

long grass, to which, if he had not done that, there was imminent danger of the other fire spreading to and burning his fences and buildings.

The fire was set out by the appellant in a very dry season, but, as the learned District Court Judge found, for a "good purpose," which I understand to mean under the honest belief that the burning of the grass was necessary to prevent the other fire from spreading to his land and destroying or damaging his fences and buildings. The learned Judge, however, found that the fire set out by the appellant ran on the respondent's land "through lack of reasonable care and protection to prevent it spreading;" and he, therefore, held that the appellant was liable for the damages suffered by the respondent.

There was evidence to support this finding, and it is fatal to the appellant's case.

Having come to this conclusion, it is unnecessary for us to determine whether the appellant was justified in setting out the fire, but I am inclined to think that the principle of the case of *Cope v. Sharpe* No. 2, [1912] 1 K.B. 496, is applicable; and that, apart from the question of negligence in not taking reasonable precautions to prevent the spread of the fire to the respondent's land, it would be a good defence to the action if there was in fact real and imminent danger of the other fire spreading to the appellant's land and doing damage to it or to his fences or buildings; and the means which he took to prevent it from doing so were reasonably necessary, in the sense that they were acts which, in all the circumstances of the case, a reasonable man would do to meet such a real danger.

The appellant also complains that the damages are excessive, but it is impossible for us to interfere upon that ground. There was evidence to warrant their being assessed at the time at which they were assessed, and the learned Judge, from his knowledge of local conditions, was in a far better position to determine the question of damages than we can possibly be.

I would dismiss the appeal with costs.