262; Woodfall L. & T. 493; Taylor L. & T. § 381; 1 Pars. Cont. 589; 1 Wash. R. Prop. 473; Sutton *v.* Temple, 12 M. & H. 52; Hart *v.* Windsor, 12 M. & W. 68; Chappell *v.* Gregory, 34 Beav. 250; Carstairs *v.* Taylor, L. R. 6 Exch. 217; Cleves *v.* Willoughby, 7 Hill, 83; Royce *v.* Guggenheim, 106 Mass. 202; Elliott *v.* Aiken, 45 N. H. 36; Alston *v.* Grant, 3 El. & Bl. 127; Leavitte *v.* Fletcher, 10 Allen, 121; Brewster *v.* DeFrancey, 33 Cala. 341; Doupe *v.* Genine, 45 N. Y. 119; 2 Story Cont. 422.

[3] Eaten *v.* Winnie, 20 Mich. 156; R. R. Co. *v.* Ogier, 35 Pa. St. 72; Garden *v.* R. Co. 40 Barb. 550; Ernst *v.* R. Co. 35 N. Y. 28.

[4] McAlpine *v.* Powell, 1 Abb. 427.

[5] Priest *v.* Nicholas, 116 Mass. 401; Norcrosse *v.* Thoms, 51 Me. 503; Kirby *v.* Ass'n, 14 Gray, 249; Gray *v.* Gas Co. 114 Mass. 149; Alger *v.* Kennedy, 49 Vt. 109.

[6] Landlord & Tenant, 624; citing Minor *v.* Sharon, 112 Mass. 477; Wilson *v.* Finch, Hatton L. R. 2 Exch. Div. 236; Eakin *v.* Brown, 1 E. D. Smith, 36; Wallace *v.* Lent, 1 Daly, 481; Staples *v.* Anderson, 1 Robt. 327; Meeks *v.* Bawerman, 1 Daly, 100.

[7] 3 Pars. Cont. 501.

[8] 2 Story Cont. 422.

[9] Citing Cowie *v.* Goodwin, 9 C. & P. 378.

[10] Citing Smith *v.* Marrable, 11 M. & W. 5.