

and the outside every third year. B has done this. A and B¹⁵ having repaired at the proper times will not be liable for such dilapidations afterwards occurring as are caused by the ordinary action of the elements, or by wear and tear arising from reasonable user of the premises.

VI. (a) The measure of damages for breach of covenants to repair in an action commenced during the continuance of the lease is usually the amount by which the reversion¹⁶ of the premises is injured by the non-repair.¹⁷

(b) The measure of damages for breach of covenant to deliver up the premises in repair, is the cost of putting them into the state of repair required by the covenant.¹⁸

(c) Where a sub-lease contains repairing covenants similar to those in the head lease (with notice thereof to the sub-lessee) and the sub-lessor sues the sub-lessee for breach of his covenant to repair, the liability of the sub-lessor under his head lease must be taken into account in assessing the damages against the sub-lessee.¹⁹

The Court of Appeal, in *Lurcott v. Wakely, Proudfoot v. Hart*, and *Lister v. Lane* (all of which have been referred to, but cases like the last must be rare), has done much to lighten the task of legal advisers, as also presumably that of surveyors, but it could be wished in dealing with questions concerning repairing covenants that the embarrassing "wear and tear" exception had reached the same tribunal. The writer has stated his notions of the law on that subject with much diffidence. Notwithstanding the advice of eminent and experienced convey-

15. *Scales v. Lawrence*, 121 R.R. 791.

16. The soundness of the rule is apparent from the circumstance that were it otherwise a freeholder entitled to a small ground-rent incident to a lease for ten thousand years could harass the lessee with continual actions for repairs.

17. *Doe d. Worcester Trustees v. Rowlands*, 62 R.R. 766; *Conquest v. Ebbetts*, [1896] A.C. p. 494.

18. *Joyner v. Weeks*, [1891] 2 Q.B. 31, C.A.; *Ebbetts v. Conquest*, [1895] 2 Ch. p. 384, C.A.

19. *Conquest v. Ebbetts*, [1896] A.C. 490. Damages for loss to the lessor of the premises whilst being repaired are recoverable, see *Fox's Land. and Ten.* (1907), p. 231; *Mayne on Damages* (1903), p. 287.