

CHAPTER 14

SUBSEQUENT IMPOSSIBILITY AND FRUSTRATION

PARADINE v. JANE

King's Bench (1647) Aleyn 26; 82 E.R. 897

In debt the plaintiff declares upon a lease for years rendering rent at the four usual feasts; and for rent behind for three years, ending at the Feast of the Annunciation, 21 Car., brings his action; the defendant pleads, that a certain German prince, by name Prince Rupert, an alien born, enemy to the King and kingdom, had invaded the realm with an hostile army of men; and with the same force did enter upon the defendant's possession, and him expelled, and held out of possession from July 19, 18 Car., till the Feast of the Annunciation, 21 Car., whereby he could not take the profits; whereupon the plaintiff demurred, and the plea was resolved insufficient.

1. Because the defendant hath not answered to one quarter's rent.

2. He hath not averred that the army were all aliens, which shall not be intended, and he hath his remedy against them; and Bacon cited 33 H.6.1.e. where the gaoler in bar of an escape pleaded, that alien enemies broke the prison, etc., and exception taken to it, for that he ought to shew of what countrey they were, *viz.*, Scots, etc.

3. It was resolved, that the matter of the plea was insufficient; for though the whole army had been alien enemies, yet he ought to pay his rent. And this difference was taken, that where the law creates a duty or charge, and the party is disabled to perform it without any default in him, and hath no remedy over, there the law will excuse him. As in the case of waste, if a house be destroyed by tempest, or by enemies, the lessee is excused. Dyer 33.a. Inst.53.d.283.a.12 H.4.6. so of an escape. Co.4.84.b. 33H.6.1. So in 9E.3.16. a supersedeas was awarded to the justices, that they should not proceed in a cessavit upon a cesser during the war, but when the party by his own contract creates a duty or charge upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract. And therefore if the lessee covenant to repair a house, though it be burnt by lightning, or thrown down by enemies, yet he ought to repair it. Dyer 33.a.E.3.6.h. Now the rent is a duty created by the parties upon the reservation, and had there been a covenant to pay it, there had been no question but the lessee must have made it good, notwithstanding the interruption by enemies, for the law would not protect him beyond his own agreement, no more then [*sic*] in the case of reparations; this reservation then being a covenant in law, and whereupon an action of covenant hath been maintained (as Roll said) it is all one as if there had been an actual covenant. Another reason was added, that as the lessee is to have the advantage of casual profits, so he must run the hazard of casual losses, and not lay the whole burthen of them upon his lessor; and Dyer 56.6 was cited for this purpose, that though the land be surrounded, or gained by the sea, or made barren by wildfire, yet the lessor shall have his whole rent: and judgment was given for the plaintiff.

TAYLOR v. CALDWELL

Queen's Bench (1863) 3 B. & S. 826; 32 L.J.Q.B. 164; 8 L.T. 356; 11 W.R. 726; 2 Sm.L.C., 13th ed., 601; 122 E.R. 309

The plaintiffs claimed expenses, agreed at £58, necessarily incurred in preparation for a series of concerts at the defendants' Music Hall.