[His Lordship, after stating the facts, said—] Had the fire come to the plaintiff's house through the negligence of the defendants? It think it had. There were heaps of dry rummage on the bank: directly after one of the company's engines passed, which emitted sparks, the heaps were on fire, and the fire spread to the plaintiff's house. There is, therefore, evidence that the fire originated in that way. The circumstance of the house being distant 500 yards has nothing to do with that. I consider that the sparks falling on the heap was the cause of the fire.

Channel, B.—The only question here is whether there was any evidence to show that the fire originated from a spark falling on the heaps. I think there was. As I think that is so, it is no excuse for the company to say that the damage was greater than they anticipated.

Blackburn, J.—I agree with the judgment of Channell, B. If I alone had to decide this matter I should require before giving judgment to have some doubts removed. I think, however, that there was evidence to go to the jury. I guard myself however from saying that such a verdict might not be set aside, since, in the case of *Vaughan* v. *Taff Vale Railway Company*, 8 W. R. 549, it was decided that a railway company are not responsible for an accidental fire caused by a spark falling from one of their engines upon premises adjoining the railway, if they have taken every precaution that science has suggested to prevent injury. But it was held that they were liable if they were guilty of some negligence in fact. But negligence cannot be implied from the mere employment of locomotive engines, as the use of them is permitted by the Legislature.

I agree entirely with that, and that the company has a duty cast on them to use all reasonable care to prevent any fire arising from the use of the engines. But is there any evidence here that the company unintentionally omitted to do that which a reasonable person would have done? To answer that question, we must look at what a reasonable man might anticipate or expect. Could any man giving a reasonable consideration as would regulate reasonable men under the circumstances, have anticipated that the fire would have spread beyond the fence. I have no doubt that if a railway company were to strew the banks with dry grass in a highly inflammable condition, and that there was no boundary to their property, by wall or otherwise, and that a spark from an engine set the grass on fire, and that highly inflammable property was situated next to their property, and that the fire destroyed the neighbouring property, that the company would be guilty of negligence. My doubt, however, is, without having more carefully considered the evidence, whether the fire was caused by the burning of the rummage, or whether it was not caused by the hedge, on account of the dryness of the season, being highly inflammable, catching fire. If the hedge had been green, as it usually is, it would have prevented the fire extending beyond the company's premises. What caused the damage, therefore, was, I rather think, the unusual state of the hedge. It is here that I doubt whether there was any evidence or negligence, or that the company would reasonably anticipate that damage would arise from the grass burning. When the line was made the company could anticipate that the grass would catch fire, but then in ordinary weather they would anticipate that the fire would not reach beyond the hedge. If there had been a stone wall in the place of the fence the fire would not have occurred. I hardly think that during this seven weeks of dry weather the company was guilty of negligence in not removing the hedge and building a stone wall.

I quite agree with Channel, B., that when once the company had set fire negligently to the adjoining premises it is no answer to say that the damage was greater than could reasonably be expected. If a person accidentally injures another he must pay for the injury, according to the position of the party injured. If a railway company negligently kills a passenger, they might be bound to pay one million; and it would be no answer to say that they expected poor and not rich people to travel by the train.

Pigott, B.—I have no doubt in this case. I agree with the judgment of Keating, J., in the court below, and by whom the case was tried. There was some evidence of negligence considering the extraordinary dryness of the season, and the fact that the company knew that the engines must nessarily emit sparks. I think they were guilty of negligence in leaving heaps of rummage on the banks until they became highly inflammable. It was a question for the jury if the fire arose in that way. I think there was evidence from which they might fairly conclude that it did When the fire once reached the field it spread in two directions; it was stopped in one direction, and it ran across the field towards the plaintiff's house in the other direction. Nothing, I think, happened but what the company might reasonably anticipate from leaving the heaps on the bank.

Lush, J.—The fire arose from sparks sitting fire to the heaps, the dryness of the season and the wind caused it to spread to the hedge. The more likely that the banks and heaps of cuttings were to catch fire, the more careful the company ought to have been in taking precautions against such an accident.

Bramwell, B., concurred.

PROBATE.

Crickett v. Field (Williams & Makepeace *Intervening*.)

Lost Codicil—Proof of factum and execution.

In propounding a copy of a lost codicil, it was proved by A. & B. that such a paper had existed, and by C. & D., the alleged attesting witnesses, that they had signed some paper for the deceased, but were unable to say whether it was testamentary or not. The Court held that in the absence of proof identifying the paper known to A. & B., with that signed by C. & D., there was not sufficient proof of the *factum* and execution of the codicil, and refused probate.

[19 W. R. 232.]

Charles Lane Crickett, late of Regent-square, Gray's-inn-road, died on 16th of October, 1869. His surviving issue consisted of one son, Charles Tomkins Crickett, and two daughters, Mrs. Field