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STEPHEN v. McNEILLON APPEAL FROM THE COURT OF APPEAL FOR  
BRITISH COLUMBIA

1929

\*Feb. 5, 6.

*Negligence—Fire—Escape of fire from defendant's premises to plaintiffs' building—Liability of defendant—Origin of fire—Unauthorized act of third person—Findings of fact.*

APPEAL by the plaintiffs from the judgment of the Court of Appeal for British Columbia (1) which, reversing the judgment of D. A. McDonald J., dismissed with costs their action against the defendant for damages for destruction of their building and contents thereof through fire, which, they alleged, originated in defendant's building through defendant's negligence. The material facts of the case are set out in the judgment of the Court of Appeal (2).

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\*PRESENT:—Duff, Mignault, Newcombe, Lamont and Smith JJ.(1) 40 B.C. Rep. 209; [1928]  
3 W.W.R. 182.(2) 40 B. C. Rep. 209; [1928]  
3 W.W.R. 182.

1929  
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v.  
MCNEILL.  
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At the conclusion of the argument of counsel for the appellants, and without calling on counsel for the respondent, the Court delivered judgment orally, dismissing the appeal with costs, on the ground that, assuming that the appellants, if they could bring themselves within the doctrine of *Rylands v. Fletcher* (1), were entitled to invoke that doctrine with respect to the fire, which started, as the trial judge had found, from the application of the blow torch, it was not disputed, and, of course, could not be disputed, that they must fail if these two propositions of fact were determined against them: (1) that the fire started in the afternoon and originated in some act of Ferguson, and (2) that the act of Ferguson was the unauthorized act of a third person; and the Court had no manner of doubt that Ferguson's acts in the afternoon were the acts of an unauthorized person, and agreed with the majority of the Court of Appeal that the most natural conclusion from all the evidence was that the fire must have occurred as the result of the sawdust being ignited on the occasion of Ferguson's visit to the cellar in the afternoon.

*Appeal dismissed with costs.*

*Chas. F. R. Pincott* for the appellants.

*R. S. Robertson K.C.* and *E. F. Newcombe* for the respondent.

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