

paint,³ a skylight leaks, a roof is decayed, a garden wall falls through perishing of mortar, an earthenware pipe is broken, a window-frame becomes rotten⁴; (b) a well is condemned as a dangerous structure, and is only repairable by rebuilding. In illustration (a) if patching is impossible, the covenantor must replace the defective parts by putting sound wood into the floor, skylight, roof, and window-frame, repaint where paint is necessary to prevent decay, replace with a new pipe, and rebuild the walls in illustrations (a) and (b).⁵

II. But a repairing covenant does not oblige the covenantor to repair by rebuilding the whole subject-matter of the covenant if the court holds that the necessity to rebuild arises from circumstances not contemplated by the parties when the covenant was entered into.⁶

Illustration.—1. (a) An old house, built on timber which has rotted, is only repairable by "underpinning" (i.e. rebuilding on walls carried down 17 feet to the subjacent gravel; (b) a house is destroyed by an underground mining explosion, another by the combined effect of earthquake and irruption of the sea, and a third by oceanic erosion; and (c) a house is destroyed by fire. In illustration (a)⁷ and [it is submitted] in illustration (b) (assuming that the events described are held not to have been in the contemplation of the parties), the covenantor is excused from rebuilding the whole of the premises, but in illustration (c) he is liable, fire being a presumable contingency.⁸

III. Unless the terms of the lease are repugnant, the surrounding circumstances may (as in the case of other documents) be regarded in construing repairing covenants therein. There-

3. *Proudfoot v. Hart* (supra), p. 54.

4. *Lurcott v. Wakely* (supra), pp. 912, 924.

5. *Lurcott v. Wakely* (supra).

6. *Lister v. Lane*, [1893] 2 Q.B. 212; *Wright v. Lawson*, 19 T.L.R. 203; *Torrans v. Walker*, [1906] 2 Ch. 166; as to the last case see *Lurcott v. Wakely*, [1911] 1 K.B. pp. 913, 923, 928; and see *Hugall v. McKean*, 1 C. & E. 391, where a lessor's covenant to repair drains was held to apply to drains existing at the date of the lease and not to mean reconstruction of the whole drainage system.

7. *Lister v. Lane* (supra).

8. *Bullock v. Dommitt*, 3 R.R. 300.