

GAUTHIER *v.* JACOBS

1927

\*May 19.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,  
PROVINCE OF QUEBEC

*Lease—Landlord and tenant—Repairs due to fire—Clause in the lease—  
“Repairs”—Art. 1660 C.C.*

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1) affirming the judgment of the trial judge, Surveyer J., and maintaining the respondent's action asking for repairs by the appellant as owner to a building rented and partially destroyed by fire.

On the 28th July, 1921, the appellant leased to the respondent certain manufacturing premises on Campion street in Montreal for a period of ten years from the 1st May, 1922. On the 17th March, 1926, a fire occurred which destroyed the roof, part of the floor and all the windows on the third floor, but the lower stories seem only to have been damaged by water and smoke, although many of the other windows were broken.

On the 29th of March, 1926, the respondent took action against the appellant to have him ordered to proceed to repair and restore the premises to the condition in which they were prior to the fire and in default to have the respondent authorized to do so, at the cost, expense and charge of the appellant. The plea sets forth that the damages caused by the fire were so great that it had become reasonably impossible to occupy the premises and, therefore, the lease had come to an end. The Superior Court maintained the action holding that the fire did not render the occupation of the premises reasonably impossible, and the Court of King's Bench affirmed this judgment.

The Supreme Court of Canada, at the conclusion of the argument of the appellant's counsel and without calling in the respondent's counsel, dismissed the appeal with costs.

*Appeal dismissed with costs.*

*R. Taschereau K.C.* for the appellant.

*E. Languedoc, K.C.* for the respondent.

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\*PRESENT:—Anglin C.J.C. and Mignault, Newcombe, Rinfret and Lamont JJ.

(1) (1926) Q.R. 42 K.B. 225.