field; that the plaintiff's cottages were situated across the field, 200 yards from the line, and were separated from the field by a lane; that the company's servants had the trimming the hedges along the line, and the tufts of grass of the banks and the trimmings had been left lying on the banks for a fortnight. The weather had been exceptionally hot and dry for some time, so that the little heaps became highly inflammable. About a quarter to one workmen were seen sitting on the bank, near the spot where the fire broke, but on the opposite side of the line, eating their dinner, and one of them was smoking a pipe. Shortly after a train was seen seen to pass; a fire broke out on, or close to, one of these heaps on the bank; it spread in two directions; the workmen and others succeeded in putting it out in one direction, but a high wind blowing at the time, the fire burnt through the hedge into the field, then ran up the stubble field across the road to the cottages, which were 500 yards from the place where the fire broke out, in spite of the exertions of the workmen. The cottages were destroyed.

The plaintiff did not call the company's servants as witnesses.

At the close of the plaintiff's case, it was submitted there was no evidences to go to the jury.

A verdict was taken by consent for £30, leave to move being allowed to the defendant.

Kingdon, Q. C. (*March* with him), for the appellants (defendants below).—There is no evidence to show that the fire originated in the heaps, or that it was caused by sparks from the engine which passed a few minutes before. Some men had been seen near the shortly before, and about half an hour previous one of them was smoking a pipe on the bank. The plaintiff might have called these men, but refused to do so. The fire might have been caused by a passenger throwing a fusee out of the carriage window. There is no evidence at what point the fire broke out. The bank itself was in a proper condition, the grass having been cut about three weeks previously. If, therefore, the fire originated in the short grass, on account of the unusual dryness of the season, and the extraordinary high wind blowing it to the plaintiff's house, there was no negligence. [Bramwell, B.—If, to suit the company's convenience, the heaps were left on the bank, and the plaintiff was injured by it, why should not the company pay? If the company had spread gravel over the grass, the fire could not have happened. They had sufficient notice to have taken proper precautions.]

Cole, Q. C.—If there was any evidence at all of negligence, the verdict is good.

Kelly, C. B.—I had some doubt at first, but on careful consideration of the facts I cannot but feel that there was evidence of negligence by the company to go to the jury, and evidence of negligence which was the cause of injury. It appears that soon after a train had passed the spot in question, which was drawn by an engine emitting sparks, a fire broke out on the adjacent land. It was a very dry season, and the defendants had cut the grass on the banks of the railway about a fortnight before, probably with a view to prevent fires taking place. Besides that, the company had trimmed the hedge which separated the railway bank from a field. The trimmings and cut grass, which were called rummage, were placed in little heaps on the railway bank, and had been lying there during a fortnight preceding the fire. On the other side of the hedge was a stubble field, which was also in a very inflammable state, on account of the dryness of the weather. Shortly after a train passing, a fire broke out at, or near, one of these heaps. It ran up the bank, burnt the hedge, ran across a stubble field, and reached the plaintiff's property, which was 500 yards from the spot where the fire broke out, and 200 yards from the railway in the most direct line. There is no distinct evidence what was the cause of the fire, or what took place immediately it occurred, for the persons who might have known how it originated were not called. But there was no doubt that it originated on the railway bank, and ran across the stubble field, and destroyed the plaintiff's property. Now, the only question is, if there was any evidence of negligence to go to the the jury, or on which, if they had returned a verdict, it would have been sustained. If the jury had proved that the fire had originated in the heaps, which had been caused by sparks coming from the engine and blown on to the heaps by the high wind at the time, and then spread to the plaintiff's property in the way described, could that verdict have been sustained? I think there was evidence that it originated in the heaps, and if that were so, the defendants are responsible. The defendants were bound to remove the heaps, knowing that the summer was exceptionally hot; knowing that engines passed along their lines which they could not prevent emitting sparks; and knowing that there was nothing more probable than that sparks might fall on the grass and the heaps, and set fire to them; and that such a fire might be communicated to the adjoining property. Having cut the hedge and grass, probably with the intention of preventing fires, I think they were guilty of negligence in not removing the trimmings when cut, for it might have been foreseen that it was probable that when the heaps caught fire it might spread to the stubble field. As to the observation made by Justice Brett, that no person would reasonably anticipate that there would be an unusually high wind, so that the fire would run from the materials on the banks for some hundred yards across a stubble field and lane, I quite agree with that; but that is not the true test of the defendant's liability.

But I think the law is, as they were aware that the heaps had been lying on the ground during an exceptionally hot and dry summer, and it was probable that the engines which emitted sparks would set them on fire, they were bound to protect the neighbouring property against the consequences of such probable fire, and that they were therefore bound to remove the cuttings as soon as the hedge was cut; and as they did not do so they are liable for all the natural consequences from the cuttings catching fire. The mere accident of the plaintiff's house being situated 500 yards distance from where the fire occurred does not alter the company's liability.

Martin, B.—I am of the same opinion, there was evidence of negligence to go to the jury.