

that a man must perform his contract or pay damages where unforeseen circumstances render performance impossible. There seem to me two main grounds for escaping the consequences of the root principle. It may, however, be doubted whether logically there is not, indeed, one ground only. However, in the present state of the development of the law of contract it is better to recognize the two grounds for exception. The first is that there is some tacit condition for the continuance of circumstances rendering performance possible. The second is that the whole contract falls to the ground and is gone, in so far as any future performance is concerned.

The case of *Taylor v. Caldwell*, *supra*, is an instance of the application of and an authority for the proposition that where the Court finds that there is some implied or tacit condition that some state of circumstances rendering performance possible should continue to exist, then, if for some unforeseen reason that state of circumstances ceases to exist, the parties are absolved from the contract. Thus in *Appleby v. Myers*, 16 L.T. Rep. 69; L. Rep. 2 C.P. 651, the plaintiffs contracted to erect certain machinery in the defendant's building and to keep the machinery in repair for two years. When some of the work had been done the premises were destroyed by fire, so that the plaintiffs were not able to perform their contract. It was held that both parties were excused from any further performance of the contract. Again, in *Baily v. De Crespigny*, 19 L.T. Rep. 681; L. Rep. 4 Q.B. 180, a man covenanted not to build on certain land, and bound himself and his assigns (with notice) accordingly. The land was taken by a railway company under statutory powers and they built on the land, but the Court held that the covenantor was discharged from his contract. Again, in *Robinson v. Davison*, L. Rep. 6 Ex. 1, a lady was engaged to perform on the piano at a concert to be given by the plaintiff. Unfortunately when the day arrived she was ill and unable to perform, and this fact was held to discharge the contract on the ground that her ability to perform was a tacit condition.