

which they comprehend very imperfectly. One of their fields of operation is making fussy suggestions to different members of the Grand Jury in order to air some hobby of their own. Nothing is more calculated to destroy the moral influence of the Grand Jury than would be the practice of dealing with matters which in no way concern them. Now, gentlemen, it is very specially your duty to bring to the knowledge of the Court any abuse which it is within the power of the Court to correct; but this you should do on mature consideration, and on your own responsibility, and not at the simple suggestion of others. If any one approaches you with a complaint about a matter you cannot enquire of personally, let him make an affidavit of circumstances, and return it forthwith, so that it may be inquired of immediately and justice be done. You are also authorised to visit the common gaol of the district, so that you may be able to assure the Court that it is kept in good order and under proper discipline, and that no one is unjustly detained there. On the other hand, it is not your duty to suggest to the Court what punishments the Court should inflict. These suggestions are generally the result of exaggeration and passion frequently produced by healthy prejudices, but not for that reason less to be avoided in the administration of justice."

### NOTES OF CASES.

#### COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 6, 1885.

Before DORION, C.J., RAMSAY, TESSIER, CROSS, and BABY, JJ.

DUFOUR, Appellant, & ROY, Respondent.

Landlord and Tenant—C. C. 1054—Responsibility for acts of tenant.

- Held:**—1. That a tenant is not under the control of his landlord within the meaning of 1054 C. C., so as to make the landlord responsible for the negligence of the tenant in the use of the premises leased to him.
2. That a proprietor is not responsible for loss occasioned by sparks from the furnace and chimney of a tannery erected and leased by him, where there is no defect in the construction of the furnace, etc.

This was an action of damages for setting fire to the barn and farm buildings of the appellant owing to the negligence of the defendants. The negligence consisted, it is alleged, in the construction and use of the furnace and chimney of a factory for the manufacture of leather. The declaration is in these words: "*Que la construction de la dite fournaise et du tuyau qui la surmonte était tellement dangereuse surtout avec le combustible employé, que lorsqu'elle était en fonctionnement ils mettaient le feu aux bâtisses environnantes.*" The defendants, respondent and one Turgeon, were sued without any distinction as having constructed and put in operation this machinery. It was also alleged in the declaration that the factory was built nearer the land of the plaintiff than was permitted by the concession to Roy by appellant, it being stipulated in the title of the former that he should put up no building, where he, in fact, built, for fear of fire.

The defendants severed in their defence. Roy pleaded that he was not working the tannery in question at the time, but had leased it to the other defendant Turgeon. By the general issue he denied any responsibility.

Turgeon pleaded that he was tenant; that he had done nothing to augment the risk, and that he had used special diligence and care in the operations.

By the judgment of the Superior Court, the tenant was condemned to pay \$415 damages, and the action against the proprietor was dismissed, on the ground that the fire was not due to any fault of construction but only to the misuse by the tenant. From this judgment, as regards the proprietor, the plaintiff appealed.

The Court was of opinion that there was no evidence to establish that the respondent Roy carried on the works, and that Turgeon was his *préposé*. The relation between them appeared by the lease filed to have been that of landlord and tenant from the 12th Sept., 1881—eight months before the fire. There was also the testimony of Jules Dufour, nephew of appellant, and his witness, who says he was employed by Turgeon. There was no evidence of *vice de construction* to alter the ordinary rule of responsibility,