The question arose as to the right of the respondent Elliott to delegate any duty resting upon him as to the heating of the premises, because it was clear that the appellant knew of the arrangement as to the heating system and the heating of the building that had been entered into with the Sinclair & Valentine Company, and must be taken to have assented to the delegation of the duty.

If the respondent Elliott owed any duty to the appellant, it was a duty, in the operation of the heating system, to take reasonable care to see that the heating appliances were and were kept in such a state of repair as that injury would not result to the occupants of the part of the building leased to the respondent Greenway from the operation of the heating system—in other words, not to be negligent in the performance of that duty.

The piping which, according to the contention of the appellant, was defective and out of repair, was situate in that part of the building leased to the respondent Greenway and sublet to the appellant. By lease from Elliott to Greenway, the latter covenanted with Elliott "to repair, reasonable wear and tear, lightning, and tempest only excepted;" and, although the appellant, being only a sublessee of part of the premises, did not incur any liability to Elliott on the covenant, he took subject to the obligation on the part of his immediate landlord, and had no right to look to Elliott to repair any part of the demised premises. He and his immediate landlord took the premises as they were; and, in such circumstances, the tenant is not entitled to claim from his landlord damages for loss sustained owing to the defective condition of the premises when they were let, or to any want of repair arising during the term. Therefore, if the heating appliances in the premises demised to Greenway were in bad condition or out of repair or became so during the term, no liability attached to the landlord to put them in proper condition or to repair them.

No negligence on the part of Elliott was proved. The proximate cause of the bursting of the pipes was the freezing, after the heating plant had been shut down, of water formed by the condensation of the steam which had lodged in a slight sag or depression in the pipes. This sag had existed from the time when the pipes had been first attached to the wall of the building, which was 11 years before the trial. The heating system had been operated during all those years without anything untoward happening, and nothing had occurred that shewed that any trouble or danger was to be apprehended from the existence of the sag; and it was impossible, on that state of facts, to find that Elliott was negligent because he did not take steps to have the sag taken out. Neither Greenway nor the appellant appeared to have anticipated danger from the existence of the sag; and, if they did not anticipate it, negligence should not be attributed to Elliott because he did not.