

taking on the landlord's part to finish and deliver the house in a proper state of repair, the performance of which is a condition precedent to the tenant's liability to accept a lease (*l*).

A covenant by the lessor that, in case the premises are burnt down, he will "rebuild and replace the same in the same state as they were before the fire" does not bind him to re-erect the additions which the lessee may have made to the premises as originally demised (*m*).

2. Subsidiary consequences of this principle.—

(A) Though, in the absence of an express contract, a tenant from year to year is not bound to do substantial repairs, yet in the absence of an express contract he has no right to compel his landlord to do them" (*a*). Nor is he entitled to treat the disrepair as an eviction and quit the premises (*b*).

(B) Though a tenant is, by force of the statute of 6 Anne, ch. 31, relieved from liability for the destruction of premises if caused by an accidental fire, the landlord is not bound to rebuild the premises (*c*).

(C) No implied responsibility for repairs is cast upon the landlord by the fact that the repairs which were not done came within an exception of fair wear and tear in the lessee's covenant, even though the result of the repairs not being done is that the premises become uninhabitable. Under such circumstances the tenant is not entitled to quit (*d*).

(*l*) *Tildesley v. Clarkson* (1882) 31 L.J. Ch. 362, 30 Beav. 419.

(*m*) *Loader v. Kemp* (1826) 2 C. & P. 375.

(*a*) *Gott v. Gandy* (1853) 2 El. & Bl. 845, 23 L.J.Q.B. 1, per Lord Campbell [declaration alleging duty of landlord to repair held to be demurrable]. The judges viewed the action as one which was in form for a wrong, but in substance for a breach of a duty arising from a contract. See especially the opinion of Erle, J.

(*b*) *Edwards v. Etherington* (1825) Ry. & M. 268, is to the contrary effect, but was overruled by *Hart v. Windsor*, 12 M. & W. 68; *Sutton v. Temple*, 12 M. & W. 52.

(*c*) *Bayne v. Walker* (1815) 15 R.R. 53, 3 Dow 233, 247; *Indar v. Ainsley*, cited by Buller, J., in *Belfour v. Weston* (1786) 1 T. L. 312; *Brown v. Preston* (1825) Newfoundl. Sup. Ct. Dec. 491. According to Lord Eldon, in the first of these cases, the meaning of the maxim, *Res perit domino*, is "that where there is no fault anywhere, the thing perishes to all concerned; that all who are interested constitute the *dominus* for this purpose; and if there is no fault anywhere, then the loss must fall upon all."

(*d*) *Arden v. Pull* (1842) 10 M. & W. 321, 11 L.J. Ex. 359. Defendant's counsel cited a nisi prius case, *Collins v. Barrow*, 2 Moo. & Rob. 112; but Alderson, B., said that it could not be supported unless it was put on the ground that