

prior to the fire, and the defendant's team of horses had been brought and put in the barn about twenty minutes earlier. I do not wish the inference to be drawn that any of these persons had anything to do with starting the fire; the evidence does not warrant any such inference. D. Kingsley Rand was not seen again by any person until a considerable time after the fire had started; he was then sitting on a fence about twenty-five rods from the barn and watching the fire. He had for some time shewn evidences of a weak mental condition, and following upon this occurrence he was placed in the asylum.

Whatever belief or opinion the insured had or has that the fire was the work of D. Kingsley Rand is based on the fact of his having been near the barn so short a time before the fire started; but as I have said there is nothing to indicate that he had been in the barn or that he went towards it, or that he did otherwise than pass the barn on his way from his mother's house towards his brother's. While there is no direct evidence of his having started the fire, or even of his having been in the barn, the evidence does not eliminate the possibilities of the fire having originated through other causes which can as readily be presumed as that it was his work, and this without going outside the possibility of its having been the result of accident or carelessness. To hold him responsible would be to found a judgment on a mere guess or supposition. Improper as it would be to arrive at a conclusion by any such means, it would be particularly so here where such a course would in effect charge this man with the commission of a criminal act when, owing to his unfortunate mental condition, he is unable to speak for himself.

The claim of the company will, therefore, be dismissed with costs.