

Mr. Allan L. Dell, Deputy Comptroller (cont'd)

a replacing of parts that have been swept away or damaged by an unprecedented flood. The weight of authority, in our opinion, is to the contrary.

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The question is not controlled by common law responsibility for negligence, where there is no liability for an act of God, but is a matter that arises from contract. One may contract to maintain property even against abnormal or unprecedented hazards, and a contract imposing such obligation without reservations is binding".

In Ingle, Executor of Dermott vs. Jones, Book 17, Law.Ed. '63,

69 U.S.1, the Court said:

"The principle, which controlled the decision of the cases referred to, rests upon a solid foundation of reason and justice. It regards the sanctity of contracts. It requires parties to do what they have agreed to do. If unexpected impediments lie in the way, and a loss ensue, it leaves the loss where the contract places it. If the parties have made no provision for a dispensation, the rule of law gives none. It does not allow a contract fairly made to be annulled, and it does not permit to be interpolated what the parties themselves have not stipulated."

One of the cases cited by the Supreme Court is that of Paradine vs.

Jayne, Alleyn Select Cases 27, decided about 1670:

"The defendant there had taken a lease, covenanting to pay rent. He pleaded 'that a certain German Prince, by name Prince Rupert, an alien born, enemy to the King and Kingdom, had invaded the realm with a hostile army of men, and with the same force did enter upon the defendant's possession and him expelled, whereby he could not take the profits.' On demurrer, the court resolved 'that the matter of the plea was insufficient,' and that 'he ought to pay his rent.' 'And this difference,' says Alleyn, '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. . . . But where a 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.'"