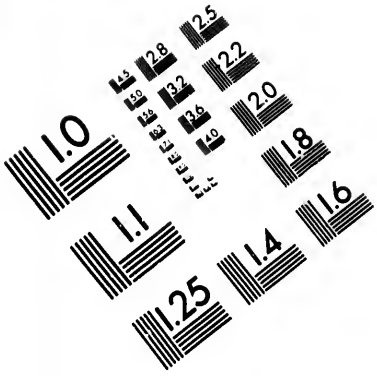

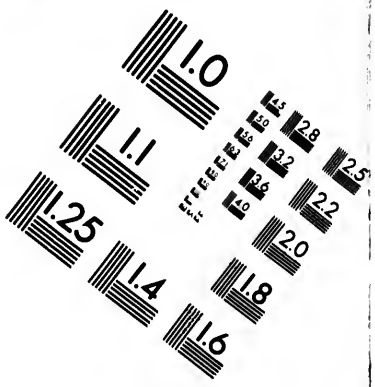

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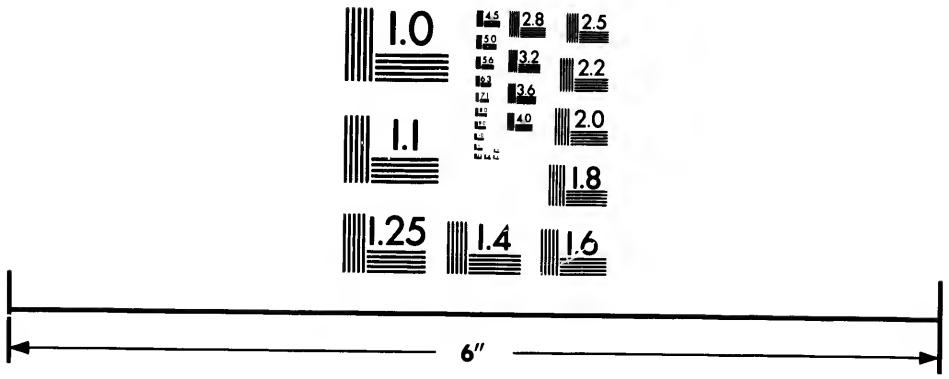

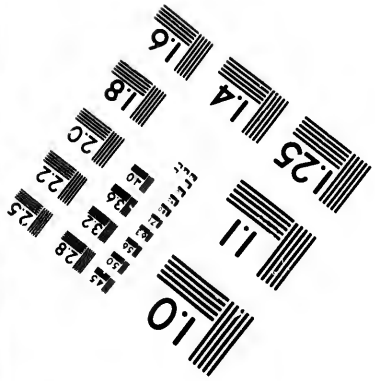

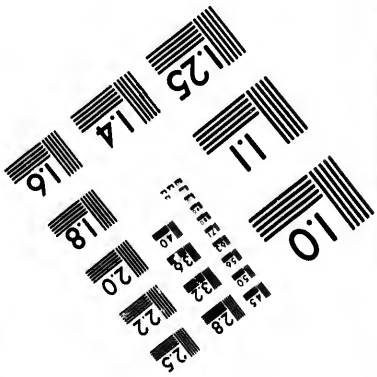

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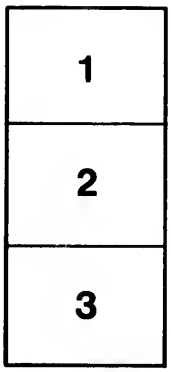

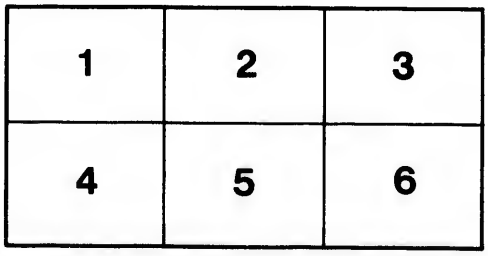

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MEMORIAL

IN

SUPPORT OF THE CLAIM

OF

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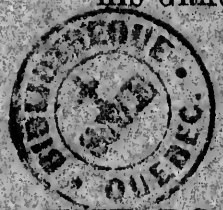

AGAINST

THE BOARD OF PUBLIC WORKS.

QUEBEC:
PRINTED BY LOVELL AND LAMOUREUX, AT THEIR STEAM PRINTING ESTABLISHMENT, MOUNTAIN STREET.

1855.

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PRINTED BY

MEMORIAL

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MOUNTAIN STREET.

1855.

MEMORIAL

In support of the claim of His Grace the Archbishop of Quebec, against the Board of Public Works.

Facta.

On the 24th day of March, 1854, the Archbishop of Quebec, by a deed of lease executed before Mtre. Petitclerc and his colleague, Notaries, leased to the Honorable Jean Chabot, acting in his capacity of Commissioner of Public Works, for and in the name of Her Majesty Queen Victoria, certain stories of a building then in course of erection, as described in the said lease, for the use of the Legislature of this Province, subject to certain charges and conditions set forth in the said lease.

In conformity with the terms of this lease, the Board of Public Works took possession of the part of the building leased, and lost no time in causing the necessary works to be carried on, to adapt it to the purposes to which it was destined.

On the 3rd of May following, about 9 o'clock in the evening, a fire occurred in the said building, in the part leased, and in the room described in the plan as the *Speaker's room*, in the third story. In spite of the efforts made upon that occasion, the entire building was destroyed by the fire, leaving nothing but the walls, fissured and considerably damaged, and in great part unfitted to serve in the rebuilding of the edifice.

The Government having appointed a commission to enquire into the origin of the fire, composed of Messrs. D. Ross and R. S. M. Bouchette, the former, Solicitor General for Lower Canada, and the latter, Inspector of Customs, these two gentlemen made a report which has been printed and published and forms part of the public documents.

This report is followed by an appendix, containing the information upon oath, taken before the Commissioners.

An important question here presents itself. Is the Archbishop entitled to an indemnity in consequence of the destruction of the building by fire, while in possession of the Government by virtue of the deed of lease above mentioned?

Is this indemnity due to him under the laws of the Country, or merely as a matter of justice and equity?

1. *Question.*—For the solution of this enquiry let us turn over to the principles of law which govern the respective obligations of lessors and lessees. What are these principles? The following are those laid down by the most respected authors who have written upon the ancient French law regulating the contract of lease:—

Pothier,—Contrat de louage, No. 193, thus defines the obligations of the lessee: "The lessee is liable, as regards the preservation of the object leased, not only "for his own fault but for that of his domestics, servants, and workmen employed "by him at his house," &c.

And No. 194, "As fires generally occur through the negligence of those "residing in the houses, the destruction by fire of a house leased is easily presumed "to have resulted from the fault of the lessee or that of his domestics, unless he "prove that the fire occurred in consequence of an accident, or that it was com- "municated from a neighbouring house."

And No. 195, "To make the lessee liable for the loss or damage of the thing "leased, it is not absolutely necessary that such loss or damage be caused by his "fault, it is sufficient that it may have occurred through his fault."

Domat, Book 2nd Title 8, "Fires hardly ever happen otherwise than "through some fault arising at least from imprudence or from negligence, and they "are liable for the damage through whose fault, however trivial, a fire occurs."

Guyot, Repertoire de jurisprudence, Verbo *Incendie*, page 121. The author, after citing the Roman law as to the responsibility of the lessee in case of fire, says: "The French jurisprudence on this point appears more severe than the Roman law." He cites Chopin and several decrees (*arrêts*) of the Parliament of Paris, of the 25th February, 1582, of the 3rd December, 1605, of the 3rd March, 1663, condemning lessees to indemnify proprietors of houses destroyed by fire, the result of the fault or of the imprudence of the said lessees or those employed by them.

And at page 123, 1st column, he adds: "One of the most controverted questions arising out of the subject of fires, is to determine whether, in cases of doubt as to the origin of a fire in a house, the defendant in an action of damages is bound to prove that the fire occurred without one of the faults for which he has to answer."

The author, at page 121, first column, establishes with all other authors, that in case of fire, the lessee, (if he is not bound by contract or by *quasi* contract for the preservation of the property burned, that is to say, if the lessee has not specially bound himself by the terms of the lease to the preservation of the property burned or by *quasi* contract,) is answerable even for the *slightest* fault.

The lease in question does not contain any clause with respect to the preservation of the edifice leased, against the dangers of fire, and no *quasi* contract can subsequently be presumed with that intent. This distinction, moreover, by which the party who is especially bound by contract to the preservation of a thing, is less responsible than he who has not bound himself for the preservation of that thing, has been rejected by the more recent authors as contrary to equity, justice, and sound reason.

Several authors have been of opinion, that in this case the defendant should not be condemned, and these authors he cites; but he adds: "Vinnius, Fachini, Asande, Kinskot, d'Argentré, LeBrun, Balde, Lablerus, Deispesses, Basnage, Rousseau de Lacombe, Pothier, in a word, the majority of the authors are of opinion that the burthen lies upon the defendant in an action of damages, to prove that neither he nor his servants are at fault, and that in the event of his failing to prove that the fire was the result of accident he should be cast in damages. This opinion is confirmed by the greater number of the *arrêts* had on the subject. *Arrêt* of the Parliament of Paris, 3rd December, 1605,—26th February, 1614,—29th March, 1756,—3rd April, 1777. Of the Parliament of Grenoble, 30th January, 1648,—26th February, 1614. Parliament of Rouen, 11th December, 1657. "More respectable authorities" says Guyot, cannot be cited, to establish, that in doubtful cases, it is the duty of the defendant in an action of damages to prove that the fault was not his: but authorities are not arguments; let us examine upon what this opinion is based, and endeavour to reply to the objections of its opponents.

"The law 3, paragraph 1, Digest, *De officio præfecti vigilum*, declares that *plerumque incendia culpâ fiunt inhabitantium.* The law 11. Digest, *De periculo et commodo rei venditæ*, is still more decisive, it declares that *incendium sine culpâ fieri non potest.* Here then is a presumption in law, that all fires which occur in houses are to be traced to the imprudence of their inhabitants; and inasmuch as in accordance with the principles cited above, the master of the house or the head of the family, who is bound to watch over the preservation of the house, is answerable for the faults committed by all those residing with him, without any distinction, there can be no difficulty in saying, that *it is his duty to*

prove that neither he nor those for whom he is responsible are to blame, and that failing such proof he should be cast in damages. To this decisive reasoning, d'Argentré adds another, well worthy of consideration—his remarks are valuable; they are as follows: "It is plain that the lessee uses as his own property the "premises leased, that the proprietor of those premises cannot then go and ex- "amine into what the lessee does on the premises, what use he makes of them, "and whether or not the servants he employs are careful and attentive. What "reason then can prevent him from exacting from the lessee an obligation "to take care that every thing be properly done, and that in so doing he should "every where exercise the vigilant attention of a careful head of a family." May not the tenant or proprietor, with all reason assert: "*If you had not leased those premises they would still be in existence*: in leasing them I have been prevented from bestowing my own care upon them. I have been unable to prevent the conflagration which has been caused either by you or by your employees, for it could have arisen from no other cause."

"If it were not so," adds Mr. Dulaure in his *Arrêts de Malines* "lessees would never be responsible for the destruction by fire of the houses in their occupation, for it would be very difficult, not to say impossible, to prove that the fire arose through their fault; for in the house there are, generally speaking, only *the tenant, his wife, children and servants, &c., who would take good care not to tell the truth.*"

Guyot at page 124, column 2, and the following, quotes the objections of Voët and others to the doctrine we have just laid down and successfully meets each one of them. See also on this subject *Merlin*, Répertoire, Verbo *Incendie*; *Rousseau de la Combe*, verbo *Incendie*, No. 2. "When the fire has been the result of a superior force, or of an accident, that is to say, of a force not to be resisted by human power, no one can be answerable for it." *But accident is never presumed*, and it rests with the party alleging it *to prove it in the clearest manner.*

No. 3. "With respect to a fire caused through imprudence or negligence, the fault may be gross, slight or very slight.

"The gross fault (*culpa gravis*) exists *when a person has failed to bestow upon the property of another, the care which every one, however wanting in diligence*, is in the habit of bestowing upon his own property. In case of gross fault, the tenant is liable towards the proprietor.

No. 4. "The slight fault (*culpa levis*) is the omission of the care which the diligent and attentive head of a family usually takes of his own business. *In all contracts* (except in those of deposit and precarious possession) a party is answerable for the slight fault; thus in the case of a fire, the tenant is liable for the fault towards the proprietor."

No. 6. "*In case of uncertainty* as to the origin of the fire, with respect to the "action of the proprietor against the tenant, the slight fault is presumed in the "tenant *quia plerumque incendia fiunt culpâ inhabitantium*, unless the tenant prove "that the fire happened by accident."

Ancien Dénizart, Vo. Incendie, No. 21, "In the case of the destruction of a house by fire, the law maintains that in general the presumption is against the tenant."

Jussieu de Montluel. Instruction facile sur les conventions. "Is the tenant "(enquires the author at page 190, edition of 1766) responsible for the damages "caused by fire, when the fire originated in his house? It seems to me that this "misfortune ought to be placed in the category of unforeseen circumstances, and it "is hard to ruin a tenant by obliging him to repair accidents caused by a single "spark escaping without his notice. Nevertheless, upon examination of the "principles of natural Law, he must be answerable for it; the fire is not com- "municated from the fire-place to the furniture or combustible matters, but through "the negligence and carelessness of the person in the apartment; this accident "never occurs without fault on the part of some one. By the principles of the

Roman Law of lease, the lessee is liable for negligence. If we follow the disposition of the *arrêts* they are unfavorable to the lessee.....It is the duty of the lessee to prove that the fire originated in a defect of the chimney, or was the result of a conflagration in the neighbourhood; failing such proof he is responsible.

Such were the principles laid down by the ancient French Law until the promulgation of the Code Napoleon, which has sanctioned anew this doctrine founded alike upon equity and justice.

Let us examine the opinions of commentators on the new French Law.

Toullier, vol. XI, No. 160, after having cited the ancient jurisprudence, thus expresses himself: "But after all how is the fault to be proved when *the cause of the fire* is uncertain, *when it is not known how the fire originated?*

"Here the law comes to the assistance of those who have suffered damages, "and who are, as generally happens, deprived of the evidence which they have "been unable to procure. Long observation, extending over ages past, has "proved that conflagrations hardly ever occur, but through the fault or imprudence "of those dwelling in the house. The Roman Law has established this observa-"tion as a legal presumption." (The author here cites the text of the Roman Law above quoted.)

"Here then is a presumption in Law, that every fire results from the fault of the inhabitants of the house, and they, consequently are answerable for it. It is possible, however, that the fault may not be theirs, that the fire has been caused by accident; but this less frequently happens, it is the exception, and consequently the burthen of proof lies upon the party alleging it.

"Besides the long course of observation which has established this presumption, it is manifestly founded on reason. Without this presumption, responsibility for faults so frequent and so dangerous as regards fires, would become null; for it would be a task of great difficulty, not to say impossibility, to prove that the house took fire through the fault of those dwelling in it .....

"This wise presumption, then, was admitted in France at a very early period, not only in the provinces governed by the Roman Law, but also in those in which the customary law obtained.

The Code, therefore, article 1733, has constituted it a legal presumption. "The tenant," says this article, "is answerable in case of fire, unless he can prove that the fire happened by accident, or superior force, or by faulty construction, or that the fire was communicated from a neighbouring house."

As may be seen, this article is nothing more than a precise reproduction of the ancient jurisprudence on this subject.

"The natural consequence of this authority (continues Toullier, No. 161), is not only that the proprietor of the house destroyed by fire has no proof to shew in order to establish the responsibility of the lessee whom the law presumes at fault, but further, that the lessee cannot exculpate himself by the plea that he has committed but a slight fault, were it only one of omission. The Code only permits him to prove one of these four facts: accident, superior force, faulty construction, or lastly, that the fire was communicated from a neighbouring house."

Duranton, vol. 17,—*Louage*, No. 104. "The tenant is answerable for the destruction by fire, unless he prove that the fire was the result of accident, superior force, faulty construction, or that it was communicated from a neighbouring house. There exists, moreover, the presumption that it is through his fault or that of the persons in his house that the fire has occurred, *quia*, says the Roman Law, *plerumque incendia fiunt culpâ inhabitantium.* Besides, it is a regulation affecting the general interest, to compel tenants to greater vigilance, for the proprietor cannot watch over his property, it being no longer under his immediate control.

"Thus, with respect to destruction by fire, the tenant is answerable even for the slightest fault; for he only ceases to be answerable upon proving that the fire was occasioned by accident, superior force, faulty construction, or that it was communicated from a neighbouring house.

Troplong, *Louage*, No. 363. After having cited the ancient jurisprudence with respect to the responsibility of the lessee in case of fire, the author continues as follows:

"This point cleared up, another difficulty presented itself in practice. The property leased having been consumed or damaged, would it be the duty of the lessor to prove that the fire occurred through the fault of the lessee and not by superior force? or, would it be necessary that the lessee who alleges superior force to exonerate himself from the obligation of returning the thing leased, should prove that the fire was not occasioned by negligence?"

After giving the opinion of the authors who have written on this subject, Troplong says, that the provisions of the Roman Law which compel the lessee to prove that the fire has been caused by superior force, were adopted by the Parliaments of France, and adds: "What would have been the result of a departure from the sage combinations of the Roman Law? The lessor would always have remained without any possible recourse against the lessee. Is he at liberty to watch over the domestic affairs of his tenant, and to be a spy upon his proceedings? Does not the description of alienation contained in the lease close the door of the house upon him; does it not prevent his meddling with the family of the tenant, and prying into what is going on in his house?"

The authorities above cited establish indisputably that the principles of the Roman Law, with respect to damages occasioned by fire, were the common Law of France on this subject.

Such was the French jurisprudence when the edict of 1663 introduced the Laws and Ordinances of the Kingdom into New France. All jurists, moreover, are aware that unde the system of jurisprudence which obtained before the Code Napoleon, all matters which were not decided by the customs or by the Edicts of the Kings, were decided and adjudicated upon in accordance with the provisions of the Roman Laws. Thus, contracts of whatever nature, were regulated by the Roman Laws.

No man of any legal experience will venture to deny, that that part of the jurisprudence formed part of that extended to New France, and that it formed part of the jurisprudence received in the different Parliaments of the Kingdom, and more particularly in the Parliament and in the *Vicomté* and *Prévoté* of Paris.

But it may perhaps be objected that as far as we know, this part of the jurisprudence has never been adopted in Canada, and it does not appear that an action has ever been brought for damages, the result of a conflagration. But supposing this to be the case, would it follow that this jurisprudence is not binding in Lower Canada. Were this a logical conclusion, how many Laws in respect of which actions have never been brought, how many Acts of Parliament in respect of which no judicial proceeding has ever been had, would be found to be expunged from our system of civil Law. Are inaction, apathy, indifference, or the non-usage or ignorance of a right sufficient absolutely to abrogate jurisprudence either in whole or in part?

It was formerly a legal maxim that non-usage sufficed to abrogate a law, but thanks to the progress, slow though it be, of a sound philosophy in jurisprudence, this doctrine has been repudiated as incompatible with the power and attributes of the legislative authority in Countries governed by the representative system. "*It is now an established principle, that law can only be abrogated by law, that it loses its binding power neither by a contrary usage nor by non-usage, nor by the cessation of the circumstances in view of which it had been framed. This is a re-*

turn to the maxim of the Roman Law, Code L. 2., quæ sit longa consuetudo, thus laid down:—*Consuetudines ususque longævi non vilis auctoritas est, verum non usque adeo sui valitura momento ut aut rationem vincat aut legem.* "(ZACHARIÆ, *cours de droit Français, vol. 1st, page* 38.)

BLONDEAU, in his excellent work *Introduction à l'étude du droit,* thus writes: "In a well organized society there can be but one legislative power; if two existed, either on the one hand their wills would agree one with the other, and in such case one of these powers would be useless; or on the other hand one would be contrary to the other, and in that case citizens would not know which to obey, and anarchy would be the result. When, therefore, we find in a nation one well defined legislative power, we are immediately led to decide that no other is in existence. But, says the jurisconsult Julien, (L. 32, paragraph 1, *de legibus*), if it be admitted that the legislative power resides in the people, why should we not consider as law the general usages resulting from the will of all? I answer in the first place that even in States in which all the subjects contribute to the enacting of the laws, the will of the majority is only considered law in so far as certain formalities have been followed by them and their suffrages collected in a certain manner. I will then ask, how it will be possible to obtain otherwise than by a solemn declaration, proof that the majority will acknowledge such faculty as law, or constitute such a proceeding into an obligation. It is plain that the judicial decisions will not be able to afford it; judgments which have been rendered, clearly prove that the tribunals are in the habit of overlooking that right, or of considering as ordained or forbidden, a proceeding which by the laws has been left unfettered; but unquestionably they would be unable to prove that the opinion of the tribunals would coincide with that of the whole or at all events of the majority of the citizens; on the contrary, every judgment necessarily supposes the existence of a partizan of the contrary opinion, for every partizan of the opinion adopted by the judge. Enquiries, then, must be instituted; but unless it be admitted that each portion of the national territory may end by adopting its own particular law, it is evident that these enquiries should extend over the entire extent of the territory. How then shall the territory be divided for such purposes? Who shall be admitted to give the information? By whom shall the depositions be received? If all the citizens are not heard, those at least must be heard who are deemed to be, as regards the exercise of political powers, the *representatives of their fellow citizens;* and then to establish a custom would be the same thing as to *make a law;* only if it is desired that a custom *should have had the force of law prior to its having been acknowledged,* it will be a *retroactive* law, a law which will punish us for not having put it in force at a period at which we were permitted to ignore it."

But those in favor of the abrogation by non-usage, of the laws and *arrêts* hereinabove cited, err in fact; for not only does this non-usage not exist, but moreover the tribunals of the Country have invariably followed the French jurisprudence in all analogous cases in which the question of responsibility for damages, the result of a fire, has presented itself. The most important case in which this question was decided in the affirmative, even in Her Majesty's Privy Council, is the cause of the *Quebec Assurance Company vs. Molson and St. Louis,* which may be found in the *Law Reports of Lower Canada,* vol. 1st, page 222.

The following is the history of the case:—

In June, 1843, a steamboat belonging to Molson and St. Louis, by a spark escaping from its funnel, set fire to certain buildings near the Church at Boucherville; from these buildings the flames communicated to the Church and sacristy of the Parish, which were completely destroyed by the flames. The sacristy and Church were insured in the Quebec Fire Assurance Company, who paid the amount of insurance effected, and at the same time caused themselves to be subrogated in all the rights of the *Fabrique* of Boucherville. The Company having brought an action of damages against Molson and St. Louis by virtue of this sub

rogation, the Court of Queen's Bench, composed of Judges Rolland, Gale and Day, condemned the defendants to the payment of damages, *inasmuch*, says the judgment, *as it was by the fault and negligence of the servants of the defendants*, that the destruction of the said church and its dependencies took place.

The defendants appealed from this judgment to the Court of Appeals, and neither in their reasons of appeal nor in their *factums* did they deny the right of claiming damages on account of fire; they contested specially: 1st. the right of the *Quebec Assurançe Company* to be subrogated in the claims of the *Fabrique* of Boucherville; 2nd. that the payment made by the Company created no subrogation either legal or *pleno jure*. Numerous authorities were cited on both sides. The Company cited all the authorities above referred to, besides many others which may be found at page 227 of the Report, all tending to establish the responsibility of the defendants. The Court of Appeals reversed the Judgment of the Court below upon the principle that the Company had no action in law, either by virtue of the Contract of Assurance or by virtue of the subrogation in the claims of the *Fabrique* of Boucherville.

The Quebec Insurance Company appealed in turn to Her Majesty's Privy Council, who confirmed the judgment of the Court of Queen's Bench upon the following principles; 1st. that Molson and St. Louis *were responsible for the fault and negligence of their servants who had caused the destruction of the Church by fire*; 2d. that the Company had in law a good and sufficient ground of action.

The principle of responsibility for the damages caused by fire, sanctioned by the highest Court whose authority we acknowledge, is that laid down by the Roman Law and by French jurisprudence, as shown by the authors above cited, of which any one may be plainly convinced by examination of the authorities cited by the *Quebec Assurance Company* in support of their claim.

The only difference is, that the law, in cases analogous to that of the fire of the Church at Boucherville, requires that the plaintiff should prove that the fire was the result of the fault or negligence of the defendants; and that in the case of a lease, it always presumes that the fire has been caused by fault, negligence, or want of precaution on the part of the tenant; and that the tenant has to prove that the fire was the result of accident, or of a superior force against which human power and precaution could not prevail, and that failing such proofs he must be condemned in damages.

Having established the law and jurisprudence of the tribunals of the country with reference to this question, let us now endeavour to ascertain whether the Department of Public Works, prior to the fire in question, did take all the precaution and care which a prudent man is bound to bestow upon the preservation of his own property, or in other words, were the Board of Public Works, by their employees, during the period of their possession of the building leased, guilty of fault or negligence by commission or omission? Have they alleged, have they proved that the fire in question was the result of superior force, of accident or of faulty construction, or that the fire was communicated from a neighbouring house?

We can only offer in answer to these enquiries the information contained in the report of the Commissioners appointed by the Executive, to enquire into the origin of this catastrophe, which report has been printed and published. The mere perusal of the report of the Commissioners and of the evidence annexed, suffices to establish, 1st. That after the execution of the lease the Board of Public Works undertook, in accordance with the terms of the said lease, the direction of the works to be executed about the said leased premises! that they caused to be transported thither an immense quantity of the timber necessary for the works; 2nd. That a considerable number of workmen of every description were employed by the Board of Public Works. 3rd. That the floors of nearly all the apartments had been for a long time previous to, and were, on the night

of the fire, covered with chips and shavings in considerable quantities. 4th. That it was quite possible during the night to obtain admission into the premises by the vents of the cellars, closed only with loose plank, which could easily be displaced from outside. 5th. That the Board of Public Works had caused to be made in each story in the south-west wall which bounded the premises, openings which remained altogether unclosed; 6th. That there was every facility for gaining admittance from without through these cellar vents and openings into the body of the building. 7th. That upon the night of the fire in question, when the six o'clock inspection was made, a small door constructed in a large gate opening upon St. Olivier Street, in the main body of the edifice, was closed inside; that the Nuns found this gate unlocked, that they locked it again at the time of their visit at half past eight, and that, notwithstanding, at the first alarm of fire, this door was again found open by Rousseau the watchman whose duty it was to act as outside guard to this immense building; this duty he performed by patrolling a good part of Richelieu and St. Olivier Streets and Cote à Coton or the the Glacis (see depositions Nos. 10, 15 and 11.) 8th. That the Commissioner of Public Works had, some days previous to the fire, ordered several barrels of water and a fire engine to be placed within the building, and that there was in the building on the night of the fire, as the Commissioners say, a barrel of water, but neither buckets nor engine; 9th. That the premises are deemed by several witnesses to have been very much exposed to fire, and that proper precautions had not been taken against such a calamity. This is also the opinion of the Commissioners as expressed in their report, in which they say, *that if a fire-engine had been placed in the building*, the fire might easily have been arrested! 10th. The witnesses examined, that is to say those who were the first to enter the building, (see the evidence given by Rousseau, Patry, P. Gauvreau, Langlais) agree in saying that with a few barrels of water and buckets to carry it, they could with ease have mastered the fire which was beginning, in spite of the immense quantity of chips and shavings scattered about the rooms and corridors. 11th. That during the night there were no watchmen in this extensive building, filled as it was with inflammable materials; the precaution taken by the Board of Public Works as regards the supervision of the interior, having been limited to the ordering a few barrels of water and a fire engine to be placed there. The engine, as we have seen, had not been placed there. But even had it been there, with buckets to convey the water, what would have been the use of this precaution if there was no person in the building to work the engine?

Let us now offer a few remarks upon this report. What is the result of the investigation made by the Government? That the fire was caused by the stoves or by the workmen? All the evidence taken appears to contradict this supposition unless the fire had been communicated by the plumbers who had been at work on the day in question in the vicinity of the Speaker's room; this does not appear probable, upon examination of the facts resulting from the enquiry, that the fire was communicated from without? This appears still more improbable.

The only presumption left, and the only one which can be naturally and reasonably accounted for, by the facts established by the evidence, is, that the fire must have begun after the last visit of the Nuns, that is to say after nine o'clock.

It is proved by the testimony of Sister St. Louis (No. 10 in the Appendix to the Report) that at the time of her visit, made at six o'clock, a small door constructed in the great entrance gate in the large body of the building opening upon St. Olivier street, which was usually kept shut by means of a piece of wood placed over the latch, was then closed. That at the visit made at half-past eight, the same Nuns on repeating their visit to the building, found this same door unbarred; they again placed the piece of wood upon the latch (see the same testimony Nos. 10 and 15.) When, however, the fire broke out, Rousseau, the outside watchman, the first who entered the building, finds this same door *open three or four inches!* (See his deposition, No. 11.)

Had this door been opened by the workman charged with the shutting of the gates, after the first visit, or had it been unbarred and opened after the departure of that person? How did it happen that that door, which was barred at six o'clock was found unbarred at the half-past eight o'clock visit? How did it happen that this door which the Nuns again barred at their visit at half-past eight, was found not only unbarred but *open three or four inches*, three-quarters of an hour at the latest, before the first alarm of fire. How are we to explain these facts in a reasonable and physically possible manner, unless we say that it had been unbarred a first time between the first and second evening visit and then a second time unbarred and *opened*, after the fire had broken out in the building, by one or more persons who were in the building, when, cannot be said, but at all events at the time of the second and last visit of the Nuns? For what purpose were these persons in the building at that hour? Evidently for an evil purpose. By what means and in what manner did they introduce themselves? They alone can tell.

But, it will be said, if these persons did set the building on fire it was in that case an accident for which the Board of Public Works can not be held liable.

To this argument, the answer would be that the fire in this case could not be the result of accident; for *an accident*, say the jurists, is *any* event which takes place independently of the will of men, either in the course of nature, as in the case of an inundation, a flash of lightning, &c., or by the *co-operation of human action* which has given rise to it, as for instance, a fire arising from the natural fermentation of hay stacked before it is sufficiently dry. This last description of accident is not excusable.

But let us suppose the destruction of the premises of the Sisters of Charity to have been the result of an accident of the second description, that is to say, of an accident accompanied by an action which has occasioned it, as for instance, suppose it the act of incendiaries; in this case even the Board of Public Works could not rid themselves of the responsibility, because in such case the accompanying act, or rather the act which produced the accident, would be due to the negligence and want of vigilance on the part of the employees of that department; *negligence* in not causing a minute inspection to be made every night by the workmen or by some person charged with the duty, of all the nooks and corners of that immense edifice into which every body had admittance, and in which it was an easy matter to hide one's-self among the masses of shavings and timber of every description abundantly scattered about; *negligence* in permitting an enormous accumulation of chips and shavings in every part of the building; *negligence* in not having taken further precautionary steps for preservation from fire, than the placing within the building of *one barrel of water*, and forgetting to provide with it buckets to carry the water in case of need! *Want of vigilance.* The Board of Public Works appointed one outside watchman, in order, to use the expression of Mr. Chabot, then Commissioner of Public Works, to prevent *evil disposed persons from setting it on fire*, and this watchman, moreover, Mr. Chabot tells us, only began duty the evening previous to the fire. They must, then, have had some fear of ill-will; and in effect, Mr. Chabot adds: *I engaged one Pierre Rousseau to watch around the buildings every night, and he was to associate with him such other fit and trustworthy persons as he should deem proper.* (See evidence No. 1.)

It would appear that in his fear of ill-will, Mr. Chabot only thought of the outside of the building; he did not think that *any evil disposed persons* could either hide themselves in the interior before the closing of the doors or during the evening, and even in spite of the watchman, while this latter individual made the circuit of these extensive buildings, steal in either by the cellar vents on St. Olivier Street or by the unclosed openings constructed in the south-west gable by the Board of Public Works. This, according to the testimony of several of the witnesses ex-

amined before the Commissioners, was a very easy matter. One witness whose deposition is marked No. 43, states that a short time after the alarm was given, he saw a man come out of one of the openings of the cellar of the west wing of the building.

The inspection of a building in course of erection, to which the public had admittance at all hours of the day, ought to be made by several men after the closing of the doors each night. Now it does not appear that any inspection had been made on the night of the fire, other than by the Nuns who took care that the stoves should not set fire to the shavings; it does not even appear that such inspection had ever been made.

Besides, every one knows that a minute inspection of each nook and corner of this labyrinth of apartments could neither properly nor advantageously be made by two or three young females, who could have easily been managed by *the evil disposed persons* if they had been discovered in any part of the building. RAPHAEL GIROUX, one of the contractors, who appears to have been charged with the closing of the gates at night, speaking on this subject, says (see deposition No. 38.) " While I was in the chapel after six o'clock that evening (the evening of the fire), I had many times listened, *as was usual with me*, to discover if any one remained in the building, but I did not hear any noise and saw no person going about or going up to the dome." Mr. Giroux had doubtless gone away convinced that no one remained in the building, he had listened and had heard no noise; therefore there could not be a soul in the building after his departure.

This conclusion is rather a bold one; for, had any one hidden himself in the building with intent to remain there after every one had left, he would have concealed himself and carefully avoided making the slightest noise which might betray his presence. Patry, whose deposition is numbered 3, and who, it appears, was also charged with the care of the premises, of which he kept the key, tells us that on the evening in question he had accompanied the Nuns through a part of their visit at six o'clock, but that he did not ascend higher than the third story. He also states that one door only of the building was closed with a lock, the key of which he kept; that all the other doors were shut within; but he gives us no information respecting the visit made by himself, always supposing he did make such visit. The other contractors appear to have had nothing to do with the guardianship of the premises.

So much for the vigilance exercised. Yet, parties building are in the habit not only of guarding during the day, buildings of any importance which they are erecting, but they also take care to place trustworthy persons in charge of them during the night. Is it to be said that the Government is bound to give less attention to public property (for the building at the time was public property) and to take less precaution than private individuals?

It is clearly proved that the Board of Public Works have been guilty of a most serious fault of omission, in taking no precautions for the preservation of the building during the night, either against external danger, such as ill-will, or from internal danger, such as fire caused by the stoves, &c.

In examining the evidence given by the Nuns, it appears that they were often obliged to go and fetch water to extinguish the fires in the stoves. It is equally evident that not only no precaution was taken against the dangers of the night, but that none even was taken against danger by day, when the stoves fiercely heated and surrounded by shavings might have set fire to these shavings, and a fire thus originated, there being in the building neither water, buckets nor fire engine, would have made in a few minutes such rapid progress, that assistance would have arrived too late to stop the advance of the devouring elements.

The plea of accident then would not even serve as a justification to the Board of Public Works, for under such circumstances it would only be the result of fault and negligence, not only serious but unpardonable.

We have followed the evidence annexed to the report; an entirely *ex parte* testimony. We have taken it for what it is worth, and we think we have clearly proved that the mass of the evidence taken tends in no way to discharge the Board of Public Works from the responsibility which they have incurred, by reason of the destruction by fire of the premises leased to them by the Archbishop of Quebec; and that nothing in the testimony adduced before the Commissioners, goes to prove that the Board of Public Works had taken all the precaution and the care which the most ordinary attention and prudence dictated, to shield themselves from all reproach not only of slight but also of gross fault; and from the payment of any indemnity awarded by the laws of the country in similar cases against the lessee. The law, besides, requires in such cases, that the tenant, to secure exoneration from all responsibility, should establish in a plain and evident manner that he is not in fault. Had he only succeeded, not in establishing his complete justification, but in arousing doubt as to the origin of the fire, that would not have sufficed; the law would still hold him responsible. Now the investigations made by order of the Executive Government, have completely failed on these two points.

In default then of the necessary proof absolutely required by law, the Archbishop of Quebec has a right in law, we will not say, in justice and equity, (because the law in this case is inseparable from justice and equity) the Archbishop of Quebec has a right to indemnification; and this indemnification should be strictly the same as one individual would in similar circumstances be entitled to claim from another; neither more nor less, according to the circumstances and the real damages sustained in consequence of the fire; the law binding alike the Government and the private individual.

It will perhaps be said, that a *co-possession* existed, or rather a common usage of the leased premises, between the Government and the Sisters of Charity. But no one would be serious in urging this as an argument to improve the position of the Government. In what did this *co-possession* consist? Did it consist in the use of the buildings of which the Board of Public Works was in possession?—No. It consisted in the fact that the Nuns had two isolated apartments which served as class rooms on the first or basement story of the main building. We admit that if the fire had originated in one or other of these rooms, the position of the Government would be different; but the fact of the fire having commenced three stories above, in an apartment and in that part of the building which was unquestionably in the exclusive possession of the Board of Public Works by their employees, this pretended possession alters in nothing the responsibility of the Government. Is it a consequence of the *co-possession* of a house, the ground floor of which is occupied by the proprietor, and the higher stories by a tenant, that the proprietor should be deprived of the right to claim damages from the lessee, solely by reason of this so called *co-possession*? But the *co-possession* does not exist: for in this case there are two altogether distinct possessions, that of the basement story, by the proprietor, and that of the higher stories, by the tenant; nothing can be more plain. It is analogous to the case of different stories of the same house being occupied by different tenants. It is useless to cite authorities to prove the truth of this proposition which common sense would of itself suggest.

This pretended *co-possession* in no way alters the position of the Government, and it consequently does not in the slightest degree discharge the Government from the damages occasioned by a conflagration, the result of the fault, negligence, and want of proper supervision on the part of the Board of Public Works and their employees. Under all the circumstances, then, the law, the jurisprudence of the *arrêts*, reason, justice and equity, are, without any possible doubt, in favor of the claim of the Archbishop of Quebec.

His Grace is prepared to afford any explanations which may be required of him.