

L.J., on the other hand, considered the contract was absolute and not subject to any implied condition, and the fact that it had become impossible of performance was the defendants' misfortune, for which they were nevertheless responsible in damages. He agreed, however, with Mathew, J., as to the measure of damages. He also agreed that there might be a case where, from the nature of the contract, it was manifest that it was made upon the understanding that its fulfilment depended on the existence of some particular thing or state of facts as the foundation of the contract, the non-existence of which would operate as an excuse for its non-performance; but he considered the non-arrival of a particular ship at a particular port was not such a case, as it was an event that might well have been guarded or insured against by the defendants.

LANDLORD AND TENANT — LEASE — COVENANT BY LESSEE TO PAY AND DISCHARGE "IMPOSITIONS" CHARGED OR IMPOSED ON DEMISED PREMISES — ORDER TO ABATE NUISANCE.

Foulger v. Arding (1901) 2 K.B. 151, was an action by a landlord against his tenant upon a covenant in the lease, whereby the tenant bound himself during the term "to pay and discharge all taxes, rates, including sewers, main drainage assessments, and impositions whatsoever which now are or at any time hereafter during . . . the term . . . be taxed, rated, assessed, charged, or imposed upon or in respect of the said premises, or any part thereof, or on the landlord, tenant or occupier of the same premises, by authority of Parliament or otherwise howsoever." There was no repairing covenant in the lease. Notice was given by the sanitary authority of the district to the lessor to abate a nuisance occasioned by a privy, and to construct a water-closet in place thereof in accordance with the by-laws of the London County Council. The lessor did the work, and the action was brought to recover the expense so occasioned from the tenant. The County Court Judge who tried the action held that the plaintiff was entitled to recover. The Divisional Court (Lord Alverstone, C.J., and Lawrance, J.), however, with some hesitation, reversed his judgment, the latter Court being of opinion that the covenant applied only to money charges imposed on the premises, and did not include the obligation to perform work thereon in the nature of the repair of structural defects.