that, if a need for slight repairs arises, and he fails to make them, he is probably precluded from recovering damages for the personal injury, for the reason that such damages are not deemed to have been within the contemplation of the parties; but that, at all events, if he knew of the dangers caused by the want of such repairs, and failed to have the repairs done himself, his action is barred on the ground that he voluntarily took the risk of using the premises in that condition. Under such circumstances, it was said, the proper course of the tenant is to notify the landlord that the repairs are needed. If the landlord then failed to perform his obligation within a reasonable time, the tenant would be justified in doing the repairs himself and charging it against the landlord or taking it out of the rent (*j*).

It must be admitted, however, that the authorities relied upon for the doctrine in this case scarcely warrant the decision in its full extent. The one upon which most stress is laid merely decides that a monthly tenant may make such repairs as are necessary and deduct the amount expended from the rent (*k*). The doctrine that a tenant, if he makes repairs which the landlord is bound to make, is entitled to be recouped for his expenditure, cannot be said logically to involve the doctrine that the tenant is guilty of a *culpable* non-feasance if he fails to make these repairs. In another of the cases cited (*l*), the point was simply that a lessor who covenants to repair cannot be sued unless he has previously been notified that repairs are necessary, the reason assigned being that it is a trespass for him to enter the premises without leave. It is difficult to see how such a ruling can be regarded as affording any support to the doctrine of the Ontario Court.

Additional doubt is cast upon the correctness of this decision by an English case which, although not directly in point, may at least be said to suggest a different doctrine. The case turned upon the construction of sec. 12 of the Housing of the Working Classes' Act of 1885, providing that "in any contract for letting . . . a house or part of a house, there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation." It was argued that the word "condition" was to be construed in its strict common law sense, and that the only remedy of the tenant, if the premises were not habitable, was to repudiate the contract and quit. This contention did not prevail, and the landlord was held liable for injuries which a tenant received

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(*j*) *Brown* v. *Toronto General Hospital* (1893) 23 Ont. R. 599.

(*k*) *Beale* v. *Taylor's Case* (1691) 1 Lev. 237.

(*l*) *Huggall* v. *McKean* (C.A. 1885) 33 W.R. 588, aff'g 1 C. & E. 394.