

of the plaintiff and defendant were situated, and that one of these was threatening to run over and destroy the defendant's land and property, and that such fires as he set out were lawful "back-fires" to prevent the bush-fires from overrunning his land; and that he was not guilty of any negligence in setting out his fires and taking care of them.

In order to succeed, the plaintiff must establish: (1) that the defendant caused the fire; (2) that the defendant was negligent; (3) that the plaintiff suffered damage flowing from the defendant's negligence. The onus was upon him. It was not a case of *res ipsa loquitur*, and the plaintiff must prove his case beyond reasonable doubt.

It was a particularly dry season. Bush-fires were raging in all parts of the country, and in particular another fire was travelling easterly along the line of the Grand Trunk Railway and extending northerly and southerly from the railway property. It was not sufficient to find that the destruction of the plaintiff's property might have been caused by the defendant's fire. The question was whether it had been proved: *Beal v. Michigan Central R.R. Co.* (1909), 19 O.L.R. 502, 507, 508, 509, and cases there referred to; *Newhouse v. Coniagas Reduction Co.* (1917), 12 O.W.N. 136.

Upon demeanour, the evidence of the defendant and his witnesses was to be preferred to that of the plaintiff and his wife and his witnesses.

The dates were very significant. The fire took place in May, 1914. A letter written by the plaintiff's solicitors to the defendant on the 2nd June, 1917, was, the defendant said, the first intimation he had that any claim was being made on him. Then in September, 1917, 3 years and 4 months after the fire, this action was commenced; 14 months later the statement of claim was delivered; and the trial took place 5½ years after the fire.

The plaintiff's claim for damages was grossly and palpably exaggerated, and his misstatements on this head cast a lurid light on the rest of his testimony.

*Action dismissed with costs.*