

Now, however, it is definitely laid down that, if not altogether wrong, it is only in a very restricted sense that the ruling of the Chief Justice can be regarded as accurate. That the words are capable of being read too widely, and that they should receive some limitation, has, perhaps, long been obvious; for to say that a tenant may not be bound by the covenant to restore the premises in an improved condition, or in a way which may improve their value, and that he is not responsible for any effects caused by time or the elements, is to run counter to doctrines already spoken of as well-established. The curious point is that no such limitation seems to have been yet suggested.

But to lay down what the precise limitation should be is the real difficulty. At the root of the whole matter, perhaps, lies the principle that the covenant in question is one only to repair, and not (as it has been put) "to give a different thing" from that which the tenant took when he entered into it: (see *Lister v. Lane*, sup., per Lord Esher, M.R.). But it is now established by the latest decision of the Court of Appeal that "a different thing" in this connection means a different principal subject-matter of demise, and that it does not follow that he is called upon to give "a different thing" because he may have to replace or renew a structure only in its subordinate parts. To determine, however, what are its "subordinate parts" within the rule will, it is conceived, often be a matter giving rise to much trouble, and the whole question is, no doubt, to a great extent one of fact and of degree. Suppose, for instance, the demise includes fifty separate houses, would the decay from inherent defects of one of them entail liability for its reconstruction as relating only to a subordinate part of the whole subject-matter of the demise?

Before *Lurcott's* case there were three reported decisions—two of them also decisions of the Court of Appeal—on the subject of the effect of the covenant to repair on structures which have "lived their life," either through mere lapse of time, or from their inherent faultiness of construction, or both;