TENANTS' RESPONSIBILITY FOR FIRE LOSS.

Enquiries which have lately come to THE CHRONICLE show that considerable interest exists, even outside Canada, in the legal decisions given in Montreal apropos of the question of tenants' responsibility for fire loss. The most interesting of these is that arising out of the case of the Gentlemen of St. Sulpice vs. Frothingham and Workman. The former, the owners of the building occupied by the latter, sued Frothingham & Workman for $12,063.42, the difference between the amount they received as owners of the building from the insurance companies and the actual loss by a fire. The trial judge decided that plaintiff had established that the fire "was brought about by the fact that one of defendants' employees, who was without experience, used a gasoline lamp to thaw out frozen pipes; that this lamp was dangerous, especially in the hands of an inexperienced person; that the lamp being near an open door and near the stairway, the current of air produced a violent discharge of the gas, that this was not a fortuitous event, but damage caused by imprudence, lack of oversight and negligence of the defendants' employees."

Frothingham & Workman appealed to the Court of Review on the ground of error in the above findings, and also submitted that the fire was due to an accident and that they should be absolved from liability in virtue of the clause in the lease which provided that the building should be returned to the owners in the same order and condition that it was received, "reasonable wear and tear and accidents by fire exempted."

The Court of Review, in November, 1916, maintained the judgment of the lower Court, stating that while under the appellants' lease the legal presumption that a tenant was responsible for a fire until he proved the contrary had been contracted away, nevertheless the tenant had to take all proper and reasonable precautions against fire. Appellants submitted they were exercising a right in thawing out the pipes when the fire broke out. "But," said the Court, "if in the exercise of that right, they resorted to a dangerous manner instead of a safe one, they were liable for the result. The use of a gasoline lamp is not a safe manner to thaw out a water pipe. Hot cloths or other appliances that are safe may be used. They were not used in this case, possibly because the method is so slow. Well, if a party wishes to expedite matters, the risk is his own."

This decision was not further appealed from.

In another case, Appleton vs. Reynolds, decided by the Montreal Superior Court in February, 1916, action was based on Article 1629 of the Civil Code of the province of Quebec, which provides "... When loss by fire occurs in the premises leased, there is a legal presumption in favor of the lessor that it was caused by the fault of the lessee, or of the person of whom he is responsible, and unless he proves the contrary he is responsible to the lessor for such loss." Defendant had been in the habit of putting hot cinders from the fire into a wooden box placed near the trellis work on the rear verandah, and at this place the fire started. Judgment was for the lessor.

PROSPECTS WHO CHANGED THEIR MINDS.

The New Brunswick Supreme Court has lately given a decision of interest to the life insurance fraternity in the case of Johnson (Maritime Provinces agent of the Mutual Life of N. Y.), vs. the Flewelling Manufacturing Company. An agent of the Mutual Life in New Brunswick got signed applications from three of the directors of the Flewelling company for $10,000 each to be paid in case of death to the company. On signature of these applications, the agent gave a receipt which included a provision that the insurance was in force from that date, provided that the application was accepted and approved by the company at its head office, and the policies issued. In event of non-acceptance or non-notification of acceptance within 30 days, all money paid was to be refunded. The agent took the note of the Flewelling company for the premium, payable to plaintiff, for $1,842.40 which he forwarded to plaintiff together with the applications.

A few days later applicants changed their minds and decided not to take the insurance. They wired the agent and head office of the Mutual Life accordingly. Later on the policies were issued, the New Brunswick agent tendered them to the applicants, but they were refused. Plaintiff then sued on the note, alleging that before he received the telegram withdrawing the application, he had discounted the note, placed the amount to the credit of the Mutual Life Insurance Company, and that when the note fell due he (Johnson) paid it from his own funds.

The Court decided that the Flewelling company was not liable for the note, on the ground that the applications for insurance were mere proposals which might be withdrawn at any time before acceptance. "An application for insurance in its ordinary form," said the Court, "is nothing more than a proposal, binding upon no one until it has been accepted and notice of its acceptance given to the applicants. I have never heard it disputed that the party making the application could not withdraw at any time before his proposal had been accepted and notice given."