

I. F. Hellmuth, K.C., and W. T. McMullen, for the appellant company.

Glyn Osler, for the plaintiff, respondent.

MEREDITH, C.J.O., read the judgment of the Court. He said that the respondent's case was that his barn was struck by lightning "by reason and in consequence of which" it was "destroyed and damaged" to the extent of \$1,689, and the produce in it was "destroyed and damaged" to the extent of \$230.

The appellant company's contention was that the barn was not struck by lightning, but that it was damaged by a violent wind-storm; and, as to the claim for damage to the produce, that, even if the injury to the barn was caused by lightning, the damage was not the result of it, but was occasioned by the fault of the respondent and his failure "to use all ordinary means and precautions to save and preserve the property . . . insured at and after the fire," which by the policy it was made a condition that he should do.

The evidence established to the satisfaction of the trial Judge that the barn was struck by lightning and was thereby damaged; and he found "that the injury caused by the lightning was throughout an operating and continuing cause and a proximate cause" within the rule which he deduced from the cases to which he referred.

In an earlier part of his reasons for judgment the trial Judge had said, "Whether the wind would have damaged the barn if it had not previously been opened by the lightning, no one can say." There was no inconsistency. It may well be impossible to say whether, if the barn had been uninjured, it would have been blown down by the wind, and at the same time it may be a reasonable inference from the facts proved that the lightning was the proximate cause of the damage which was done by the wind.

As to the damages for injury to the barn, the judgment should be affirmed.

The grain was threshed about a week after the injury to the barn, the threshed grain was put in the granary, and was there injured by the rain. The lightning was not the proximate cause of this loss. The grain might and should have been put in a place of safety. The amount allowed on this head of the respondent's claim was \$100, and the judgment should be varied by reducing by \$100 the damages awarded.

There should be no costs of the appeal to either party.

*Judgment below varied.*