Held, affirming the judgment of the Supreme Court of Nova Scotia, that the act causing the injury violated the rule which does not permit a person, even on his own land, to do an act which, lawful in itself, yet necessarily causes injury to another, and, especially as the injury continued after notice to the company, the plaintiffs were entitled to recover damages therefor.

F. H. Bell for the appellants.

Newcombe for the respondents.

New Brunswick.] [Oct. 10.

BUCK *v.* KNOWLTON.

Marine insurance—Application to agent—Neglect to forward—Liability of agent for—Privity of contract—Negligence—Trover.

B., wishing to insure his vessel, went to a firm of insurance brokers at St. John, N.B., to whom he gave an app' cation for $800 insurance at 11 per cent. on a valuation of $2500. The brokers sent the application by a clerk to K., the agent at St. John for an underwriter's company in Portland, Me., requesting a policy from his company. K. informed the clerk that he would not forward the application unless the valuation was put at $3000, or the premium raised to 12 per cent. This was never acceded to by the brokers, and two days after K. forwarded an application to his company putting the valuation at $3000, and on the following day the vessel was burnt. The policy was sent to K., but recalled by telegram before it was delivered to B. or to the brokers, and was returned to the company. B. brought an action against K. claiming damages for negligence in not forwarding the application in proper time, with a count in trover for conversion of the policy.

Held, affirming the decision of the Supreme Court of New Brunswick, that as K. never forwarded, nor undertook to forward, the application signed by the brokers on B.'s behalf he owed no duty to B., and could not be liable for any negligence.

Held, further, that as the policy issued never ceased to be the property of the company, and was nothing more than an escrow in the hands of K, no action would lie against K. for its conversion.

Appeal dismissed with costs.

Palmer, Q.C., for appellants.

McLeod, Q.C., for respondent.

VAUGHAN *v.* RICHARDSON.

Marine insurance—Charter party—Disbursements—Difference in freight—Guarantee of part owner—Consideration — Misrepresentation—Pleading—Evidence.

V., part owner and managing owner of the ship *Eurydice*, chartered her to R. for a voyage from Savannah to Liverpool; the charterer was to pay a lump sum for freight and the master to sign bills of lading at any rate of freight without prejudice to the charter party; if the actual freight exceeded the sum payable by the charter, the master of the ship was to give bills for the difference to R., payable ten days after the arrival of the ship at Liverpool, and the disbursements were to be secured by similar bills. When the ship was loaded it was found that the difference in freight was in favour of R., and by arrangement with the son of V., the managing owner, who held a power of attorney to act as his agent, the master drew two bills of exchange on the agents of the ship at Liverpool, one for the amount of the disbursements, and the other for the difference in freight; each in favour of R., and payable sixty days after sight.

The bills were accepted by the agents, but were not paid at maturity, and notice of dishonour was given to V., who, on receiving it, sent another of his sons to the solicitors who held the bills for collection. This son stated to the solicitors that his father would like the matter to be held over until he could communicate with the other owners, which was acceded to, and an agreement was drawn up, in the form of a letter to the solicitors, requesting them to delay proceedings on the bill for disbursements until the ship arrived at St. John, N.B. (where V. lived), and guaranteeing immediate payment, on her arrival, of that bill, with cost of protest, etc., and also of the bill for difference in freight. This agreement was taken to V., who signed it, and it was returned to the solicitors. When the ship arrived V. paid the draft for disbursements, but refused to pay the other, on the ground that he had supposed that they were both for disbursements, and that the solicitors had so stated to his son when the agreement was prepared. An action was then brought against V. on his guarantee to pay the draft for difference in freight, to which he pleaded that he had been induced to sign the same by fraud and misrepresentation.