spect of the said houses or ground, as if the same had been actually paid to such owners as part of such rent."

19. "That in no case, except as hereinafter mentioned, shall any occupier be liable to pay more money in respect of such charges and expenses as aforesaid than the amount of rent due from him at the time of the demand made upon him for such charges and expenses, in case he shall pay the same or any part thereof, on demand, or at the time of the issuing of the warrant of distress, or the levying thereof in case such charges and expenses, or any part thereof, shall be levied by distress, &c."

Certain improvements were undertaken under the powers of this Act in the sewerage, etc., of the street in which the house let by the plaintiff to the defendant was situated, and the plaintiff having failed to perfom the required work under section 15, the work was done under the orders of the council, and the expense charged upon the plaintiff under section 17.

The plaintiff brought this action against the defendant in order to recover under the covenant in the lease above set out the expenses so incurred.

At the trial a verdict was found for the plaintiff with leave reserved. A rule was subsequently obtained to show cause why the verdict should not be set aside and a verdict entered for the defendant or a nonsuit, on the ground that there was no breach of the covenant declared on.

*Quinn*, Q.C., and *R. G. Williams*, now showed cause.—The defendant was clearly bound under the covenant to pay the expense incurred in improving the street, although the landlord might be liable under the Act of Parliament, still the payment fell within the words, rate, assessment, or imposition in the covenant, and as between the landlord and tenant, the tenant was liable; *Sweet* v. *Seagar*, 5 W. R. 560. 2 C. B. N. S. 119. [BOVILL, C.J.—If your client had done the work under section 16 how could he have recovered]. That would have been an imposition, and he could have recovered under the covenant; *Giles* v. *Hooper*, Carthew, 135; *Brewster* v. *Kitchell*, 1 Salk. 197; *Payne* v. *Burridge*, 12 M. & W. 727; *Waller* v. *Andrews*, 3 M. & W. 312 [WILLES, J.—There the imposition fell within the precise words of the covenant]; Callis on Sewers, p. 144, 4th ed. (note). Under section 15 this is a charge imposed upon the premises which the defendant is bound to pay.

*Holker* and *Butt* in support of the rule.—The words of the covenant do not extend to such a payment as this. To fall within the covenant the imposition must be one payable in respect of the demised premises, whereas this is made in respect of the street, and the word imposition must be construed to mean some charge *ejusdem generis* with rates and taxes, and therefore would not include this. 2. The duty of draining, etc., the road is thrown upon the landlord, and the landlord, cannot, by ommiting to perform that duty, cast the expense upon the tenant. In some cases it would be impossible to have recourse to the tenant; if the works were done when the lease had only half a year's rent from the tenant which would probably be insufficient. The landlord is the owner of the street *ad medium filum*, and it is reasonable that he should bear the expenses of improving his own property. The cases cited are inapplicable, in *Sweet* v *Seagar* the words were wider, in *Waller* v. *Andrews* the covenant was to pay scot, and the work done was expressly for the benefit of the demised premises; and in the case of *Payne* v. *Burridge* no liability was thrown on the landlord to do the work.

BOVILL, C.J.—This question arises on the construction of a covenant in a lease. [His Lordship here read the covenant] It is contended by the landlord that the covenant by the tenant to pay all impositions includes payments which have to be made in order to defray the expenses of paving, sewering, etc., the street. This lease was made after the passing of the Act, but that is immaterial. It is material to consider what the provisions of the Act are. It is clear that by section 15 the burden of making these improvements is in the first place thrown upon the landlord; but I cannot at all accede to Mr. Holker's argument, that there is anything in the Act which prohibits the tenant from undertaking the duties which are in the first instance cast upon the landlord; it is, however, unnecessary to decide that, as we are prepared to give judgment in favor of the defendant upon other grounds. If the duty imposed on the landlord by section 15 be performed, no burden is cast upon the tenant, but section 18 gives a power to levy charges on the occupier as an "additional remedy," but at the same time authorises the occupier to deduct such charges from his rent; so that when the landlord fails to perform his duty no burden is cast upon the occupier. I think that the "impositions" mentioned in the covenant must be taken to refer to money payments, and cannot have reference to an undertaking to indemnify the landlord from the duties imposed upon him by the Act. Then it is urged that if the landlord fails to perform the works himself, a money payment is due from him, and that that payment may be recovered from the tenant under this covenant. The covenant speaks of "taxes, rates, and impositions," and I am clearly of opinion that the word "impositions" must be held to apply to payments of the same character as rates and taxes, and that, therefore, a payment of this description would not be included. I should have no difficulty in deciding this case if it were not for the previous decisions; those decisions go very near this case but do not touch it; they are all distinguishable. In the case of *Waller* v. *Andrews* the covenant was to pay and discharge all out-goings whatsoever, rates, taxes, scots, etc.; and the payment sought to be recovered in that case was a "scot," and therefore within the very words of the covenant. That case therefore is distinguishable. In the case of *Sweet* v. *Seagar* the widest possible expressions were employed; the yearly rent was to be paid "without any deduction whatsoever in respect of any taxes, rates, assessments, impositions, or any other matter or thing whatsoever then already or thereafter to be taxed, assessed and imposed, upon or in respect of the said premises, or any part thereof by authority of Parliament or otherwise," and the respondent covenanted to discharge "all such Parliamentary, parochial, county district, and occasional levies, rates, assessments, taxes, charges, impositions, contributions, burthens, duties, and services whatsoever, as during the said term should be taxed, assessed, or imposed upon, or in respect of the said premises