

of the Act of 1774 does not apply where a fire is caused by negligence, and the plaintiff in that case recovered by reason of negligence on the part of the defendant's servants in lighting and managing the fire. There appears to be no modern case of authority in the English reports, deciding that a man who lights a fire on his own land is liable absolutely to his neighbour for damage done by the spreading of the fire to the latter's land, independently of negligence. There are cases to the contrary in the American reports, and negligence is, in the United States, held to be the gist of the cause of action. The English text books also are divided on the subject.

Of these text books it will be sufficient to refer to two. In the 6th edition (1912) of Clerk and Lindsell's Torts, p. 470, it is said: "The making of a fire involves the bringing on land of something not naturally there, and therefore the owner of the fire is bound to keep it in at his peril," and a person who kindles a fire is by the common law "absolutely liable to others whose property was injured by such fire spreading." The contrary opinion will be found expressed in the 3rd edition (1912) of Salmond's Law of Torts, pp. 224-226. The author summarizes his conclusion by saying that the occupier of land from which fire escapes is liable if the escape is due to negligence, but "he is not responsible for the act of a stranger, or for damage which is not caused by negligence on the part of any one."

The divergence in the views of the text writers is reflected in the cases on the subject that are to be found in the Colonial reports. Support can be found in these reports for each view. Under these circumstances the English practitioner may usefully peruse the latest of these oversea cases, in which the Supreme Court of South Australia has expressly decided that the rule of English law now is that the person who lights a fire on his own land does so at his own peril, and must answer for the consequences, unless he can shew something extrinsic analogous to *vis major*. Thus the position adopted in Clerk and Lindsell's