

HON. MR. JUSTICE KELLY.

DECEMBER 30TH, 1913.

OTTER MUTUAL FIRE INSURANCE CO. v. RAND.

5 O. W. N. 653.

*Insurance — Fire Insurance — Action Against Alleged Lunatic
Incendiary—Evidence—Dismissal of Action*

KELLY, J., *held*, in an action against a lunatic for indemnity against liability upon a fire insurance policy based upon the contention that the defendant was responsible for the fire in question, that the charge against the defendant had not been proven.

Action against D. Kingsley Rand for indemnity in respect of the plaintiff company's liability to Marshall Rand upon a policy of fire insurance on the latter's barn.

S. G. McKay, K.C., for the company.

A. S. Watts, K.C., for the defendant.

HON. MR. JUSTICE KELLY:—The company's claim against D. Kingsley Rand is in respect of its having been held liable to Marshall Rand upon a policy of fire insurance on the latter's barn. The company seeks indemnity against D. Kingsley Rand, by the official guardian *ad litem*, as insane—on the ground that the fire which caused the loss for which it has so been held liable was through his act. D. Kingsley Rand, by the official guardian *ad litem*, has appeared and submitted his rights to the Court.

The fire occurred about 11 o'clock on the forenoon of December 17th, 1912. A short time before that Marshall Rand, the insured, saw from his house his brother, D. Kingsley Rand, running past the barn and coming towards his house. He was not going towards the barn nor coming from it, but was passing over the approach (the bridge as it is called in the evidence) leading to the barn door. His course was southerly, coming from the house of his mother—with whom he lived and which was some distance to the north of the barn—towards his brother's house, which was south of the barn. The brother, thinking he was coming to his house, and apparently fearing he might be intent on some act of personal violence, left the house and thus lost sight of him. The fire was noticed very soon afterwards, and despite the efforts of the insured and others, the barn and contents were destroyed. Others had been in or near the barn a short time