

## A creature of contract: Force Majeure

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PRACTICES International Arbitration

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Prince Rupert of the Rhine was born in 1619. He was of German-British descent. He became a soldier as a youth and stuck with that career. Prince Rupert proved a capable cavalry commander, though (it is said) he was hampered by his youthful impatience and exuberance. During the English Civil War (1642-1651), he rose through the Royalist ranks and became a prominent commanding officer. Prince Rupert had his troops requisition lands to use them as camps or staging posts for the Royalist campaign. In doing so, Prince Rupert, probably unwittingly, made a great contribution to the development of the common law.

On 26 March 1647, in *Paradine v Jane* the Court of King's Bench gave judgment in a dispute concerning arrears of rent under a lease. The judgment is still quoted today as establishing that the English law of contract recognises no general defence of supervening impossibility: if a party agrees to do something that turns out to be impossible, they will be held to their bargain. In that venerable case, the tenant admitted that he owed the landlord three years' rent, but argued that he should not have to pay because Prince Rupert had forcibly expelled him from the land, aided by a foreign 'hostile army of men' who had then kept him out for the three years in question. That state of affairs had somewhat lessened the tenant's ability to enjoy the land. The landlord sued nonetheless, arguing that the tenant had no good defence to the claim.

One reason relied on by the landlord was that the tenant had failed to prove that the entire army had indeed consisted of aliens (in the sense of foreigners) and enemies of the king, absent evidence of what country each individual soldier hailed from. Prince Rupert was only half-German after all, and it could not be ruled out that some of the soldiers had been Scots. The point in issue appears to have been that if some of the invaders had been subjects of the Crown, then the tenant might have had some form of redress and could have sought to recover his loss (the rent due) from them in the English courts, whereas if he had been forcibly evicted by enemies of the Crown, he would be unable to do so, and (the tenant hoped) would not have to pay out in the first place.

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