

to increase or lessen them, or to take them away altogether, only the power to impose a penalty and nothing more. If the Legislature intended that the non-observance of the by-law took away the common law right of defence of no negligence as contended for by Mr. Clarke, they would have expressly said so, but not having done so, it is not for me to do so. It is a well-known rule applicable to all by-laws, that they must be reasonably clear and unequivocal in their language in order to vary or take away common law rights, and in my opinion this by-law does neither. It only says you must not set out fire in certain months of the year without first giving notice, and if you do you must pay the penalty imposed by it. It cannot make the setting out unlawful without the notice, for if it did I think it would be clearly ultra vires, for power is only given to regulate the times during which fire may be set out, not to prevent it altogether. It only adds to what is a lawful act in setting out for the purpose of husbandry, the condition of first giving notice, under a penalty for its omission. From a perusal of the case of *Lamb v. Sloan*, 94 North Carolina Reports 534, it appears that the Legislature of that State at all events thought it necessary, just as I do, to enact specially, in addition to the pecuniary penalty, that anyone violating the statute should be liable to any person injured in an action. The section of that Act, which is very similar to this by-law, is as follows:—

“No person shall set fire to any woods except it be his own property, nor in that case without first giving notice to all persons owning lands adjoining to the woodlands intended to be fired, at least two days before the firing of such woods, and also take effectual care to extinguish such fire before it shall reach any vacant or patented lands near to or adjoining the lands so fired. Every person wilfully offending against the preceding section shall for such offence forfeit and pay to any person who shall sue for the same the sum of \$50 and be liable to any one injured in an action, and shall moreover be guilty of a misdemeanor.”

The action was brought under this statute against the defendant, who set out the fire without giving the notice. The learned Judge in his judgment, amongst other things, says: “Having set fire to his woods, without having given the plaintiff at least two days’ notice thereof, he made himself liable for such damages as the latter sustained by the spread of the fire to and upon the adjoining woodland. Reasonable diligence on the part of the defendant in his efforts to keep the fire under control would not relieve him from this cause of action. He made himself responsible at all events for the harm his fire did the plaintiff. The very purpose of the statute was to give the plaintiff a right of action in which the defendant could not defend himself successfully by showing reasonable care and diligence on his part as he might do if the plaintiff had sued for a breach of his common law right, otherwise the statutory right would be nugatory.” In my opinion then, the by-law does not have the effect contended for by Mr. Clarke, and coming to this conclusion it becomes unnecessary for me to consider the