sufficient to go to the jury on the question of negligence. See, also, *Albridge* v. *The Great Western R. R. Co., supra; Piggott* v. *Eastern Counties R. R. Co., supra; Gibson* v. *The South-Eastern R. R. Co., supra.*

The omission of all these appliances and precautions, and the fact that premises are set on fire by engines thus driven, would be a *prima facie* case of negligence. 1 Redfield on Railways 452. In *Gibson* v. *South-Eastern R. R. Co., supra,* it was shewn "that sparks flew out of the engine and fell upon the herbage and pasturage, and set it on fire;" and Watson, B., said: "That is sufficient evidence according to the cases." In some cases the negligence is not entirely in the management or construction of the locomotive. In *Smith* v. *The London and South-Western R. R. Co., supra,* the company's servants had been employed in cutting grass and trimming hedges at the side of the track, and had heaped together the cuttings, and allowed them to remain fourteen days. This heap caught fire from a locomotive, and was carried across a stubble field and a public road 200 yards to the cottage of plaintiff, which was burned. The Court held that there was evidence for the jury on the question of negligence, although there was no suggestion that the engine itself was improperly constructed or driven. The jury found for plaintiff, and the court on appeal refused to interfere. See, also, *Gibson* v. *The South-Eastern R. R. Co.*, 1 Fos. & Fin. 23; *Vaughan* v. *Taff Vale R. R. Co.*, 5 Hurlst. & Norm. 679. Under the Massachusetts statute, several cases of this character have arisen. In *Perley* v. *Eastern R. R. Co.*, 98 Mass. 414, a wood lot half a mile distant from the track was ignited; the sparks set fire to the grass in the open field, and spread without any break in the direction of the wood lot, over the premises of several different proprietors, and finally burned the wood lot in suit. The court held the company liable. In *Hart* v. *Western R. R. Co.*, 13 Metc. 99, the fire was communicated from the engine to a carpenter's shop, thence, by wind driven sparks, sixty feet to plaintiff's dwelling, which was consumed, and the company was held liable. In *Ingersoll* v. *Stockbridge and Pittsfield R. R. Co.*, 8 Allen 438, the fire was communicated from the locomotive to a barn, thence through a shed to plaintiff's barn, and the company was held liable. See, also, *Ross* v. *Boston and Worcester R. R. Co.*, 6 Allen 87. We come now to the second class of cases wherein the injured party contributes to the loss.

These cases have arisen usually where fire has been communicated to grass, etc., or any combustible material lying near the track. In *Ill. Central R. R. Co.* v. *Mills*, 42 Ill. 407, which was an action to recover for a stack of hay burned in consequence of fire communicated through grass and weeds from the locomotive of the company, the court said: "The company were bound to use the same diligence in removing dry weeds and grass and all other combustible material, from exposure to ignition by the locomotive, that a cautious and prudent man would use in reference to combustible materials on his own premises if exposed to the same hazard from fire as dry grass upon the side of a railway." And it is a question for the jury whether the company has exercised this care, and whether the injured party has contributed to the injury by leaving combustible material upon his own land adjoining the railroad. See, also, *The Ohio & Miss. R. R. Co.* v. *Shanefelt*, 47 Ill. 497; *Ill. Central R.R. Co.* v. *Frazier*, id. 505; overruling *Bass* v. *Chi. Bur. & Qu. R. R. Co.*, 28 id. 9; *Chicago & N. R. R. Co.* v. *Simmons*, 54 id. 504. In this last case above mentioned the court said that "land owners contiguous to railways were as much bound, in law, to keep their lands free from an accumulation of dry grass and weeds as railroad companies were; so when a fire is ignited on a company's right of way, and is communicated to fields adjoining, the negligence of such owner will be held to have contributed to the loss, and, unless it appears the negligence of the company was greater than that of such land owner, the latter cannot recover for injuries thus arising."

In *Vaughan* v. *The Taff Vale R. R. Co., supra,* which was an action to recover for a wood lot consumed, as was alleged, by fire from a locomotive of defendant company, it appeared that at the time the fire was discovered the wood was burning, but the dry grass on the railway bank had been already burned. Chief Justice Cockburn intimated that if the fire was carried indirectly by the dry grass on the bank to the wood, the defendant would be liable, but if it arose from the sparks not being carried to the bank but direct to the wood which was full of dry combustible material, the defendant would not be liable. It is thus well established, that one who owns land along a railway has a duty to perform in dry seasons when grass and weeds are liable to ignition. But by far the most important part of the discussion is included under the next and third division of cases, wherein the distinction between the direct and remote damages is made. A *resumè* of the discussion, and an observation of the course of decisions, both in England and the United States, will reveal the fact, that not until recently has this distinction been advanced in the courts. In fact the decisions of England do not furnish a single instance of the distinction. So late as *Smith* v. *The London and South-Western R. R. Co., supra,* (decided in 1870), in which fire was carried across a stubble field and a public road 200 yards to a cottage, it was held, without limitation, the plaintiff could recover, the jury having found negligence. In the United States the distinction has not been contended for or judicially recognized except in New York, Pennsylvania, and possibly in