

air from entering through it under the house, and thereby causing damage to the plaintiff. There was no duty resting upon the plaintiff to do what the defendants should have done.

The defendants' appeal failed.

There has been considerable diversity of judicial opinion as to whether or not a covenant for quiet possession is to be implied from the use of the word "let." The Court should follow the decision of Swinfen Eady, J., in *Markahm v. Paget*, [1908] 1 Ch. 693, and hold that a covenant for quiet enjoyment is to be implied from the word "let"—and therefore from the word "rent," here used, which is a synonymous term.

Can the implication of the covenant be displaced by an express stipulation in the letting, on the part of the lessor, that it shall be subject to such a condition as that set up by the defendants?

Reference to *Hoare v. Coambers* (1895), 11 Times L.R. 185; *Jones v. Lavington*, [1893] 1 Q.B. 253, 256; *Newman v. Gatti* (1907), 24 Times L.R. 18.

There is no reason why, on principle, the implication of a covenant from the use of "let" or "rent" may not be displaced by proof of a parol agreement that the right to quiet enjoyment is to be subject to such a condition as that which the defendants set up, just as the implication of a resulting trust may be rebutted; and, therefore, upon the finding of fact as to the demise to the plaintiff having been agreed to be subject to the right of the defendants to build on the vacant ground in front of the house, the conclusion of the trial Judge was right.

The defendant Armaly testified that when the lease of the 14th November, 1919, was being arranged for, it was agreed that the defendants should have the right to build which they now claimed. The Judge accepted this testimony as true, and found in accordance with it, and it was impossible to reverse that finding.

The cross-appeal should also be dismissed.

*Appeal and cross-appeal dismissed with costs.*