

dition (and so keep them) than that in which he received them from the landlord.

There are, however, many traces of the doctrine that the covenant did not extend so far as to impose upon the tenant the duty of giving to the landlord the benefit of "new work generally," or that of replacing an old structure by a new one when the former had become worn out by mere process of time, or rendered useless for its purpose, after the lapse of an interval more or less long, owing to its inherent defects of construction. The classic reference on this topic is, of course, to the passage in which Chief Justice Tindal summed up the law to a jury at Nisi Prius in the case of *Gutteridge v. Munyard* (1834), 1 Moo. & R. 334; 7 Car. & P. 129,—a passage which, after being cited with approval again and again in the courts, and accepted by text-writers during several generations, has now been authoritatively pronounced to be at least misleading, if not incorrect.

The passage in question is to the effect that, where an old building is demised, it is not meant by a mere covenant to repair that it is "to be restored in a renewed form at the end of the term, or of greater value than it was at the commencement;" and that "what the natural operation of time flowing on effects, and all that the elements bring about in diminishing the value, constitute a loss which, so far as it results from time and nature, falls upon the landlord." Singularly enough, two reports of the summing-up have been preserved, and it is only in one of them, 1 Moo. & R. that the passage occurs textually, which has lately provoked so much comment, though no doubt the other is not very materially different; but, as has already been said, the statement of law which it embodies appears, in the long period which has elapsed since it was laid down, not only to have remained unchallenged, but to have been adopted as the basis of numerous judgments of high authority. It may suffice to refer for this purpose to *Lister v. Lane*, 69 L. T. Rep. 176; (1893), 2 Q.B. 212, where Lord Esher, M.R., in delivering the leading judgment of the Court of Appeal, transcribes and accepts it without qualification.