

Torts (*supra*) is upheld as against the view that negligence constitutes the gist of the action for damage.

The South Australian case referred to is *Young v. Tilley* (1913) S.A.R. 87, and a very short summary of the report may be found useful and instructive. The defendant lighted a fire on his own land—a tract of country land covered with grass—and the grass caught fire and spread to the grass on the plaintiff's land. The fire was lighted in an iron receptacle—a proper outdoor fireplace—and it was found as a fact that there was no negligence at all on the defendant's part. The liability of the defendant under these circumstances was argued as a point of law before the Supreme Court of three judges. The arguments for and against the absolute liability of the defendant were dealt with at some length in the leading judgment, and in the result it was held that the defendant was liable, and that the fire was not "accidental" within the meaning of section 86 of the Act of 1774. Most of the English authorities were referred to, and the decision of the South Australian court would probably commend itself to the English courts should a similar question come before them.

Ten years ago the law was laid down to the same effect in New Zealand by the Court of Appeal in *Kelly v. Hayes* (1902) 22 N.Z.R. 429, and it was there held "that if a person lights a fire on his own land, he must at his peril prevent it spreading to the land of his neighbours." This case was not referred to in *Young v. Tilley*, but a Canadian case (*Furlong v. Carroll* (1882) 7 Ont. App. 145) was referred to in argument in support of the view that some degree of negligence is necessary in order to fasten liability on the person lighting the fire. In that case, however, the injured neighbour was able to shew a certain amount of negligence in the defendant's conduct, he having thrown a burning match on to some dry stubble. The New Zealand case and the South Australian case above referred to seem to be the only instances of express decision in modern British courts that the liability of a person lighting a fire is absolute.—*Solicitors' Journal*.