

his own land, observed on the prairie near him a pile of ashes and some partially burned willow roots, that he imagined he saw smoke and moved the ashes with his foot to ascertain whether or not there was fire there. A very strong wind was blowing from the south at the time and it carried burning embers into the dry grass adjoining, which at once took fire. Defendant immediately started to beat the fire out. A few yards away to the north there was a strip of burned ground extending east and west. The defendant succeeded, as he believed, in preventing the fire from spreading and it appeared to him to have burned itself out when it ran up into a pocket in the old burned strip. About an hour afterwards a prairie fire was first observed near the same place. This fire spread to the plaintiff's granaries and consumed them. He sought to recover damages from the defendant, claiming that his loss was caused by the fire started by the defendant under the circumstances above stated, and charging negligence.

*Held*, that on the facts as found the defendant was not guilty of negligence and the plaintiff could not recover.

*Owens v. Burgess*, 11 M.R. 75, and *Chaz v. Les Cisterciens Reformés*, 12 M.R. 30, followed.

*Hudson and Howell*, for plaintiff. *Wilson and Haffner*, for defendant.

Full Court.]

[Nov. 26, 1906.]

JOHNSTON v. O'REILLY.

*Summary conviction—Certiorari to quash—Want of jurisdiction in convicting magistrate.*

Rule nisi to quash a conviction of the applicant under the Liquor License Act, R.S.M. 1902, c. 101. The conviction did not shew on its face where the offence had been committed nor even that it was in the Province of Manitoba.

*Held*, that the jurisdiction of an inferior Court must appear on the face of the proceedings or it will be presumed to have acted without jurisdiction, and that the conviction must be quashed on the ground that it did not appear from it that the magistrate had jurisdiction.

*Held*, also, that, notwithstanding the provisions of s. 887 of the Cr. Code, 1892, and the fact that the applicant had taken steps to appeal to the County Court against the conviction, a