

that he was not to blame. He is required to shew that degree of care "which men of common prudence generally exercise about their own affairs:" Halsbury's Laws of England, vol. 1, para. 1082; Beale on Bailments, p. 56; Bullen v. Swan Electric Engraving Co. (1907), 23 Times L.R. 258, 259.

The Tomiko Mills Limited operated on rails in their mill-yard a small engine or motor, equipped with a boiler, smoke-stack, ash-pan, etc.; but the Act to preserve the Forests from Destruction by Fire, R.S.O. 1897 ch. 267, did not apply to the yard so as to make it obligatory that the engine should be furnished with the best means of preventing the escape of fire from the ash-pan and smoke-stack. And there was no evidence from which it could be reasonably inferred that the fire originated from the engine. The exact manner in which the fire started was not shewn by the evidence. It was not necessary for the plaintiffs to prove how the fire occurred to exonerate themselves—so long as they shewed that they were not negligent.

Reference to Schwoob v. Michigan Central R.W. Co. (1905-1906), 9 O.L.R. 86, 10 O.L.R. 647, 13 O.L.R. 548.

The defendants to the counterclaim had negatived the charge of negligence preferred against them.

Judgment for the plaintiffs for the amount of the cheque, \$61,988.97, with appropriate interest, and with costs. Counterclaim dismissed with costs.

MULOCK, C.J.Ex.

JUNE 6TH, 1918.

*A. J. REACH CO. v. CROSLAND.

Way—Easement—Private Right of Way Appurtenant to Land—Extinction by Sale of Servient Tenement for Taxes—Assessment Act, R.S.O. 1897 ch. 224, secs. 7, 149—Municipal Act, R.S.O. 1897 ch. 223, sec. 2 (8)—"Land."

Action for a declaration that the defendants were not entitled to a right of way over a strip of land owned by the plaintiffs, being the southerly 10 feet of the plaintiffs' lot fronting on Macdonald avenue, in the city of Toronto, and for further relief. The defendants were the owners of land fronting on the north side of Rideau avenue, which intersects Macdonald avenue, the defendants' land extending northward to the southerly limit of the plaintiffs' land. The strip extended easterly from Macdonald avenue to the defendants' land.