

MULOCK, C.J. Ex., reading the judgment of the Court, said that the defendant, a farmer, owned, occupied, and operated as a farm, lot 13 in the 19th concession of Keppel. The plaintiff Forbes owned the adjoining lot, 14, and the plaintiff McGregor owned lot 15, which was separated from the defendant's lot by the intervening lot 14. In the centre of the defendant's land was a lane by which he was able to reach his woodland situate at the southerly end of the lane. A brush-heap near the rear end of the land interfered with his obtaining convenient access to the woodland, and in order to remove the obstruction the defendant, on the 6th September, 1919, set fire to this brush-heap. The fire spread first through the adjoining land, owned by Forbes, and thence to the land of McGregor, destroying timber on the property of each plaintiff, and these actions were brought to recover damages because of such destruction.

At the trial questions were submitted to the jury, and in each case the answers were to the effect that the defendant was not guilty of negligence either in starting the fire or in endeavouring to prevent its extending to the plaintiffs' lands. In the case of the plaintiff Forbes the jury found \$60 damages and in the case of the plaintiff McGregor \$50 damages.

One ground of appeal was, that the County Court Judge erred in refusing to allow the plaintiffs to put in evidence a by-law passed by the township council, under authority of sec. 542 (16) of the Municipal Act, R.S.O. 1897 ch. 223, which provided that no stumps, wood, brush, etc., should be set on fire in the open air within the township from the 15th July to the 1st September, nor at any other time or times during the year until after two days' notice to the owner or occupant of the adjoining property; and that any person contravening this provision should be liable to a fine and also for all damages which might be occasioned thereby.

If the defendant did not give to Forbes, the owner of the adjoining property, two days' notice of his intention to start the fire, his starting it was, as against Forbes, if it injured his property, a wrongful act. The contravention of the by-law was not in pleading set up by the plaintiff in either action; but at the trial counsel for the plaintiffs tendered the by-law in evidence. The County Court Judge declined to receive it. In the view of the learned Chief Justice, if, having regard to the facts, the by-law, in the absence of such notice, gave to the plaintiffs or either of them a cause of action, an amendment of the pleadings should have been allowed. The plaintiff McGregor not being "an owner or occupant of the adjoining property," the by-law did not create any duty owing to him by the defendant.

The evidence shewed that the brush in which the fire was started obstructed the defendant in the proper management of