

TEETZEL, J.

MAY 1ST, 1909.

TRIAL

SCOTT v. PERE MARQUETTE R. R. CO.

Negligence—Destruction by Fire of Wood Piled near Railway Siding—Escape of Fire from Engine—Proof of Negligence—Accumulation of Combustible Matter—Defective Condition of Screen.

The plaintiff, a dealer in wood and timber, by arrangement with the defendants had the right to and did store cordwood on the defendants' property adjoining their tracks at Foster's siding. A large quantity was burned on 4th July, 1907, and a smaller quantity on 22nd April, 1908, and this action was brought to recover the value. It was tried at Sandwich without a jury.

A. H. Clarke, K.C., and A. R. Bartlet, Windsor, for plaintiff.

F. Stone, Chatham, for defendants.

TEETZEL, J.:—I have no difficulty in finding upon the evidence that both fires were caused by sparks escaping from defendants' locomotives, but, in order to make the defendants liable for the loss, negligence must also be found.

As to the July fire, there was not, in my opinion, sufficient evidence to establish negligence, either in using a defective locomotive or allowing combustible material to exist on the right of way or otherwise.

As to the fire on 22nd April, 1908, there is evidence upon which negligence by the defendants in respect of two matters may be found, and I think both combined to cause the destruction of the plaintiff's wood.

In the first place, I think the defendants were negligent in allowing to remain along the side of their right of way near plaintiff's pile of wood, an unreasonable amount of long, dead grass, the growth of the previous year, and in which, I am of opinion, the fire started and spread to the wood.

On 23rd April the plaintiff and two engineers of experience examined the locomotive from which the sparks were emitted on the 22nd, which caused the damage, and they