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RESPONSIBILITY OF TENANTS.

The Supreme Court of Canada, on the 18th March last, dismissed the appeal taken by Evans in the case of *Skelton et al. & Evans*, from the judgment of the Court of Queen's Bench at Montreal, reported in M. L. R., 3 Q. B. 325-347. The case was of the utmost importance to landlords and tenants—including, practically, the entire community; and the difficulty of arriving at a decision may be inferred from the fact that we find—taking the three Courts through which the case passed—four judges holding one opinion and six coming to an opposite conclusion. The decision of Mr. Justice Doherty in the Superior Court, was reversed by the majority of the Court of Queen's Bench, consisting of Chief Justice Dorion and Justices Tessier and Cross, the dissentient judge being Mr. Justice Church; and the latter decision has been affirmed by Justices Strong, Fournier and Gwynne in the Supreme Court, the dissentient Justices being Chief Justice Ritchie and Mr. Justice Taschereau. The law is now settled, unless it be overruled hereafter by the Judicial Committee of the Privy Council, that where the lease contains a clause stipulating that the lessee shall deliver up the premises at the expiration of the lease in as good order as the same shall be found in at the commencement of the lease, "*accidents by fire excepted*," the burden of proving that the fire was not an accident, but was caused by negligence or fault of the tenant, falls upon the landlord who seeks to recover from the tenant the damage caused by the fire. In other words, the insertion of such a clause in the lease is a waiver on the part of the lessor of the presumption established in his favor by Article 1629 of the Civil Code. It may be observed that this judgment overrules *De Sola* v. *Stephens*, 7 Leg. News, 172, where the lease contained a similar clause.

We append the opinions of the Supreme Court, with the exception of that delivered by Mr. Justice Strong (on the side of the majority), which has not been received:—

EVANS v. SKELTON.

TASCHEREAU, J. (*diss.*):—

I would allow this appeal.

The law of the case is clear. Art. 1053 C.C. enacts that "Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill."

Art. 1627. "The lessee is responsible for injuries and loss which happen to the thing leased during his enjoyment of it; unless he proves that he is without fault."

Art. 1628. "He is also answerable for the injuries and losses which happen from the acts of persons of his family or of his sub-tenants."

Art. 1629. "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 persons for whom he is responsible; and unless he proves the contrary, he is answerable to the lessor for such loss."

The fire, therefore, is presumed to have been caused by the respondent's fault.

The words "accidents by fire excepted" in this lease have not the effect of destroying this presumption of law that the fire was caused by the lessee's fault. On him rested the onus to plead and to prove that the fire was caused by an accident. This proof he has failed to make. The contention, that I remark in the factum, that the word *accident* may be defined to be an event which is not the result of intention, is untenable. Nothing but a criminal and wilful setting on fire of these premises would make this lessee liable according to this contention. Such is not the lease. The word "fault" in Arts. 1627 and 1629 C. C. means, as in Art. 1053, not only a positive act, but also acts of imprudence or negligence.

The respondents seem to think that if they have proved that the cause of the fire is unknown, they have proved that it was an accidental fire. But the law is exactly to the contrary. If the cause of the fire is unknown, the presumption is that it was due to the lessee's fault. 2 Bourjon, p. 47; Pothier, Louage, 194; Domat, Lois Civiles, p. 181; Dalloz, 85. 2. 14; Dalloz, 81. 2. 111;