

parties have contracted with reference to some special custom. This second exception, however, is of scarcely any practical importance, and has left very faint traces upon this branch of the law of contracts (b).

Another form in which the above principle may be stated is this—that, in the letting of a house, there is no implied warranty as to its condition, and that, in the absence of a promise by the lessee to put the premises into a state of good repair, the lessee takes them as they stand (c). Even where the landlord contracts to put the demised premises into "good tenable repair," he is not bound to put them in such a state of repair as will fit them to any particular or specified purpose. Hence the tenant, if he takes possession without complaining of the insufficiency of the repairs actually executed, and without expressing a desire that more should be done, cannot recover from the landlord the money which he has been obliged to spend to adapt the premises to the requirements of his business (d).

This principle, being ultimately referable to the still broader one that the responsibility for the condition of property rests upon the party who has it in his possession and under his control, is not applicable where it is a question of the duty to repair a common staircase in a building divided into apartments, offices, etc., which are leased to different tenants. Under such circumstances there is not a demise of the staircase, but merely a grant of an easement in the use thereof, and, as the control of the subject-matter of the easement remains with the landlord, the case is deemed to be one

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half the expenses of repair," the lessor has a right to remove the pump whenever he pleases, even without any reasonable cause. *Rhodes v. Ballard* (1806) 7 East. 116.

(b) In *Whitfield v. Weedon* (1772) 2 Chit. R. 685, the declaration in an action against a tenant for years was for not using the premises in a husbandlike manner, contrary to his implied promise to do so. A plea was held bad, which was to the effect that the fences became out of repair by natural decay, and that there was not proper wood, (without specifying it), which defendant had a right to cut for repairing the fences, and that the plaintiff ought to have set out proper wood for the purpose of repairs, which plaintiff neglected to do, but averred no request that plaintiff should do so, nor any custom of the country.

In *Burrell v. Harrison* (1691) 2 Vern. 231, where specific performance was granted of an agreement for a lease of lands in a locality where the custom was for the lessors to make repairs, the court, upon its being shewn that the rent reserved was not the full value of the property, adjudged that the tenant should covenant to repair.

(c) *Chappell v. Gregory* (1863) 34 Beav. 250.

(d) *McClure v. Little* (1868) 19 L.T. 287.