vening cause beyond the control of either party its performance has become impossible, I take the law to be as follows:—If a party has expressly contracted to do a lawful act, come what will—if, in other words, he has taken upon himself the risk of such a supervening cause—he is liable if it occurs, because by the very hypothesis he has contracted to be liable. But if he has not expressly so contracted, and from the nature of the contract it appears that the parties from the first must have known that its fulfilment would become impossible if such a supervening cause occurred, then, upon such a cause occurring both parties are excused from performance. In that case a condition is implied that if performance becomes impossible the contract shall not remain binding". [*Horlock* v. *Beal*, 1916, A.C. 486 at p. 525; 32 T.L.R. 251]. Or as the present Lord Chief Justice has put it:—" The law is well settled that where the performance of the contract becomes impossible by the cessation of the existence of the thing which is the subject-matter of the contract, the contract is to be construed as 'subject to an implied condition that the parties shall be excused in case, before breach, performance becomes impossible from the perishing of the thing without default of the contractor', [*per Blackburn J.* in *Taylor* v. *Caldwell*, 1813, 3 B. & S. at pp. 833, 834]. This principle is not confined to the cessation of the existence of the subject-matter of the

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Horlock v. Beal

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