

OCTOBER 26TH, 1904.

DIVISIONAL COURT.

FABIAN v. SMALLPIECE.

Negligence—Setting out Fire—Damage to Property—Causal Connection—Findings of Jury.

Appeal by defendant from judgment of MACMAHON, J., in favour of plaintiff, upon the findings of a jury, for \$200 damages and costs in an action for negligence in setting out fire.

W. R. White, K.C., for defendant.

C. A. Moss, for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.), was delivered by

FALCONBRIDGE, C.J.—The law relating to setting out fire has been fully defined by a line of cases from 1846 (Dean v. Carty, 2 U. C. R. 448) to the present day, the fullest modern exposition, being in Furlong v. Carroll, 7 A. R. 145.

This case could not have been withdrawn from the jury, and it went to them with a charge to which no exception was, or could reasonably have been, taken.

The answer to the 3rd question was faintly and unsuccessfully attacked, and the only point for consideration was as to the establishment of a causal connection between the fire kindled by defendant and the damage to plaintiff's property. This was placed beyond the range of mere speculation or conjecture by evidence that fire had been known to jump over an intervening space as large as that which was said to have existed here. No other reasonable theory of the cause of fire on defendant's premises was put forward.

These matters and the high wind which arose on the 30th were all placed before the jury.

As John Wilson, J., said in Wilkins v. Row, 15 C. P. 326, "the facts of the case were of a character familiar to the occupations of the jury, about which they were not likely to form an erroneous judgment."

Certainly they meted out scant justice to plaintiff in the matter of damages, and I question whether the grant of a