

depends on the question of the actual ownership of the land on which the animal is harbored. He must be understood as referring to a man's premises, as they are understood in the colloquial and not the strictly legal sense, *i.e.*, the premises on which a man lives or carries on his business, though they may, in no strictly legal sense, be his. It could hardly be supposed that if a man leases land from another, for the purpose of keeping a menagerie, that he thereby imposes on his landlord a liability for any damage which his wild animals may do by escaping from the demised premises. Where a weekly tenant used the demised premises for the purposes of a brothel, and paid an increased rent to the landlord in consequence of the immoral use which he made of the premises, it was nevertheless held that the landlord was not liable for the act of the tenant, and the fact that he did choose to not give him notice to quit made no difference: *Regina v. Barrett*, 32 L.J.M.C., 36; *Regina v. Stannard*, 33 L.J.M.C., 61.

Not long ago there existed on one of the principal streets in Toronto a menagerie in which lions and tigers, and other ferocious animals, were kept caged up. Assuming that the premises were leased for the purpose, could it be held that the lessor was responsible for any damage which might have been done by any of these animals escaping? It is not uncommon, too, for persons to lease land to travelling circuses and menageries; do they, thereby, become responsible for any damage which the animals may do in case they break loose from the demised premises? We should think not, because the premises are, for the time being, the premises of the lessee, and he alone is answerable for what he may put thereon.

But does the case of a husband, living with his wife upon her premises, stand in any different position? Are not the wife's premises for the purpose of keeping anything he may choose to bring upon them, to be deemed the husband's premises? Can he be said to be in any different position than a tenant at sufferance? He is there lawfully by the consent of the owner, and, being there, he brings upon the premises a wild animal; if he were in sole possession, his wife could hardly be held responsible because she happened to be the rightful owner of the property, and it is somewhat difficult to see why a more extended liability can arise merely from the fact that she happens to be also living on the property and carrying on her own business there. The Divisional Court appears to have based the liability of the wife on the fact of her ownership of the property on which the bear was kept, coupled with the fact that she did not actively oppose her husband's keeping it there. But it seems open to doubt whether this is the proper test of liability in such cases. Suppose a person demised a house to a tenant, who used it as a boarding house, and the landlord boarded with the tenant; and a fellow boarder brought and kept a bear upon the premises; would the landlord and tenant be responsible for the bear's safe keeping? According to the decision of the Divisional Court it is difficult to see how both the landlord and tenant could escape liability under such circumstances, unless they actively resisted the retention of the animal upon the premises.

The observations of Lord Tenterden, C.J., which have been referred to, were made upon a motion in arrest of judgment, it being alleged in the declaration