

his farm. The fire was, therefore, an instrument of husbandry, and the defendant would not be liable for injury caused by its spreading beyond his property unless he was guilty of negligence in having started it or in having allowed it to spread to McGregor's farm. There was no reason for disturbing the finding of the jury that the defendant was not guilty of negligence. The case was fairly submitted to the jury, and the charge was not open to objection.

McGregor's appeal should be dismissed with costs.

The by-law prohibited the defendant from starting a fire until after two days' notice to Forbes. Assuming that the defendant did not give Forbes such notice, the principle of *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330, applied. See also *Jones v. Festiniog R.W. Co.* (1868), L.R. 3 Q.B. 733.

The defendant brought fire, a dangerous thing, on his land. It spread and injured the adjoining owner; and absence of negligence did not excuse the defendant. The defendant, therefore, by reason of the by-law, if no notice was given, would be liable to Forbes. The plaintiff should be allowed to amend his statement of claim by setting up a cause of action arising under the by-law. The defendant, if he desired it, should have the right to plead to the amended statement of claim and have a new trial. The judgment in the Forbes case should be set aside, and the defendant should pay the plaintiff his costs of the appeal; and, if the defendant should not within one month elect to have a new trial, judgment should be entered for the plaintiff Forbes for \$60 damages and costs of the action and of this appeal.

Order accordingly.

SECOND DIVISIONAL COURT.

DECEMBER 20TH, 1920.

***WAMPLER v. BRITISH UNDERWRITERS AGENCY.**

Insurance (Automobile)—Proofs of Loss—Correspondence—Waiver—Construction of Policy—Peculiar Accident—Whether Covered by Terms of Policy—Absence of Ambiguity—Action Prematurely Brought—Pleading—Amendment Made at Trial—Technical Defence—Rule 183—Justice of the Case—Real Matter in Dispute.

Appeal by the plaintiff from the judgment of ORDE, J., 48 O.L.R. 13, 18 O.W.N. 312.

The appeal was heard by MULOCK, C.J.Ex., MAGEE, J.A., RIDDELL and MASTEN, JJ.

W. N. Tilley, K.C., and J. G. Kerr, for the appellant.

A. C. Heighington, for the defendants, respondents.