

The action should be dismissed—in all the circumstances without costs.

Reference to Grand Trunk R.W. Co. v. McAlpine, [1913] A.C. 838; Beven on Negligence, 3rd ed., pp. 140, 141; McEachen v. Grand Trunk R.W. Co. (1912), 2 D.L.R. 588, 3 O.W.N. 628.

LATCHFORD, J.

APRIL 11TH, 1918.

FORSYTH v. WALPOLE FARMERS MUTUAL FIRE
INSURANCE CO.

Insurance (Fire)—Contents of Barn—Hay Piled outside Barn not Included—Limitation of Liability—Provision in Application—Insurance Act, R.S.O. 1914 ch. 183, sec. 156 (3)—Mutual Insurance Company—Membership in, of Assured—By-law—Actual Cash Value of Property Destroyed.

Action upon a policy of insurance issued by the defendants to the plaintiff on the 26th August, 1916, insuring him against loss by fire on the "ordinary contents" of a barn to the extent of \$1,600 and on certain live stock to the extent of \$600.

The action was tried without a jury at Cayuga.

R. S. Colter, for the plaintiff:

T. J. Agar, for the defendant.

LATCHFORD, J., in a written judgment, said that on the 11th December, 1916, during the currency of the policy, the barn was burned. Its contents were then, it was admitted, of the actual cash value of \$850.

The plaintiff contended that the defendants were liable to him for the damages which he sustained by reason of the burning of certain stacks of hay, about 100 tons in all, not in the barn, but piled near it. His contention was based on what he understood the defendants' agent to have represented, that hay stacked as this was, within 80 feet of the barn, was to be regarded as covered by the policy.

This part of the plaintiff's claim should be rejected. Hay stacked outside the barn could not be considered to be included in the word "contents."

The defendants did not deny liability, but said that it was limited to two-thirds of the value of the property destroyed.