HIGH COURT OF JUSTICE.

DIVISIONAL COURT. JUNE 15TH, 1911.

THIBODEAU v. CHEFF.

Negligence—Parent and Child—Fire Caused by Act of Imbecile Son—Liability of Parent—Mischievous Propensity—Scienter—Tort of Minor.

Appeal by the defendant from the judgment of BRITTON, J., in an action for damages, tried at Chatham with a jury, ante 1035.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

M. Wilson, K.C., for the defendant.

O. L. Lewis, K.C., for the plaintiff.

BOYD, C.:—For injuries committed by an infant in the course of his employment as a servant by his father, the latter is responsible as in other cases of master and servant. But the rule of common law is that a parent is not, because of his family relationship, legally responsible to answer in damage for the torts of his infant child. Upon this rule exceptions are engrafted that where the father has knowledge of the wrongdoing and consents to it, where he directs it, where he sanctions it, where he ratifies it or participates in the fruits of it, he becomes in effect a party to it, and as such is liable to the injured person. That is the result of the American decisions upon which Mr. Schouler frames the statement of the law adopted by the Ontario Court of Appeal in File v. Unger, 27 A.R. 468.

A subsequent American author puts the same conclusion more briefly thus: "A parent may be liable for his child's torts committed with his knowledge and acquiescence": Tiffany on Domestic Relations, p. 239, sec. 120 (1896).

In the case under consideration the father did not see the act done and consent to it. Nor did he direct the doing of it, nor did he share in any benefit, on the contrary, he shared in the destruction caused by it; so that the precise question is—did he so acquiesce with knowledge that he has made himself accountable to the plaintiff?

The correct doctrine as to liability in the present case is in my opinion stated in the article on Parent and Child in 29