

the preceding month of April, to which this of May was an answer, and says, no goods of his should remain in so dangerous a situation for the future, that is, by being stored in the river warehouse.

But those who maintain that the neglect of that direction makes the Defendant answerable in damages for the loss sustained, also maintain, nor can they escape from the necessity of maintaining, that whatever might have caused the loss, lightning, earthquake, fire or hurricane, which should have swept away half the stores in Montreal, the Defendant would equally have been answerable for. I say they cannot escape from this, because there is no proof, nor indeed any averment, certainly *no finding*, that the warehouse was unsafe, or unsuitable for the keeping of goods, or was in any way an unusual place for their custody.

On the contrary it is a fact in the cause (and so found) that the place was one usually so employed, and that the flood was one of unusual occurrence. The neglect therefore consisted in disobeying or not observing the direction.

It must follow, if that alone is sufficient to support the court and the judgment, that this non-feasance or neglect was of itself sufficient to cast on the Defendant, the responsibility for what has happened:—

It is not at all impossible that further proof might have been afforded to show, on the one hand how far the party was negligent, or on the other how far the custody was necessarily such as he gave to the goods. Very possibly there was no other storage for them, and had he not put them there he must have reshipped them to the bailor. Very possibly between the date of the letter and of the bailment, other dealings between the parties had taken place, either by the Defendant storing the Plaintiff's goods in the forbidden warehouse, or, by his carefully avoiding that course. Of all these things we are left uninformed. The result is that we are required to cast upon the Defendant the loss of the goods, because 18 months before, he had been told not to place them where he did place them. That deviation is not a ground sufficient to make him amenable. It is not itself sufficient to con-