Brétonnier, 2 Henrys, 537, justly remarks that, if the burden of proving that the fire was caused by the lessee's fault or negligence was on the lessor, the lessees would hardly ever be liable, because it would generally be impossible for him to get at the evidence, as in the house there is generally only the lessee and his family.

In Ancien Denizart, Vo. Incendie, a case of Aug. 22, 1743, is cited, where a proprietor who had himself lost his house by a fire was obliged to indemnify his neighbours to whose property the fire had extended, upon the only ground that the fire had originated in the defendant's house. This judgment, says Denizart, is based on the principle that, in the event of a fire, the *cas fortuit* is not presumed, if not proved.

In another case, *loc. cit.* (Quentin's) the defendant was condemned, because the fire had originated on his premises in an unknown manner, *sans qu'on pût savoir comment.*

I need not refer specially to the authorities under Art. 1733 C. N. They may easily, almost all, be found under Art. 1733, in Sirey's Codes Annotés.

The words, " accidents by fire excepted " in this lease mean fire *not by or through his fault.* So, that, for instance, if an incendiary had caused the fire, the lessee would not have become responsible. Or, if the fire had been caused by a coal oil lamp accidentally falling from anyone's hands, or, by a rocket or firecracker fired from the street, or anything of that kind, then on the proof of any such fact, the respondents would have been exonerated. But otherwise, as I have already remarked they are liable, the presumption is that they were in fault. They had to rebut that presumption by proving that they were not in fault, that is to say that the fire was caused by an accident, by a *vice de construction ou force majeure*, or by an incendiary. They do not prove an accident when they prove that the cause is unknown, or no negligence on their part. They, in fact, contend that the words " accidents by fire" mean "loss by fire excepted." That construction is untenable.

As to the defective chimney there is nothing to help the respondents. It is a very farfetched defence. If the chimney was really defective, they should have informed their landlord of it. Then there had been no fire for over 24 hours in any of the stoves communicating with it.

As to the extra premium clause, I cannot see that it can in any way be read as removing, in any degree, from the respondents the liability which, as tenants, the law imposed upon them. The appellants were not even bound to insure at all. See cases cited No. 58 in note under Art. 1733—2 Sirey, Codes Annotés, and Dalloz, 85-2-137.

The evidence in the case as to the hot ashes in a wooden barrel, shows the grossest negligence possible on the part of the respondents, and I concur fully with Mr. Justice Church when he says, in the Court of Appeal, (M. L. R., 3 Q. B., p. 345). " The plaintiff has " shown more than he was bound to do, for, " in my opinion, he has shown gross neglect " of the commonest prudence on the part of " his tenant, and has afforded satisfactory " presumptive evidence of the cause of the " fire in the absence of any countervailing " proof."

The absence of a watchman on the premises, considering the danger that the extreme heat required in the building involved, is also evidence of negligence. It is proved that the premises must have been on fire for a long time before any alarm was given, and that consequently the fire brigade's services were of no use to save the building. Now, had there been a watchman there, not only could the brigade have been called out in time to save the building, and perhaps, confine the damage to a few dollars, but the watchman himself it may be, would have checked the fire in its origin with a bucket of water. On this point I would refer to Merlin, Rep. Vo. Incendie, par. IX; 2 Arrêts de Louet, p. 29; 6 Marcadé, p. 464, and the following passage in note 6 Boileux, 77: " On " peut d'ailleurs, en certains cas, imputer au " locataire d'avoir laissé les lieux sans gar- " dien."

Moreover, the jurisprudence supports entirely the appellants.

" A tenant, in order to free himself from " the responsibility of the burning of the " leased premises, must show satisfactorily " that the fire was not caused by his fault or " the fault of those for whom he is answer-