BAIN, J.] [Dec. 10, 1895.

BOOTH *v.* MOFFAT.

Negligence—Fire, damages for setting out.

Appeal from the decision of the Judge of the County Court of Carberry, who entered a verdict for defendant.

The plaintiff claimed $250 damages, occasioned by a fire which spread from defendant's land and destroyed the plaintiff's property.

The defendant had started a fire to burn some reeds at the edge of a creek about 10 o'clock in the morning. The reeds were burned through in about fifteen minutes, when the defendant, who had been watching the fire and thought it was out, went away to his work in a field adjoining the place where the fire was. At about 11 o'clock in the morning of the same day the defendant observed a fire burning in the grass a short distance to the east of the ground that had been burned over; this fire was carried by a high north-west wind then blowing, and spread with great rapidity over the prairie land until it reached the plaintiff's land and destroyed the property, for the loss of which he sought to recover damages.

At the trial the Judge of the County Court found as a fact that the fire which did the damage was caused by the fire which the defendant had himself set out early in the morning; but was of the opinion that defendant was not guilty of negligence and was not bound at all hazards to prevent the spreading of the fire. The wind had been getting stronger until it blew quite a gale, and when defendant noticed the fire spreading, it was impossible for him to do anything to stop it, although he had a man working with him.

Held, that the defendant could not be made liable for starting a fire on his own property for purposes of husbandry, nor was he bound at all hazards to prevent the spread of the fire to his neighbor's property; but he was bound to exercise precaution and care proportionate to the risk of fire spreading in a dry and windy country like Manitoba, where the adjoining property was covered with long and inflammable grass, and that whatever falls short of taking every precaution that is reasonably possible under the circumstances to prevent the spread of the fire, should be held to be negligence: *Furlong* v. *Carrol*, 7 A. R. 145.

The judge in appeal will not reverse the finding of the trial judge on any question of disputed facts, but he may differ from him in the inference to be drawn from the facts that are not really in dispute, and thus differing the appellant is entitled to the benefit of his opinion: *Smith* v. *Chadwick* 9 App. Cas., per Blackburn, J., p. 194.

It was negligence under the circumstances to go away to his work leaving a fire still smouldering; it was also shown that he afterwards looked back from the field in which he was working and saw small pieces of manure still smouldering which he did nothing to extinguish, although he knew that the wind was steadily rising. Defendant's own statement that he did not see the second fire until it was so far advanced that nothing could have been done to stop it, was in itself sufficient evidence to convict him of negligence.

Appeal allowed and verdict entered for plaintiff for $250 damages.

Pitblado for plaintiff.

Clark for defendant.