

such negligence was proved, but that judgment was overruled by the Privy Council : [1902] A.C. 220. Now Parliament has apparently made a radical change in the law by enacting in s. 239, sub-s. 2 that : "Whenever damage is caused to crops, lands, fences, plantations, or buildings and their contents, by a fire started by a railway locomotive, the company making use of such locomotive, whether guilty of negligence or not, shall be liable for such damage and may be sued for the recovery of the amount of such damage in any court of competent jurisdiction." The sub-section contains a proviso limiting the amount of damages recoverable if the company has used modern and efficient appliances and has not otherwise been guilty of negligence, and sub-s. 3 gives a company an insurable interest in property along its route.

This legislation has one peculiar feature. Sec. 239 begins as follows : "The company shall at all times maintain and keep its right of way free from dead or dry grass, weeds and other unnecessary combustible matter," and then follows sub-s. 2, quoted above. It might be said that the sub-sections are merely complementary of the opening or main provision and that only fires caused by the presence of combustible matter on the track are contemplated, otherwise there is not the slightest connection between the first and subsequent paragraphs which is opposed to every principle of drafting statutes. On the other hand, a company is made liable for damage by fire "whether guilty of negligence or not." Now, a company is always guilty of negligence if a fire is communicated to adjoining property through the medium of combustible matter on the track : *G. T. R. Co. v. Rainville*, 29 S.C.R. 201 ; so that a fire could never be so caused without negligence.

In addition to this specific section the Board is empowered, by s. 25, to make rules and regulations : "With respect to the use on any engine of nettings, screens, grates and other devices, and the use on any engine or car of any appliances and precautions, and generally in connection with the railway respecting the construction, use and maintenance of any fireguard or works which may be deemed by the Board necessary and most suitable to prevent, as far as possible, fires from being started, or occurring, upon, along or near the right of way of the railway." This is new, the Railway Committee of the Privy Council not having had such powers. Neglect to comply with such rules or regulations makes