state or appropriated; and this, in itself, affords a strong argument in favour of an intention by the parties that the property was to pass before the goods were in a deliverable state or appropriated.

It is further quite reasonable to conclude that, when the appellant paid for the goods, it was to his benefit that the property should pass; for, if the respondents had become insolvent, the appellant would, if the property had passed, have the goods as the security for his money. The respondents, so far as they could, parted with the dominion over the goods, deducted the 3,000 bushels from their account with the elevator, and allowed the appellant the elevator charges for delivery on the track. The appellant, in pursuance of a well-known course of dealing, acted upon one order, and left the rest of the wheat in the elevator; and, in the case where he presented the order, actively assented to the performance by the elevator man of the duty of delivery on the track. The appellant says that he ordered the cars up. The respondents state that they were not billed for this grain by the elevator man after the sale, which is important in view of the decision in Jenner v. Smith, L.R. 4 C.P. 270.

I think, therefore, that it is reasonable to hold that, under all the circumstances, the property had passed to the appellant before the fire.

But another view of the case makes the question of the passing of the property less important. Whatever the intention of the parties was, there can be no doubt of this, that the respondents intended to divest themselves of all dominion over the wheat, leaving it for the appellant to demand it from the elevator when he wanted it. It was obviously convenient to deal with the wheat in this way, so that, when the appellant resold it, he could ship it direct to his purchaser. The respondents had marked it out of their books and had ceased to insure it. If, then, it should be held that the risk was in the respondents, because the property had not passed, it would subject them to a liability, the duration and extent of which could only be determined by the length of time which the appellant took before he required delivery, and by the fluctuation of price during that period. . . .

[Reference to Martineau v. Kitching, L.R. 7 Q.B. 436; Pew v. Lawrence, 27 C.P. 402.]

All the number one northern wheat was in bin "B," and it was not, as stated by the learned trial Judge, destroyed, but only damaged. After the fire, the appellant demanded his wheat. He was met with a refusal both by the railway company's agent and by the respondents, the latter alleging that they had bought