

OTTER MUTUAL FIRE INSURANCE CO. v. RAND—KELLY, J.—
DEC. 30.

Fire Insurance—Action by Insurers against Alleged Incendiary for Indemnity—Evidence—Lunatic—Failure of Proof of Incendiarism.]—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. The fire occurred about 11 o'clock in the forenoon of the 17th December, 1912. A short time before that, Marshall Rand saw the defendant running past the barn. He 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, watching the fire. He had for some time shewn evidences of a weak mental condition, and, after the fire, was placed in an asylum for the insane. KELLY, J., said that there was no direct evidence of the defendant having started the fire, or even of his having been in the barn; and the evidence did not eliminate the possibility of the fire having originated from other causes. To hold the defendant responsible would be to found a judgment on a mere guess or supposition; and, improper as it would be to arrive at a conclusion by any such means, it would be particularly so in this case, where the defendant, owing to his unfortunate mental condition, was unable to speak for himself. Action dismissed with costs. S. G. McKay, K.C., for the plaintiffs. A. E. Watts, K.C., for the defendant.

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Fire Insurance—Policy—Loss Payable to Mortgagee—Action by Mortgagor—Mortgage Paid after Action Brought—Liability of Insurers.]—Action upon a fire insurance policy. At the trial the defendants admitted the application for the policy sued upon, the policy itself, and that it was in conformity with the application, the happening of the fire on the 17th December, 1912, and the receipt of proofs of loss. The only evidence submitted was on behalf of the plaintiff; and it shewed that there was no act, neglect, or default on his part which could in any way vitiate the claim or disentitle him to the benefit thereof. The policy covered loss on dwelling-house and contents, on three barns, and on the contents of outbuildings; the amount on these