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NEW JERSEY
Court of Errors and Appeals

THE BOARD OF CONSERVATION AND DEVELOPMENT,
Plaintiff, Appellant,
vs.
PETER Y. VEEDER,
Defendant, Appellee.

On Appeal from the Supreme Court.

Brief of Plaintiff, Appellant.

STATEMENT OF FACTS.

This case involves the construction of Section 11 of an act of the Legislature of the State of New Jersey entitled "An act for the appointment of firewardens, the prevention of forest fires, and the repeal of sundry acts relating thereto," approved April eighteenth, one thousand nine hundred and six (*2 Comp. Stat.* 2332), as amended by act approved March fifteenth, one thousand nine hundred and eleven (*P. L.* 1911, *p.* 52).

The action was originally commenced before a justice of the peace to recover a penalty for violation of the statutory provision above mentioned, and resulted in the conviction of the defendant. From this conviction an appeal was taken, and on the trial of the appeal

a judgment of nonsuit was entered. The record was removed to the Supreme Court by writ of certiorari, and the judgment of nonsuit was affirmed.

The charge against the defendant, as appears from the Complaint (Case, page 6), was that on the twenty-fourth day of April, A. D. nineteen hundred and twelve, "he set fire to, burned and caused to be burned, wasteland, brushland and forest land, located in the Township of Berkeley, in the County of Ocean."

Pursuant to rule of the Supreme Court, the Common Pleas Court certified all of the evidence found in the case. It appears from this evidence (Case, pages 16 to 20) that on the day in question the defendant started to burn his salt meadows, located as shown on the diagram (Case, page 19), south of the line "A, E"; that he set fire at the point indicated by "A" on the diagram when the wind was from the west; that the meadows adjoining him east of the line "A, B" and north of the line "A, E" had a short growth of grass upon them; that the fire crossed over the line "A, E" and burned in the field containing the short grass; that while defendant's helper was whipping out the fire in the field containing short stubble, at the point marked "X" on the diagram, and while the defendant himself was whipping out the fire in a fringe of old grass along the ditch running from "A" to "B" the wind shifted and the fire went across the ditch and burned the grass at "C" and reached the woods at "W". After the fire reached the woods it became a very extensive forest fire (Case, page 16, line 12; page 17, lines 18–20). The defendant, after the fire, when questioned by the warden concerning the fire, said: "It was a case of bad judgment; I had no right to burn my meadow a day like yesterday, and I ought to have had more than one man; it was my fault, and I will take my medicine like a man, only just go as easy on me as you can." (Case, page 18, lines 15 to 20.) And, further, that the trouble was a shift of the wind from

west to south, and the "dumbness" of the man he had helping him.

It appears, therefore, that the defendant failed to confine the fire which he set in his meadow to that land, but that it escaped to adjoining land and to the woodland, causing a destructive forest fire, and that the defendant admitted that this escape was due to the selection by him of an unsafe time for the burning of his meadows and to his failure to provide sufficient assistance to enable him to control the fire.

It appears further from the return to the Rule to Certify that the nonsuit in this case was granted by the Common Pleas Court "upon the ground that the fire which was charged in the suit of plaintiff, appellee, was not actually set or caused to be set by the defendant, appellant, in any wasteland, brushland or forest land, and that, therefore, Section 12 was not violated." The opinion of the Supreme Court is printed on pages 22 to 24 of the Case. From this opinion it appears that the Supreme Court affirmed the judgment of the Common Pleas Court upon a somewhat different ground, Mr. Justice Kalisch, who wrote the opinion, stating that:

> "We think that in order to hold the defendant accountable under section eleven of the act it was essential that it should have appeared that the causing of the woodland to be burned was his intentional act."

Reference was also made to the case of *State Board of Forest Park Reservation Commissioners* v. *McCloskey,* reported in 87 *N. J. L.* 470, which was an action brought for the recovery of a penalty for violation of the same section of the same act, and decided at the same term.

The specifications of reasons for reversal appear in the Notice of Appeal, on pages 1 to 2 of the State of the Case.

Appellant contends that the facts proven by it show

a violation of the statute on the part of the defendant and appellee, and that the judgment of the Supreme Court affirming the judgment of nonsuit was, therefore, erroneous.

ARGUMENT.

I.

THE ACTION IS A CIVIL ACTION AND THE LEGALITY OF THE JUDGMENT OF NONSUIT DEPENDS UPON THE RULES APPLICABLE TO CIVIL ACTIONS.

In *Forestry Board* v. *McCloskey*, 87 *N. J. L.*, at page 476, it was stated by the Supreme Court that the statute upon which the action to recover the penalty in this case is based is a *quasi* criminal one. While the purpose of the statute is to some extent, at least the punishment of the offender, the procedure is neither criminal nor *quasi* criminal, but civil, and the rules of trial procedure peculiar to civil actions apply thereto. See *Brophy* v. *Perth Amboy*, 15 *Vr.* 217, (*Court of Errors*); *Minard* v. *Dover &c. Gas Co.*, 68 *Atl. Rep.* 910; *Board of Health* v. *VanDruens*, 77 *N. J. L.* 443; *McGuire* v. *Doscher*, 36 *Vr.* 139; *Rutgers College Athletic Asso.* v. *New Brunswick*, 26 *Vr.* 279.

In each of the cases above mentioned the procedure was summary; a sworn complaint was filed, summons or warrant was issued, and hearing was held without the filing of any pleadings, execution issued against the goods and chattels and body, and in all respects the procedure was substantially identical with that in the case at bar.

In the VanDruens case, *supra*, Mr. Justice Minturn said, of substantially the same procedure as in this case:

> "The second and final objection urged by the prosecutor is that the Court directed the jury to find a verdict against the prosecutor and in favor of the state board, thus depriving the

prosecutor, as he alleges, of his right to a jury trial. This claim to the right of trial by jury is based upon the contention that as the proceeding *sub judice* was to recover a penalty it was at least a *quasi* criminal prosecution and not a civil action, but the adjudications of this court are to the contrary. (Citing cases.)

"The status of the proceeding having been repeatedly adjudged to be a civil and not a criminal character it follows that the rules of procedure peculiar to the civil jurisdiction were applicable in the trial of the cause."

See also *C. B. & Q. Ry. Co.* v. *U. S.*, 220 *U. S.* 559, 578, in which Mr. Justice Harlan said:

"It is a settled law that a certain sum, or a sum which can readily be reduced to a certainty prescribed in a statute as a penalty for the violation of law, may be recovered by civil action even if it may also be recovered in a proceeding which is technically criminal. *Hepner* v. *U. S.*, 213 *U. S.* 13, 18. In this case it was also held that it was competent for the trial court, even though the action was for a penalty, to direct a verdict for the government, the Court saying that, 'it is fundamental in the conduct of civil cases that the court may withdraw a case from the jury and direct a verdict according to the law, if the evidence is uncontradicted, and raises only a question of law.'"

The well-known rule with regard to granting a nonsuit is stated by Mr. Justice Trenchard, speaking for the Court of Errors in *Weston Co.* v. *Benecke*, 82 *N. J. L.* 448, in the following language:

"A motion for nonsuit admits the truth of the plaintiff's evidence and of every inference of fact that can be legitimately drawn therefrom, but denies its sufficiency in law. *Hayward* v. *North Jersey St. Ry. Co.*, 45 *Vr.* 648. Where

> the evidence and the inferences reasonably arising therefrom will support a verdict for the plaintiff a motion for nonsuit must be denied. *Dayton* v. *Boettner, ante. p.* 421."

This case also states that the rule is the same in cases tried before the court without a jury as in cases tried with a jury. See also *N. J. School Church Furn. Co.* v. *Board of Education,* 58 *N. J. L.* 646. (Court of Errors and Appeals), in which it is said:

> "The facts of the case are not in dispute, being for the most part the written communications between the parties or the entries in the minutes of the defendant. This circumstance does not, however, of itself, create a question of law for the court, since if indisputable facts admit of two inferences, one favorable and the other unfavorable to the plaintiff, a question is presented that calls for the opinion of the jury."

If, therefore, there was any evidence offered on behalf of the plaintiff showing that the defendant violated the statute in question, or from which it could reasonably be inferred that the defendant violated the statute, the judgment of nonsuit was erroneous.

II.

THE DEFENDANT BURNED AND CAUSED TO BE BURNED FOREST LAND, WITHIN THE MEANING OF SECTION 11 OF THE STATUTE.

Section 11 reads as follows:

> "No person shall set fire to or burn, or cause to be burned, any wasteland, brushland or forest land, but nothing in this section shall be interpreted to forbid any person from setting a back fire, or ground fire, or a surface fire, upon his own property to protect the same; provided, however, if such fire be permitted to escape, or

> does escape, to adjoining property, then the person setting such fire, or causing it to be set, shall be deemed to have violated the provisions of this section. Any firewarden, however, shall have the power to set, or direct to be set, any back fire. In any township in which a fire service is established, any person who shall find a fire burning in the forest, or where forest is endangered, shall immediately extinguish the same, or, being unable so to do, shall notify a firewarden."

It was proven that the fire which burned a large tract of woodland was communicated from defendant's land and was started by him in his meadow, and that the spreading of the fire was due to natural causes rather than to the intervention of another person. The admission of the defendant that he should not have burned his meadow at that time, and in that manner, without more help to assist him in controlling the fire (Case, page 15, lines 1 to 20), his act in pointing out to the firewarden the course which the fire had taken (Case, page 15, lines 16 and 17), and in showing the warden where the fire escaped from his control and spread to the forest land, all show not only that the fire which the defendant started in his meadow was the cause of the burning of the forest land and wasteland, but that the defendant's lack of care was at least in some degree responsible for the escape of the fire.

The section prohibits not only setting fire to and burning wasteland, brushland and forest land, but causing such land to be burned. The defendant contends that since the fire was not actually set in woodland, but was set in a meadow near such woodland, the statute was not violated. Even if there were support for the defendant's contention that the setting of a fire in a meadow, which spread to adjoining woodland, is not setting fire to woodland, such an act is certainly burning woodland and causing it to be burned, if the fire set in

the meadow spreads without the intervention of any other person and through natural causes to the woodland.

As to whether or not the act of the defendant was the proximate cause of the burning of the woodland, some of the cases dealing with the liability of railroad companies for fires indirectly communicated to adjoining property from their locomotives are in point.

In the case of *Del., Lack. & West. R. R. Co.* v. *Salmon*, 10 *Vr.* 300, *at page* 307, this Court held that in an action against a railroad company for the recovery of damages for negligently starting a fire it was immaterial whether the fire was started on the plaintiff's land or on the property of a third person, if the fire was communicated from its place of origin to the land of the plaintiff. In this case the contention was made that the railroad company was not liable for injury done to lands not adjoining the right of way of the railroad because such injury was remotely and not proximately connected with the escape of the fire from the engine. This contention was not sustained.

In the case of *Goodman* v. *Lehigh Valley R. R. Co.*, 82 *N. J. L.* 450, a fire had been started in the barn of one Goodman by a spark from the engine of the defendant company; buildings belonging to one Mays were located about 1,180 feet away from this building. Fire was communicated to these buildings from the Goodman fire. The railroad company contended that they were not liable for the destruction of Mays' buildings. The Court of Errors held that since the evidence showed that the fire was communicated from Goodman's buildings to Mays' buildings, there was no doubt as to the responsibility of the railroad company.

See, also, the case of *Wiley* v. *W. J. & S. S. R. R. Co.*, 44 *N. J. L., at page* 251. In this case it was insisted by the defendant that inasmuch as the burning of plaintiff's woods was caused by a fresh outbreak of a fire started by a spark from an engine of the de-

fendant, that the defendant was not liable for such burning, because if the tenant to whose attention the first fire was called had extinguished it, the woods would not have been burned. The Supreme Court held that the starting of the fire by the engine of the defendant was the proximate cause of the burning, and that the defendant was liable therefor.

The cases above cited are actions brought to recover damages for negligence, and not actions to enforce a penalty for violation of a statute. They are cited, however, because in these cases it was held that the starting of a fire on lands of a third person, at some distance from the lands of the plaintiff, was the proximate cause of the damage done on lands of the plaintiff, although the fire was not communicated directly from the defendant's engine to any property of plaintiff. By these decisions the Supreme Court and this Court have held that when a fire is actually started the person starting that fire has caused the burning of every object to which that fire is communicated by natural causes, without the intervention of third persons. This being true, how can it be said that there was no *prima facie* proof that the fire started by the defendant in this case was not the proximate cause of the forest fire, or that the defendant did not cause the forest land to be burned within the meaning of section eleven?

See, also, *Ingersoll & Quigley* v. *Stockbridge and Pittsfield R. R. Co.*, 8 *Allen* 438, in which it was held that in an action brought under a statute of the State of Massachusetts, which provided that every corporation shall be responsible in damages to any person or corporation whose buildings or other property may be injured by fire communicated by its locomotive engines, proof that the fire was communicated directly from the locomotive of the defendant to a barn belonging to one Ingersoll and spread through an intervening shed to the barn of Quigley (the plaintiff), was proof that the

fire was communicated from the locomotive to the barn of Quigley, although no fire was directly communicated from the locomotive to Quigley's property.

III.

IT WAS NOT NECESSARY TO PROVE THAT THE DEFENDANT WILFULLY OR INTENTIONALLY SET FIRE TO AND BURNED OR CAUSED TO BE BURNED THE FOREST LAND, ETC.

The judgment of the Supreme Court rests upon the assumption that proof that the defendant did the acts prohibited by the language of the statute is insufficient unless supplemented by proof that the defendant's acts in doing the prohibited thing were wilful and intentional. In other words, the Supreme Court construed the statute as though it had read: "No person shall wilfully set fire to or burn or cause to be burned."

In the opinion in the *McCloskey case,* 87 *N. J. L.* 470, reference is made to the opinion of this Court in the case of *Halsted* v. *State,* 41 *N. J. L.* 552, as authority for the statement that in expounding a penal statute, reference must be had to its context and effect so that such construction may be given it as will prevent the act from being run into absurdity. The Supreme Court quotes from the opinion of Mr. Justice Swayze in *State* v. *Kuehnle,* 85 *N. J. L.* 220, commenting upon the opinion in *Halsted* v. *State, supra,* as follows:

> "It was held that in that case that with respect to statutory offenses the maxim that crime proceeds only from a criminal mind does not universally apply. But the great Chief Justice who spoke for this Court in that case was too acute and accurate to fail to perceive and call attention to the fact that the real question is one of statutory construction. The Legislature may, if it will, make an act criminal without regard to

> the criminal intent; the question is, has it done so?"

With the general rule of law, as stated by the Supreme Court in the McCloskey case, the appellant is in entire accord. It is submitted, however, that the Supreme Court erred in the application of this rule to the statute then under construction.

Halstead v. *State, supra,* is the leading case in this State on this subject. In this case, Chief Justice Beasley said:

> "Nothing in law is more incontestable than that with respect to statutory offenses the maxim that crime proceeds only from a criminal mind does not universally apply. The cases are almost without number that vouch for this."

After reviewing a number of cases, the learned Chief Justice makes the following statement of the controlling rule (italics ours):

> "Now these two classes of cases diverging as they do, and seemingly standing apart from each other, may at first view appear to be irreconcilable in point of principle, but nevertheless such is not the case. They all rest upon one ground and that ground is the legal rules of statutory construction. None of them can legitimately have any other basis. They are not the products of any of the general maxims of civil or natural law. On the contrary, each of this set of cases is, or should have been, the result of the judicial ascertainment of the mind of the Legislature in the given instance. In such investigations the dictates of natural justice, such as that a guilty mind is an essential element of crime, cannot be the ground of decision, but are merely circumstances of weight, to have their effect in the effort to discover the legislative purpose. As there is an undoubted competency in the lawmaker to declare an act criminal irre-

spective of the knowledge or motive of the doer of such act, there can be, of necessity, no judicial authority having power to require, in the enforcement of the law, such knowledge or motive to be essential. *In such instances the entire function of the Court is to find out the intention of the Legislature and to enforce the law in absolute conformity to such intention, and in looking over the decided cases on the subject it will be found that in the considered adjudications this inquiry has been the judicial guide.*"

And again at page 596:

"The course of the inquiry, therefore, has led to this point: Is there anything in the language of the statute now to be construed, or in the legislative design displayed in it, or in the consequences, if its terms are construed strictly, by force of which this Court can limit its operation to those only who act with consciousness of violating the law."

The rule laid down in this case is the rule which has been followed in subsequent decisions both in this Court and in the Supreme Court.

In *Waterbury* v. *Newton*, 50 *N. J. L.* 534, the Supreme Court considered the act of 1886, regulating the sale of oleomargarine. Speaking of this statute, the Court, by Mr. Justice Dixon, *inter alia*, said:

"The prohibition is, in clear and simple terms, against the sale of oleomargarine colored with annatto. Unless, therefore, there be discoverable, in what may be deemed the general design of the Legislature, an intention to limit this language to cases where the seller is shown to be cognizant of the character of the article sold, the terms of the statute should be effectuated. This general design, as declared both in the title and in the body of the act, is to prevent deception in the sale of oleomargarine, and if we have regard

> to the public sentiment out of which the law sprung, it was, we think, not only to avoid for the sake of purchasers, the danger of their buying oleomargarine under the belief that it was butter, but also thereby to secure to the manufacturers of butter those advantages which fair and open competition would afford. The object was not to punish acts intrisically wrong, but to prevent acts which in their results operated unjustly upon others. This object would be thwarted if sales could be made with impunity by those ignorant of the ingredients of the articles sold."

See, also, *Bayles* v. *Newton*, 50 *N. J. L., at page* 553; *Cigarmakers' International Union* v. *Goldberg*, 70 *N. J. L.* 488.

In *Newark* v. *Essex Club*, 53 *N. J. L.* 99, an action was brought before a police justice to recover a penalty for the alleged illegal sale of liquors by the Essex Club, in violation of the act regulating the sale of liquor, passed March 7, 1888 (*P. L.* 1888, *p.* 141). The Supreme Court, by Mr. Justice Van Syckel, said:

> "In my judgment it is wholly immaterial and not a legitimate subject of inquiry whether an intention to violate or evade the law was present or not. Intent constitutes no part of the offense. A simple question is presented whether the act expressly inhibited has been done. If so, the presumption of wrongful intent is present and cannot be controverted."

In *Vandegrift* v. *Meihle*, 66 *N. J. L.* 92, it was held that with regard to the statutory offense of selling adulterated milk intent to violate the law was not an essential ingredient in the offense.

Speaking of this the Court said:

> "There is nothing in the law or in the character of the forbidden act which indicates a legislative intent to make guilty knowledge a cir-

> cumstance necessary to be proven. If such a provision is engrafted upon the statute by judicial interpretation it would furnish very slight protection to the public."

See *Jaycox* v. *U. S.*, 107 *Fed. Rep.* 923.

In *C., B. & Q. R. R. Co.* v. *U. S.*, 220 *U. S.* 559, the Supreme Court of the United States held that the Safety Appliance acts of March 2, 1893, and March 2, 1903, imposed an absolute duty upon the carrier, and that the penalty imposed by those acts could not be escaped by the exercise of reasonable care, and the absence of intent to violate the law. Referring to the omission of Congress to make knowledge and diligence on the part of the carrier ingredients of the act condemned, the Court said, quoting from the language of the trial court:

> "Its omission was intentional in order that this statute might induce such a high degree of care and diligence on the part of the railway company as to necessitate a change in the manner of inspecting appliances and to protect the lives and safety of its employees, provided the accident occurs from a defective appliance such as is designated in this act."

It was contended in this case that, although the Supreme Court had decided in a previous case, which was an action brought by an employee to recover damages for injuries arising from the failure of the railroad company to supply the safety appliances required by the statute, that the duty of the railroad company was absolute; that the construction of the penal provision of the law should be different and that in an action to enforce a penalty for failure to comply, proof of good intentions and diligent effort to comply with the statute would be sufficient. Speaking of this contention the Court said:

> "This difference, it is suggested, will justify a re-examination upon principle of the rule an-

> nounced in the Taylor case. In effect the contention is that the present action for a penalty is a criminal prosecution and that the defendant cannot be held guilty of a crime when it had no thought or purpose to commit a crime, and endeavored with due diligence to obey the act of Congress. This contention is unsound because the present action is a civil one."

The action in question was for the recovery of a penalty by civil procedure, and in that respect was identical with the case at bar. The Court found in this case that the Legislature, upon grounds of public policy, imposed an absolute duty upon the railroad company; that the purpose of the statute, viz., the protection of the lives of the railroad employees, could not otherwise be accomplished.

In *Commonwealth* v. *Emmons,* 98 *Mass.* 6, it was held that in a prosecution for violation of a statute prohibiting the admission of minors to a poolroom it was immaterial to show that the defendant did not know or have reason to believe that the alleged minors were under age; that the defendant admitted them to the room at his peril, and was liable to the penalty, whether he knew them to be minors or not.

In *United States* v. *Bayaud,* 16 *Fed. Rep.* 376, it was held that in the trial of an indictment for removing revenue stamps from casks containing spirits, without cancelling them, it was immaterial whether or not the defendant knew that the casks contained distilled spirits; that he was bound to know the facts and obey the law at his peril.

In *People* v. *Snowberger,* 113 *Mich.* 86, it was held that a law of Michigan, which prohibited the sale of adulterated food and made any violation of its provisions a misdemeanor, had been violated by the defendant, who sold a quarter of a pound of adulterated mustard, although he did not know that it was adulterated and had reason to believe that it was not, hav-

ing purchased it for the pure article. This case cites a large number of cases in which a similar principle has been applied under varying circumstances.

In *State* v. *Heck*, 23 *Minn.* 549, it was held that in a prosecution for violation of an act prohibiting the sale of liquor to an habitual drunkard, it was unnecessary to prove that the defendant knew that the person to whom the liquor was sold was an habitual drunkard.

In *People* v. *Roby*, 52 *Mich.* 577, it was held that an act which required all saloons to be closed on Sunday was violated under the following circumstances. The clerk of the defendant, without his knowledge or consent, but while the defendant was on the premises, opened the saloon on Sunday morning to have it cleaned out, and in the meanwhile sold a drink to a customer who insisted upon having it. This case cites a large number of cases in which the same principle was applied.

In *Commonwealth* v. *Goodman*, 97 *Mass.* 117, on a complaint for unlawfully keeping intoxicating liquor for sale, it was held that it was not necessary to show that the defendant had knowledge of the intoxicating quality of the liquor kept by him for sale.

See, also, *Commonwealth* v. *Wentworth*, 118 *Mass.* 441, in which a statute of the State of Massachusetts prohibiting the sale of naphtha under any other name was held to have been violated by the defendant who sold naphtha which, according to the evidence, the defendant believed to have been treated with chemical agents in such a way as to counteract the explosive qualities of the naphtha. The Court said in part:

> "It is like the statutes against the sale of intoxicating liquors, or adulterated milk, and many other police regulations; it prohibits the acts of selling or keeping naphtha under any other name, not because of their moral turpitude or the criminal intent with which they are committed, but because they are dangerous to the

> public; as stated in *Hourigan* v. *Nowell,* 110 *Mass.* 470, which arose under section 2 of this statute, 'for the protection of the community the law throws upon the offender the responsibility and burden of keeping himself at his peril within the terms of the statute in dealing with a kind of article, the use of which has been found to be attended with great danger.'" (Citing cases.)

The decisions above cited are illustrations of the rule that the question to be determined in each case of this character is one of statutory construction. The function of the Court is to discover the intention of the Legislature.

BY THE ENACTMENT OF SECTION 11 THE LEGISLATURE INTENDED TO MAKE THE USER OF FIRE RESPONSIBLE FOR THE RESULT OF SUCH USE IF SUCH FIRE SPREAD TO FOREST LAND OR WASTE LAND.

This design is made apparent:

First. By an examination of the whole statute, particularly sections 9 and 11.

Second. By considering the provisions of previous laws on the same subject.

Third. By considering the evil which the law was designed to remedy.

FIRST.

A consideration of the language of the statute, and particularly of sections 9 *and* 11.

The statute in question was passed in 1906. (*P. L.* 1906, *p.* 221.) Its title is "An act for the appointment of firewardens, the prevention of forest fires, and the repeal of sundry acts relating thereto." Its object, as expressed in its title, was, therefore, the prevention of forest fires. The first eight sections of the act provide

an organization for fighting forest fires and supply detailed provisions governing such organization. The ninth section of the act (*2 Comp. Stat.* 2332), as amended in 1911 (*P. L.* 1911, *p.* 55), provides as follows: (Italics ours.)

> "In any township or part thereof for which firewardens have been appointed under the provisions of this act, waste, fallows, stumps, logs, brush, dry grass or fallen timber shall not be burned unless the written permission of the State Firewarden, or a division firewarden, or of the township or district firewarden of the township or district in which such fire is set has been first obtained. *Such permission shall not be granted by any firewarden if, in his opinion, any forest or woodland will be endangered thereby, nor shall such permission, if granted, relieve or exonerate any person from any penalties under this act, in case, by reason of such fire, any forest, brushland or woodland be burned;* provided, however, permits shall not be necessary for burning said materials when the fire is set in a public road, garden or plowed field at a distance of not less than two hundred feet from any woodland, brushland or field containing dry grass or other inflammable material."

Section eleven (the section the defendant is charged with violating) as amended in 1911 (*P. L.* 1911, *p.* 56) reads as follows: (Italics ours.)

> "No person shall set fire to or burn, or cause to be burned, any wasteland, brushland or forest land, *but nothing in this section shall be interpreted to forbid any person from setting a back fire, or ground fire, or a surface fire, upon his own property to protect the same; provided, however, if such fire be permitted to escape, or does escape, to adjoining property, then the per-*

son setting such fire, or causing it to be set, shall be deemed to have violated the provisions of this section. Any firewarden, however, shall have the power to set, or direct to be set, any back fire. In any township in which a fire service is established any person who shall find a fire burning in the forest, or where forest is endangered, shall immediately extinguish the same, or being unable so to do, shall notify a firewarden."

The twelfth section, as amended in 1911 (*P. L.* 1911, *p.* 56), provides that any person violating the act shall be liable to a penalty of not less than $50, nor more than $200, and contains a proviso that where there are mitigating circumstances the Forest Commission may, in its discretion, permit the person or persons who may have violated the law to pay the cost of extinguishing the fire, or other expenses incurred, or such part thereof, or such sum less than the minimum fine, at such time and in such manner as the Commission shall determine, and that such payment when made shall relieve the person or persons making it of the penalty for such violation imposed by the act. Provision is also made that the penalty, when received, shall be disbursed by the Executive Officer of the Forest Commission in such manner as will relieve in equal degree the township or townships concerned and the State of the expenses incurred.

The remaining sections of the act refer to the procedure.

It will be noted that the portion of section 9 above printed in italics provides that the permit to burn brush, if granted, shall not relieve or exonerate any person from any penalties under this act *in case by reason of such fire any forest land, brushland or woodland be burned.* In other words, it appears that the Legislature intended that if a fire started by a person while burning brush pursuant to a permit properly granted should be

communicated to forest land, brushland or woodland, that person would thereby become liable to some penalty under this act. Section 9 does not contain any prohibition which would be violated by the escape of fire under the above-stated circumstances. There is no other section of the act which can possibly cover this situation except section 11. If section 11 is construed as the Supreme Court construed it, *i. e.*, to prohibit only the wilful, intentional burning of woodland, it would not cover the situation of a person who burns brush, rubbish, etc., pursuant to a permit under such circumstances that in the opinion of the firewarden no woodland or forest land would be endangered, but from whom the fire, nevertheless, escapes to woodland or brushland, and this provision of section 9 is therefore rendered meaningless and without effect.

If, however, paragraph 11 is construed to prohibit the setting fire to or burning, or causing to be burned, of any brushland or forestland, under any circumstances, regardless of the intent of the person starting the fire or of the place where the fire may have been started, it would apply to a person burning brush under a permit, from whom the brush fire escapes to forest or woodland, as well as to persons starting fires under other circumstances and the purpose of the proviso to section 9 above mentioned becomes at once apparent, *i. e.*, to make certain that such permit would not protect anyone if the fire started by him for a proper purpose escapes to adjoining woodland.

The language of paragraph 11 is also significant. It preserves to the landowner the right to set a back fire, ground fire, or surface fire upon his own property to protect the same, but provides that "if such fire be permitted to escape or does escape to adjoining property, then the person setting such fire or causing it to be set shall be deemed to have violated the provisions of this section." This furnishes further evidence of the intention of the Legislature to cover by this section an un-

intentional burning of the woods, as well as a wilful intentional burning. It renders entirely lawful the setting of a back fire upon one's property to protect the same, but provides that such fire must be set by him at his peril; that if it is permitted to escape (this signifying perhaps some negligence on the part of the person whose duty it is to control the fire), or if it does escape (undoubtedly meaning without the volition and perhaps in spite of the efforts of the person who set it), to adjoining property, then the person setting it shall be deemed to have violated this section.

It unquestionably appears, therefore, that the Legislature intended that the provisions of section 11 should be so construed as to be violated by a person who obtains a permit for the burning of brush in such a place and under such circumstances that in the opinion of the firewarden no forest or woodland will be endangered thereby, and who burns brush pursuant to that permit, if the fire escapes from his control to woodland or brushland.

It appears, further, that the Legislature intended that the provisions of section 11 should be so construed that they would be violated by a person who set a back fire upon his own property to protect the same, but which back fire escaped from him, without any intention upon his part that it should escape and without any negligence, and reached adjoining lands. These provisions of the statute are the legislative construction of its meaning and are entirely inconsistent with the construction placed upon it by the Supreme Court.

It is submitted that if the Legislature intended to provide by section 11 that the man who unintentionally and without negligence starts a forest fire while burning brush, pursuant to a permit, or while back firing on his own property to protect it would be guilty of violating its provisions, it would be unreasonable to believe that they did not intend by this section to reach the burning of the woods under any circumstances regardless of the motive with which the fire was started.

Reference has been made to the penalty provided for violation of this act. The maximum penalty of two hundred dollars would be grossly inadequate for the offense of wilfully burning the woods, particularly in view of the fact that paragraph 157 A of the Crimes Act (2 *Comp. Stat.* 1792) makes such *wilful* burning a misdemeanor.

The provisions above mentioned, giving to the Forestry Board power to accept the cost or a portion of the cost of extinguishing the fire, in lieu of the penalty, is readily explained upon the theory that the act is intended to make the user of fire responsible for the result, regardless of his intent. Such a provision would seem to be entirely unnecessary if the act were designed only for the punishment of those who wilfully start fires in the woods.

Section 11 of the act, as originally passed in 1906, reads as follows:

> "No person shall wilfully, negligently, carelessly, or in any manner set fire to or burn or cause to be burned, any wasteland, brushland or forest land, but nothing in this section shall be interpreted to forbid any person from setting a back fire, a ground fire, or a surface fire upon his own property to protect the same; provided, however, if such fire be permitted to escape or does escape to adjoining property, then the person setting such fire, or causing it to be set, shall be deemed to have violated the provisions of this section. Any firewarden, however, shall have the power to set, or direct to be set, any back fire."

In 1908 this section was amended by striking out the words "wilfully, negligently, carelessly or in any manner." While it may be contended that section 11, as originally passed, covered, by virtue of the words "in any manner" a burning which was not wilful, negligent,

or careless, as well as one which was, it is significant that the Legislature deliberately eliminated from this section the words "wilfully, negligently and carelessly." If, by this section, as amended, the Legislature only intended to prohibit a wilful burning, their act in eliminating the qualifying word "wilful" from the statutory description of the offense, is inexplicable.

SECOND.

Prior laws on the subject of forest fires.

Section 18 of the act of 1906 repeals various acts concerning the burning of the woods. Among these is an act to prevent the burning of woods, marshes and meadows, passed in 1794 (2 *Gen. Stat.* 1477). This act provides that no person shall *wilfully* set fire to or burn, etc., his own woods, marshes, or meadows, or the woods, marshes or meadows in his or her tenure or possession, by means whereof any other person shall be damnified, and provides that any person violating it shall be guilty of a misdemeanor.

A supplement to that act, passed March 24, 1875 (2 *Gen. Stat.* 1477), is also repealed. This supplement prohibits any person from burning out squirrels or any species of game in any woods, forest, marshes or meadows, and provides that if fire originates from any such burning or smoking out, by means of which any person shall be damnified in his or her houses, buildings, fences, woods or other property, such person shall be guilty of a misdemeanor, etc.

Paragraph 7 of this section provides for the repeal of an act passed in 1902, entitled "An act concerning forest fires, and the prevention thereof" (*P. L.* 1902, *p.* 451). This act provided a system for the extinguishment of forest fires, and for investigations into the cause of forest fires.

Section 7 of this act (the act of 1902) provided that "no person shall burn or cause to be burned any pit

of charcoal or shall *wilfully or negligently* set fire to, or burn, or cause to be set fire to or burned, any brush, grass, leaves or other material whereby the property of any other person is endangered or destroyed, unless he shall keep and maintain a careful and competent watchman," etc.

The section of the Crimes Act repealed by paragraph 8 of section 18 of the act of 1906 is incorporated as section 10 of that act.

It will be noted that in some of the laws which preceded the act of 1906 the Legislature used the word "wilful," while in the act prohibiting the burning out of squirrels the word is not used.

Section 1 of a supplement to the Crimes Act, approved April second, nineteen hundred and two (*P. L.* 1902, *p.* 248; 2 *Comp. Stat.* 1792, § 157A), provides that any person who shall wilfully or maliciously set fire to, burn or cause to be burned, or aid, counsel or consent to the burning of any woods, marshes, cranberry bogs, or meadows of any other person or persons, shall be guilty of a misdemeanor.

It is significant that this act was not repealed by the act of 1906 and is still in force, and furnishes another illustration of the fact that in dealing with forest fire protection laws the Legislature, when they intended to prohibit only *wilful* burning, made such intention plain by the use of the word "wilful." The act of 1906, now under construction, and the supplement to the Crimes Act above referred to, cover different parts of the same subject matter. If the burning is unintentional, prosecution may be had under the act of 1906; if the burning is wilful, prosecution may be had under either the act of 1906 or the Crimes Act. The wilful burning is a crime. The unintentional burning under the act of 1906 is not punished by a criminal proceeding and only makes the violator of its provisions liable to a penalty, which liability may be commuted by the Forestry Board to the cost of extinguishing the fire which he has started, or some part of such costs.

It is submitted that the use of the word in some of these statutes, and its absence in the act of 1875, *supra,* and in section 11 of the act of 1906, shows a discriminating use of the word; that when the Legislature intended to prohibit the *wilful* burning, they said so; that when they intended to prohibit burning, whether wilful or not, the prohibition was framed without the use of the word 'wilful."

THIRD.

The evil which the law was designed to remedy.

The evil which the law was designed to remedy was the destruction of the forests of this State by fire. This was due, principally, as shall be hereafter shown, to two causes: First—carelessness in the lawful use of fire; second—lack of an efficient organization for extinguishing fires.

The act in question met the first cause by providing that every user of fire, no matter how lawful his use might be, or how good his intentions, should be responsible for the result of such use (Section 11), and by requiring a permit for the burning of brush and other substances (Section 9). It met the second of these causes by providing for an efficient organization for extinguishing forest fires (Sections 1 to 8).

Within the last ten or fifteen years the people of this country have awakened to the importance of protecting and conserving their forests. The science of forestry is being taught in our schools and the United States Government and the various States have recently retained the services of expert foresters. Investigation has shown that forest fires work more damage to the forests of the country than almost all other causes combined, and that a large proportion of these fires is due to carelessness.

Mr. Charles S. Sargent, Professor of Arboriculture of Harvard University, in a special report on forest fires, contained in his monograph on the forests of North America, published in 1884, page 492, says:

"The largest portion of these fires of any one class was traced to farmers clearing land and allowing their brush fires to escape into the forest. The carelessness of hunters in leaving fires to burn in abandoned camps, next to the farmers, was the cause of the greatest injury. The railroads were responsible too for serious damage to the forests from fires set by sparks from locomotives, while the intentional burning of herbage in forests to improve pasturage often caused serious destruction of timber."

None of these causes of forest destruction, except perhaps the last, would be covered by the act if restricted as the Supreme Court have construed it.

In the annual report of the State Geologist of this State for the year 1902 (four years prior to the passage of the act in question), appears the following:

"FOREST FIRES."

"The loss to the State from forest fires has been frequently referred to by the State Geologist. In the annual report of 1895 a list of forty-nine fires in Atlantic, Ocean and Burlington Counties alone is given, which burned over 60,000 acres and did damage estimated at several hundred thousand dollars. In order to determine exactly the effect of these repeated fires upon the forests of the State accurate valuation surveys were made in 1897 by Mr. Gifford Pinchot, Chief Forester of the United States. These surveys included timber which had been protected from fire and that which had been repeatedly burned over. These showed the yield of timber from the burned tracts was only one-third the volume of what it would be if protected from fire, and only one-sixth of what the land is capable of producing under careful management."

Speaking of the fires which were investigated, and of which the causes had been ascertained, the report continues:

> "Twenty-one of these were set by locomotives, twenty-two by farmers burning brush or clearing land, six by hunters, two were incendiary, and the rest resulted from miscellaneous causes.
>
> "During the past year more fires were started by carelessness in burning brush, clearing land, etc., than by locomotives, although the difference in the numbers is not great."

Speaking of the damage which had been done by fires in this State, the report continued:

> "As eminent an authority as Mr. Gifford Pinchot has declared that 'the complete impoverishment of southern New Jersey is close at hand unless the fires can be stopped.' "

Following this statement of the damage done by forest fires and the causes of such fires, the report outlines recommendations for the organization of a State forest service of the same general character as those provided for in the act of 1906.

Other reports of the State Geologist contain substantially the same statements, and it was evidently these repeated reports which led to the adoption of the State Geologist's suggestions by the passage of the act now under construction.

In view of the fact that in these reports attention is called to the fact that by far the greatest damage is done to the forests from carelessness of persons lawfully using fire, rather than by intention wrongdoing, and of the further fact that the law, prior to the passage of the act, and still in force, provided for the punishment of those who wilfully set fire to the woods, but did not cover the most destructive causes of forest fires, viz., carelessness in the lawful use of fire, it seems plain that this law was intended to prevent forest fires by bringing within its provisions the persons who caused such fires by the use of fire for a lawful purpose.

It is sometimes possible to trace a fire to its source, and to determine who was responsible for starting the fire. It is rarely, if ever, possible to show either that the fire was started with wilful intent to violate the law, or even to show that negligence was responsible for the escape of the fire.

The same reasons, therefore, which have led the courts to determine that laws passed prohibiting the sale of adulterated foods, or adulterated tobacco, prohibiting the admission of minors to certain places of amusement, prohibiting the sale of liquor on Sunday, requiring railroad companies to furnish safety appliances for the protection of their employees, were violated by the doing of the prohibited act, or the failure to perform the prescribed duty, regardless of the intent with which the act or duty may have been done or omitted, should lead this Court to construe this act so as to make the intent with which the prohibited act is done immaterial.

Such a construction would not produce an absurdity. *The use of fire has always been hedged about with arbitrary regulations for the protection of persons and property.*

At Common Law (as pointed out in the case of *St. Louis & San Francisco Railroad Co.* v. *Matthews,* 165 *U. S.* 1)—

> "every man appears to have been obliged by the custom of the realm to keep his fire safe, so that it should not injure his neighbor, and to have been liable to an action if a fire lighted in his own house or upon his property by the act of himself or of his servants or guests burned the house or property of his neighbor, unless its spreading to his neighbor's property was caused by a violent tempest or other inevitable accident, which he could not have forseen." (Citing authorities.)

In *Grissell* v. *Housatonic Railroad Co.,* 54 *Conn.* 461, the Supreme Court of Connecticut said:

> "Fire has always been subject to arbitrary regulations and the Common Law of England was more severe and arbitrary on the subject than any statute. In Rolle's Abridgement (Action on Case, B, Title Fire,) it is said: 'If my fire by misfortune burns the goods of another man he shall have his action on the case against me. If a fire breaks out suddenly in my house, I not knowing it, and it burns my goods and also my neighbor's house, he shall have his action against me. So, if the fire is caused by a servant or a guest, or any person who entered the house with my consent. But otherwise if it is caused by a stranger who enters the house against my will.' "

The Common Law of England on this subject seems not to have been adopted in this country, although, as pointed out by Justice Gray in *St. Louis & San Francisco Railroad Co.* v. *Matthews, supra,* at page ten of the report, statutes have been passed in many of the States imposing substantially the same rule.

The case last cited held that a statute of the State of Missouri providing that every railroad corporation owning or operating a railroad in the State should be responsible in damages to the owner of any property injured or destroyed by fire communicated directly or indirectly by locomotive engines in use upon its railroad, was a valid regulation, and did not deprive the railroad of property without due process of law. The Court, in its opinion, refers to the propriety of strictly regulating the use of fire, and mentions numerous instances in which statutes have been passed containing such strict regulations. The case also lays emphasis upon the fact that it is substantially impossible to prove negligence on the part of the railroad company, even if negligence is present. See, also, *Grissell* v. *Housatonic R. R. Co.,* 54 *Conn.* 447, and *Matthews* v. *St. Louis & San Francisco Ry. Co.,* 121 *Mo.* 298.

If the intention of the Legislature be gathered from the old law, the mischief and the remedy it will be seen that the deficiency in the existing law, which this act was passed to remedy, was its failure to provide adequate protection for the forests of the State. This failure, as has above been pointed out, was of such a serious character that thousands of dollars' worth of valuable timber were destroyed every year, and in that way the State's resources were being depleted to such an extent that, as has been said by Mr. Gifford Pinchot, unless checked it would cause the impoverishment of all of South Jersey.

The section of the Crimes Act which prohibited the wilful burning of the woods was inadequate. The tremendously destructive forest fires were found upon investigation to be due to carelessness in the lawful use of fire and to the failure of an adequate system for the extinguishment of fires. This law attempted to supply the remedy for both conditions by creating a department and officers whose duty it would be to extinguish fires and to investigate their causes, and by imposing upon the person whose use of fire caused a forest fire a penalty for such result.

It was not intended by the act to place any opprobrium upon the person who violated its provisions; it was intended to protect the forests by making each user of fire responsible for the results of such use.

That the supreme purpose of the act is the protection of the forests also appears from the manner in which the moneys collected for violation of its provisions are to be applied. It will be noted by section twelve that they are to be divided by the Forest Commission between the townships involved and the State in such a manner as to relieve in equal degree the township and the State in paying the cost of extinguishing the fire.

If this act is to be construed so as to require proof of a wilful violation its beneficent purpose will be entirely frustrated. It will no longer protect the forests

of the State from the person who in the careless burning of brush starts a forest fire. It will no longer protect the forests from the careless hunter and camper. It will operate only to protect the forests from the wilful incendiary, the results of whose activities in the forests are negligible.

It is respectfully submitted that the judgment of the Supreme Court should be set aside.

Respectfully submitted,

JOSIAH STRYKER,
JOHN W. WESCOTT,
Attorney-General,
Attorneys of Plaintiff-Appellant.

NEW JERSEY TRIBUNE PRINTING, TOMS RIVER, NEW JERSEY

NEW JERSEY

Court of Errors and Appeals

The Board of Conservation and Development,
Plaintiff, Appellant,
vs.
Peter Y. Veeder,
Defendant, Respondent.

On Appeal from the Supreme Court

Brief of Defendant, Respondent

STATEMENT OF FACTS

This action was originally brought before a Justice of the Peace, to enforce a penalty for the alleged violation of Section 11 of an act of the Legislature of the State of New Jersey, entitled, "An Act for the appointment of fire-wardens, the prevention of forest fires, and the repeal of sundry acts relating thereto", approved April 18th, 1906 **(2 Comp. Stat. 2332) as amended by P. L. 1911, p. 56.)** The pertinent part of this section reads; "No person shall set fire to, or burn, or cause to be burned any wasteland, brushland or forestland."

The Justice rendered a judgment in favor of the plaintiff and an appeal was taken to the court of Common Pleas where a judgment of nonsuit was entered which was later affirmed by the Supreme Court.

Plaintiff's entire case was presented before the Court of Common Pleas, and the evidence stands as strong as plaintiff could make it,

and shows that the defendant, while performing a lawful and necessary part of his farming operations, that of burning off the old grass on his salt meadows, had the misfortune to have the wind shift, and the fire was communicated first to other meadow land, and from there to certain brushland and forest land. When defendant started to burn his meadows the wind was west, and a glance at the sketch (**see State of the Case, page 19**) shows that a west wind was a proper and a safe wind for burning the meadows in question; that this particular meadow was not a dangerous meadow to burn, and the wind was not blowing too hard. See testimony of District Fire-Warden Garfield Worth, and Harry Ellis **(Case, pages 16 and 17.)**

The only evidence that could be in any way considered as derogatory to plaintiff, was his alleged admissions made to Mr. Torrey, Division Fire Warden, and yet Mr. Torrey says defendant told him the main trouble was a sudden shift of wind from west to south, and even then the defendant had the fire under perfect control, and it was a spark that was smouldering in some drift stuff, back of where he was whipping out the fire in a fringe of old grass along the ditch from A to B, that was suddenly blown across the ditch that made the trouble.

It will be noted that, 1st, the wind unexpectedly shifted and 2nd, that where the blaze had been beaten out a spark lingered and was carried by the capricious wind in the one direction where it could do harm, across a three foot ditch; and dropped in some old grass from which the fire spread. The fact that defendant took the trouble to show Mr. Torrey just how the fire started and the wind changed, with the evident object of convincing him that he was not at fault shows that he was at least misunderstood by Mr. Torrey when he quotes defendant as saying "It was a case of bad judgment. I had no right to burn my meadows a day like yesterday," etc. The words sound much more like the accusation of Mr. Torrey. Defendant's explanation to Mr. Torrey is corroborated by the testimony of two of plaintiff's witnesses, Harry Ellis, who says the wind was west and shifted to the south and that it was not blowing hard at first; also the testimony of Garfield Worth, the District fire warden, who testified to the same thing, and that it was a proper day to burn meadows.

Salt meadows have to be burned after they dry out in the spring, and before the green grass gets a start, and all that anyone can do is to select a time when the wind is blowing in the proper direction to carry the fire away from any woodland. Except under the most un-

usual circumstances, which actually did occur, two men were ample to safeguard any fire started, and there is nothing in plaintiff's testimony to contradict this.

Argument

1

THE JUDGMENT OF NONSUIT WAS PROPERLY ENTERED, UNLESS IT BE FOUND THAT ANYONE STARTING A FIRE WHICH IS COMMUNICATED TO WASTELAND, BRUSHLAND OR FOREST LAND, IS RESPONSIBLE FOR THE BURNING, NO MATTER HOW REMOTELY THE BURNING TAKES PLACE, OR HOW UNAVOIDABLE THE FIRE MAY BE, OR WHETHER IT IS THE RESULT OF AN INEVITABLE ACCIDENT.

The plaintiff has to prove its case by a preponderance of evidence. This would be true, even though the defendant called not a single witness. Mr. Torrey, the Division fire warden, tried to prove negligence by testifying to an admission of negligence on the part of the defendant that it was not a proper day to burn meadows, but that there was any negligence is contradicted by the District fire warden who was on the ground at the time of the fire, and who says that all of the conditions were right for the burning of the meadows, and by the testimony of Harry Ellis, who testified to all the conditions that would make it proper to burn meadows at that time, and also the testimony of Charles Newham, former fire warden, who remembered that the wind shifted from west to south early in the afternoon of the day of the fire **(Case, pages 16 & 17.)** Even if it is true that the defendant gave it as his opinion that he was negligent, he could not be found so, in view of the positive testimony of the facts by the other witnesses that show he was not. Nor did Mr. Torrey himself give any testimony to show that it was, in fact, an improper day to burn meadows. Therefore, the question of negligence should not enter into the present case.

2

The question is, did the defendant burn, or cause to be burned, any wasteland, brushland or forestland, within the meaning of **SECTION 11, P. L. of 1911, page 56, which is as follows:—**

> "No person shall set fire to or burn, or cause to be burned, any wasteland, brushland or forestland; but nothing in this

> section shall be interpreted to forbid any person from setting a back fire, or ground fire, or a surface fire, upon his own property to protect the same; provided, however, that if such fire be permitted to escape, or does escape to adjoining property, then the person setting such fire, or causing it to be set, shall be deemed to have violated the provisions of this section. Any firewarden, however, shall have the power to set, or direct to be set, any back fire."

Giving the words "no person shall set fire to or burn, or cause to be burned, any wasteland, etc., its ordinary and usual meaning it is a command to refrain from doing something that the person might otherwise intentionally do; the person is not to himself burn, nor is he to cause another to burn wasteland, etc. The command not to do an act implies the will power of the person forbidden to do the prohibited act.

And as to the proviso it is a well known fact that when a forest fire is anywhere near a person's property they frequently rush out and start back fires that do more damage than the original fire, and burn property that would not otherwise be touched, and it was to make anyone starting a back fire take proper care of the same that the Legislature added to Section 11 the proviso that "if such fire be permitted to escape or does escape, to adjoining property, then the person setting such fire or causing it to be set shall be deemed to have violated the provisions of this section." When a back fire is started the possible damage and very grave danger of its escaping is immediately before the starter, and the legislature has expressed in clear language its intention of holding him responsible.

And in this connection it should be noted that the burning of forestland on adjoining property is the natural and proximate result that follows from the starting of a back fire unless it is kept under control.

In the present case defendant was burning salt meadows, which was an act not in any way prohibited by section 11 or any other section or act, nor does section 11 go on and make it a violation should such fire escape, as was done in the case of back firing. This is a penal statute and should be strictly construed. **See State Board of Forest Park Reservation Commissioners vs McCloskey, 94 Atl. page 411, and the cases therein cited. In this case the Supreme Court said: (at page 413.)**

> "The statute is a penal one. It must be construed strictly. Its escope will not be extended beyond the plain and general meaning of its words."

It cannot be made to include fires that are the remote and not the proximate result of the acts of defendant. If such a construction were placed upon the section, it would then include every burning of wasteland, brushland or forestland, no matter how remotely the fire may have started, nor how lawful the purpose which was being accomplished by the fire;— to illustrate; more forest fires are probably started in the state each year from railroad trains than from any other cause, and if the plaintiff's contention is correct, then every fireman who starts the fire in his locomotive violates this section if a spark from his engine sets the woods on fire.

Such a construction it would seem to me is absurd. In **Mendles v. Danish, 74 N. J. L., 333, 65 Atl. at 890,** the Supreme Court said:

> "In construing a statute, where ambiguity exists, or literal interpretation may lead to absurd results, resort may be had to the principle that the spirit of the law controls the letter."

Also see **The Associates of the Jersey Company v. Davison, 29 N. J. L. page 415, at page 424,** where the Court of Errors and Appeals said:

> "The principal of construction is, that although a matter may fall within the words of the act, it shall not control it, unless within the reason and spirit; also,
>
> A thing which is within the letter of a statute, is not within it unless within the intention of the makers.
>
> When the intnteion is doubtful, the court will interpret the law consonant with equity and what is most convenient."

The construction contended for by plaintiff would punish any one, no matter how lawful the purpose for which the fire was started or how unavoidable the escape of the fire may have been. Was that the intent of the legislature? It certainly cannot be so gathered from the text. The plain wording of the section in question, as well as the title of the statute, "An act for the appointment of firewardens, the prevention of forest fires, and the repeal of sundry acts relating thereto," would all indicate that what is prohibited is anyone, themselves, setting fire to the kind of land named in the section, or directing or causing anyone else to do it. See **Randall v. Hendrickson, 45 N. J. L. page 555, at page 563,** where the Court of Errors and Appeals said:

> "Under the provision of our constitution, the title of a statute is not only an indication of the legislative intent, but is also a limitation upon the enacting part of the law. It can have no effect with respect to any object that is not expressed in the title." **Const. Art. IV. Sec. 7, par. 4.**

Plaintiff contends that defendant is liable under the doctrine laid down in **Del. Lack. and West R. R. Co. v. Salmon, 10 Vr. 300,** and other cases along the same line but in those cases the starting of the original fire was in itself negligence.

When we take into consideration the thousands of dollars that are spent by the State each year under the authority of the Legislature to promote agriculture in all its branches, it is impossible to believe that it was ever the intention of the Legislature to penalize the farmer, sell his goods and chattels, and if they were insufficient, then to imprison him, by reason of an unavoidable accident growing out of his farming operations. If such was the intention of the Legislature, why did it not use language that would unmistakably include more than the burning that results from an escaped back fire?

It cannot be contended that defendant violated section 9, for the complaint does not make any such allegation (case page 6) and it is exceedingly doubtful whether section 9 in any way applies to the burning of salt meadows. It provides "waste, fallow, stumps, logs, brush, dry grass or fallen timber" shall not be burned without written permission, etc. The words "dry grass" are used in connection with waste, fallows, stumps, logs, brush, and fallen timber, and relate to dry grass that would be found with the other materials mentioned in woodland or forest land and not to old salt hay on meadows remote from any woods. The maxim, Noscitur a sociis, would apply to the construction in the above case. **State v. Herring 56 Atl. 670; State v. Gedicke 43 N. J. L. 86 at page 89. Morris Co. v. Freeman 44 N. J. L. 631 at page 633.**

The evidence shows that defendant was burning meadow land, which is neither wasteland, brushland or forest land, and it is respectfully submitted that the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

DAVID A. VEEDER,
Attorney for defendant,
respondent.

INDEX.

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APPEAL TO
Court of Errors and Appeals

NEW JERSEY SUPREME COURT.

BOARD OF CONSERVATION AND DEVELOPMENT,
Plaintiff,
vs.
PETER Y. VEEDER,
Defendant.

NOTICE OF APPEAL.

To David A. Veeder, Esquire, Attorney of Defendant:

Take notice that the Board of Conservation and Development, substituted as plaintiff in the place of the State Board of Forest Park Reservation Commissioners, appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

1. Because the Supreme Court affirmed the judgment of nonsuit entered against the plaintiff by the Court of Common Pleas of the County of Ocean, when said court should have reversed said judgment.

2. Because the said Supreme Court affirmed the determination of the said Court of Common Pleas as a matter of law that the evidence introduced on the part

of said plaintiff in said Court of Common Pleas did not establish a *prima facie* case in favor of the said plaintiff, when said Supreme Court should have reversed the said determination of the said Court of Common Pleas.

3. Because the said Supreme Court affirmed the judgment of the said Court of Common Pleas, entered in said case in favor of the defendant, when the said Supreme Court should have reversed said judgment upon the ground that the uncontradicted evidence in said case presented to the said Court of Common Pleas, and brought to the said Supreme Court by rule allowed for such purpose, supported only a judgment in favor of the plaintiff.

4. Because the said Supreme Court affirmed the judgment of the Court of Common Pleas, entered in said case in favor of the defendant, when said judgment should have been reversed by said Supreme Court upon the ground that there was no evidence submitted to said Court of Common Pleas, and brought to said Supreme Court by rule allowed for such purpose, which supported the judgment of said Court of Common Pleas.

5. Because the said judgment of the said Supreme Court was in divers respects illegal, unjust, oppressive and contrary to law.

JOHN W. WESCOTT,
Attorney-General of New Jersey,
Attorney of Plainitff.

NEW JERSEY SUPREME COURT.

BOARD OF CONSERVATION AND DEVELOPMENT,
Prosecutor,
vs.
PETER Y. VEEDER,
Defendant.
} On Certiorari.

RULE AFFIRMING JUDGMENT.

(*Filed November 11, 1916.*)

The Court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Ocean, returned with the certiorari in this cause, and the reasons for reversing the judgment below and having heard the argument of counsel therein, and having duly considered the same:

It is, on this eleventh day of November, nineteen hundred and fifteen, ordered that the judgment of the Court of Common Pleas in the County of Ocean be in all things affirmed.

On motion of
DAVID A. VEEDER,
Attorney of Respondent.

NEW JERSEY SUPREME COURT.

STATE BOARD OF FOREST PARK RESERVATION COMMISSIONERS,
Plaintiff in Certiorari,
v.
PETER Y. VEEDER,
Defendant in Certiorari.

WRIT OF CERTIORARI.

(*Filed March 31, 1914.*)

NEW JERSEY, *ss.*—The State of New Jersey to our Judge of our Court of Common Please in and for the County of Ocean, GREETING:

We being willing, for certain reasons, to be certified of a certain judgment, by you lately made and rendered, on an appeal brought to our said Court of Common Pleas, in and for the said County of Ocean, from the judgment obtained before Arthur C. King, Esquire, one of the Justices of the Peace in and for said County of Ocean, in a summary proceeding for the recovery of a penalty, wherein the Board of Forest Park Reservation Commissioners of the State of New Jersey was plaintiff and Peter Y. Veeder was defendant, do hereby command you that you send, under your seal, to our Justices of our Supreme Court of Judicature, at Trenton, on the eighth day of April, A. D. nineteen hundred and fourteen, as well the judgment aforesaid, as the judgment, order and proceedings made and given by the said Arthur C. King, Esquire, Justice of the Peace, as aforesaid, with all things touching and concerning the same, as fully and entirely as they remain in our said Court of Common Pleas before you, by whatsoever names the parties may be called therein, together with this, our writ, that we may further cause to be done thereupon, what of right we shall see fit to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this nineteenth day of March, A. D. nineteen hundred and fourteen.

(Signed) WM. C. GEBHARDT,
Clerk.

Endorsed:

I allow this writ. Let it be sealed.

THOMAS W. TRENCHARD,
Justice Supreme Court.

RETURN.

(*Filed March 31, 1914.*)

To the Justices of the Supreme Court of New Jersey:

In obedience to the command of this writ, I, the Judge of the Court of Common Pleas, in and for the County of Ocean, within named, do hereby certify and send to you the Honorable Justices of the Supreme Court within mentioned, the judgment by me made and rendered on an appeal brought to the said Court of Common Pleas in and for said County of Ocean, from the judgment obtained before Arthur C. King, Esquire, one of the Justices of the Peace in and for said County of Ocean, in a summary proceeding for the recovery of a penalty wherein the Board of Forest Park Reservation Commissioners of the State of New Jersey was plaintiff, and Peter Y. Veeder was defendant, whereof mention is within made, with all things touching the same as fully as before me they remain.

In witness whereof I have hereunto set my hand and seal in open court this thirtieth day of March, A. D. nineteen hundred and fourteen.

(Signed) I. W. CARMICHAEL,
Judge of the Court of Common Pleas of the County of Ocean.

State Board of Forest Park Reservation Commissioners
v.
Peter Y. Veeder,

Summary Proceeding for a Penalty.
COMPLAINT.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } *ss.*

Personally appeared before the subscriber, Charles P. Wilber, who being duly sworn according to law on his oath says that he is the State Fire Warden of the State of New Jersey, and that on the twenty-fourth day of April, A. D. nineteen hundred and twelve, one Peter Y. Veeder, of the County of Ocean and State of New Jersey, did violate the provisions of section eleven, of an act of the Legislature of the State of New Jersey, entitled "An act for the appointment of fire wardens, the prevention of forest fires and the repeal of sundry acts relating thereto," approved April eighteenth, nineteen hundred and six, as said section eleven was amended by act approved March fifteenth, nineteen hundred and eleven, in the following respect, to wit: that on the said twenty-fourth day of April, A. D. nineteen hundred and twelve, said Peter Y. Veeder did, in the Township of Berkeley, County of Ocean, and State of New Jersey, set fire to and burn and cause to be burned waste land, brush land and forest land located in said Township of Berkeley, in said County of Ocean, near to and adjoining land in said Township of Berkeley occupied by said Veeder, and deponent further says that the setting of said fire, burning and causing to be burned above mentioned, was not the setting of a back fire or ground fire, or a surface fire upon the property of the said Peter Y. Veeder to protect the same, contrary to and in violation of said section eleven of said act, as amended as aforesaid, and against the form of said statute, all of which is sworn to by the said Charles P. Wilber on information and belief.

Therefore, the said Charles P. Wilber, State Fire Warden as aforesaid, says that the said Peter Y. Veeder

has incurred the penalty of two hundred dollars prescribed by the above mentioned act for the aforesaid violation and prays that the said Peter Y. Veeder may be summoned to answer unto the State Board of Forest Park Reservation Commissioners of the State of New Jersey, who sue for the use of said State, and dealt with according to law.

CHARLES P. WILBER.

Sworn and subscribed before me, this third day of September, A. D. nineteen hundred and twelve.

[L. S.] OWEN W. KITE,
N. P. of N. J.

OCEAN COUNTY. *ss.*

The State of New Jersey to any constable of the County of Ocean, GREETING: Summon

[L. S.] Peter Y. Veeder personally to be and appear before the subscriber, one of the justices of the peace of the County of Ocean, at my office at Toms River, Dover Township, in the County of Ocean, and State of New Jersey, on Tuesday, the tenth day of September, A. D. nineteen hundred and twelve, at the hour of one o'clock in the afternoon, to answer unto the State Board of Forest Park Reservation Commissioners of the State of New Jersey, who sue for the use of said State to recover a penalty of two hundred dollars for violation of section eleven of an act of the Legislature of the State of New Jersey, entitled "An act for the appointment of fire wardens, the prevention of forest fires, and the repeal of sundry acts relating thereto," approved April eighteenth, nineteen hundred and six, as said section eleven was amended by act approved March fifteenth, nineteen hundred and eleven, it being alleged on oath made according to law that the said Peter Y. Veeder did violate the provisions of section eleven of the above recited act, as amended as aforesaid, in the following respect, to wit: that on the twenty-fourth day of April, A. D. nineteen hundred

and twelve, said Peter Y. Veeder did, in the Township of Berkeley, County of Ocean and State of New Jersey, set fire to and burn and cause to be burned waste land, brush land and forest land, located in said Township of Berkeley, in said County of Ocean, near to and adjoining land in said Township of Berkeley occupied by said Veeder, and it being further alleged on oath as aforesaid, that the setting of said fire, burning and causing to be burned, above mentioned, was not the setting of a back fire, or ground fire, or a surface fire upon the property of the said Peter Y. Veeder to protect the same, contrary to and in violation of said section eleven of said act, as amended as aforesaid, and against the form of said statute. Hereof fail not.

Given under my hand and seal this fifth day of September, A. D. nineteen hundred and twelve.

(Signed) ARTHUR C. KING,
Justice of the Peace.

Endorsed:

Small Cause Court, before Arthur C. King, Esquire, one of the justices of the peace of the County of Ocean.

Setting Forest Fire.

State Board of Forest Park Reservation Commissioners
vs.
Peter Y. Veeder.

Summons.

Returnable Sept. 10th, 1912.

Sum demanded, ... $200 00
Costs, ... 3 92

$203 92

EDMUND WILSON,
Attorney-General of New Jersey,
State House, Trenton, N. J.
Attorney of Plaintiff.

Section 11.

Served the within Summons on the defendant Peter Y. Veeder personally by reading it to him and gave him a true copy of the same this fifth day of September A. D. 1912.

JOHN HAGAMAN,
Constable.

THE STATE OF NEW JERSEY
OCEAN COUNTY, } *ss.:*
[L. S.] ARTHUR C. KING, ESQUIRE,
Justice of the Peace.

State Board of Forest Park Reservation Commissioners
v.
Peter Y. Veeder. } For Penalty.

I, Arthur C. King, justice of the peace in and for the County of Ocean, hereby certify and make statement that on the tenth day of September, nineteen hundred and twelve, the said plaintiff, the State Board of Forest Park Reservation Commissioners, recovered against the said defendant, Peter Y. Veeder, before me in the above stated cause, a judgment for the sum of fifty dollars damages and three dollars and ninety-two cents ($3.92) costs of suit.

Witness my hand and seal this twelfth day of September, A. D. 1912.

ARTHUR C. KING,
Justice of the Peace.

Amount of judgment, ... $50 00
Amount of costs, ... 3 92
Transcript, ...
Cost of docketing, ...
Before Arthur C. King, Justice of the Peace.

State Board of Forest Park Reservation Commissioners
v.
Peter Y. Veeder.
September 5th, 1912.

For a Penalty.
Transcript of Docket.

Issued a summons in the above cause, returnable before be at my office in Toms River, on Tuesday, September 10th, 1912, at 1 P. M.

September 5th, 1912.

The summons in the above cause returned with the following endorsement: "Served the within summons on the defendant, Peter Y. Veeder, personally by reading it to him and gave him a true copy of the same this fifth day of September, A. D. 1912.

JOHN HAGAMAN,
Constable."

September 10th, 1912.

Mr. Stryker, representing the State Forestry Commission, appeared in court and moved his case. Mr. David Veeder, attorney for the defendant, appeared and asked for an adjournment, which Mr. Stryker objected to as he would be put to a great inconvenience to come to Toms River again to try the case. Mr. Stryker's objection sustained and the case moved. Mr. Veeder objected to the jurisdiction of the court on the ground that the copy of the summons served on the defendant was not dated; objection overruled. Mr. Veeder stated that he would waive his objection if an adjournment were granted.

Harry Ellis, sworn and testified.

Garfield Worth, sworn and testified.

Charles Newham, sworn and testified.

Fred C. Torrey, sworn and testified.

Counsel for the defendant took no further part in the proceedings after his motion for adjournment was overruled.

I rendered judgment for the State against Peter Y. Veeder for $50.00 penalty and costs.

Summons and service,	$2 10
Trial fees,	1 50
Mileage,	32
	$3 92

September 12th, 1912.

David Veeder, attorney for defendant in the above cause, filed a notice of appeal together with a bond which was accepted by me.

Mr. Veeder paid the above costs. I filed all the papers in the case with the County Clerk.
September 12th, 1912.

ARTHUR C. KING,
Justice.

I do hereby certify that the foregoing is a true and correct copy taken from my docket. Witness my hand and seal this 12th day of December, A. D. nineteen hundred and twelve.

ARTHUR C. KING,
[L. S.] *Justice of the Pence.*

Before Arthur C. King, Esq., Justice of the Peace.

State Board of Forest Park Reservation Commissioners
v.
Peter Y. Veeder.
} Notice of Appeal.

To Arthur C. King, Esq., Justice of the Peace:

Whereas on the tenth day of September, A. D. 1912, in the above stated cause, wherein the State Board of Forest Park Reservation Commissioners was plaintiff, and I, Peter Y. Veeder, was defendant, a judgment was rendered by Arthur C. King, Esquire, justice of the peace, in favor of said plaintiff, for the penalty of

fifty dollars and three dollars and ninety-two cents costs.

Now, therefore, this is to give notice that I do respectfully appeal from the said judgment, to the Court of Common Pleas to be holden in and for the County of Ocean.

Dated the twelfth day of September, A. D. nineteen hundred and twelve.

PETER Y. VEEDER.

KNOW ALL MEN BY THESE PRESENTS:

That we, Peter Y. Veeder and Albert S. Tilton, of the Township of Berkeley, in the County of Ocean and State of New Jersey, are held and firmly bound unto the State Board of Forest Park Reservation Commissioners in the sum of one hundred seven dollars and eighty-four cents, good and lawful money of the United States, to be paid to the said State Board of Forest Park Reservation Commissioners or to its certain attorney, successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the twelfth day of September, in the year one thousand nine hundred and twelve.

The condition of this obligation is, that whereas the above bounden Peter Y. Veeder, has appealed from the judgment rendered by Arthur C. King, Esq., justice of the peace in and for the County of Ocean, in a suit wherein the said State Board of Forest Park Reservation Commissioners was plaintiff and the said Peter Y. Veeder was defendant in an action to recover a penalty for the violation of Section 11 of an act of the Legislature of the State of New Jersey entitled "An act for the appointment of fire wardens, the prevention of forest fires and the repeal of sundry acts relating thereto."

Now, therefore, if the said Peter Y. Veeder shall appear and prosecute the said appeal in the Court of Com-

mon Pleas in and for the County of Ocean and shall stand to and abide the judgment of the said Court, and pay such costs as shall be taxed, if the judgment be affirmed, then this obligation to be void, otherwise to remain in full force and virtue.

PETER Y. VEEDER, [L. S.]
ALBERT S. TILTON. [L. S.]

Signed, sealed and delivered in the presence of

The word "successors" interlined and the words "heirs, executors, administrators, the Small Cause Court held by" erased out before signing.

DAVID A. VEEDER.

OCEAN COUNTY COMMON PLEAS COURT.

State Board of Forest Park Reservation Commissioners, *Plaintiff,*
v.
Peter Y. Veeder, *Defendant.*
} Order for Nonsuit.

This action came regularly on for trial on the 27th day of February, nineteen hundred and fourteen, before his Honor Isaac W. Carmichael, Judge of the Court of Common Pleas, and when called for trial the parties duly appeared and the plaintiff having submitted its evidence and the court being of the opinion that it was not sufficient to entitle it to recover, ordered judgment of nonsuit to be entered against the said plaintiff.

Whereupon, it is adjudged that the action of the

plaintiff be dismissed and that a judgment of nonsuit be entered.

Judgment entered February 27, 1914.

On motion of

DAVID A. VEEDER,
Attorney of Defendant.

STATE OF NEW JERSEY,
COUNTY OF OCEAN. } *ss.*

I, John A. Ernst, clerk of the Court of Common Pleas in and for the County of Ocean, do certify that the foregoing is a true copy of a certain judgment lately made and rendered on an appeal brought to the said Court of Common Pleas from the judgment obtained before Arthur C. King, Esquire, one of the Justices of the Peace in and for said County of Ocean in a summary proceeding for the recovery of a penalty wherein the Board of Forest Park Reservation Commissioners of the State of New Jersey was plaintiff and Peter Y. Veeder was defendant, and a true copy of the complaint, summons, transcript of judgment, transcript of docket, notice of appeal and appeal bond as fully as they remain of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, and of said Court, this 27th day of March, A. D. nineteen hundred and fourteen.

(Signed) JOHN A. ERNST,
Clerk.

RULE TO CERTIFY FACTS.

(*Filed April 23, 1914.*)

To the Judge of the Court of Common Pleas of the County of Ocean:

On allegation of the diminution in the record and return of the said Court of Common Pleas of the County of Ocean, it is ordered, on motion of John W. Wescott, Attorney-General, attorney of plaintiff-appellee, that the judge of the said Court of Common Pleas of the County of Ocean do certify to this court, within fifteen days after the service of a copy of this rule:

First—Whether or not a judgment of nonsuit was entered in this cause after the plaintiff had rested its case, and without the production of any evidence whatever on the part of the defendant-appellant, and if so upon what ground said judgment of nonsuit was entered;

Second—A full, complete and detailed statement of the facts proven before him at the trial of the above-mentioned cause;

Third—A full, complete and detailed statement of the evidence taken before him on the part of the plaintiff-appellee in said cause.

Dated April 22d, 1914.

Entered April 23d, 1914.

On motion of John W. Wescott, Attorney-General of New Jersey.

JOHN W. WESCOTT,
Attorney of Prosecutor.

A true copy.

WM. C. GEBHARDT,
Clerk.

Let the above rule be entered.

THOMAS W. TRENCHARD,
Justice of the Supreme Court.

RETURN TO RULE.

(*Filed May 9, 1914.*)

Charles Newham, being duly sworn, testified that he was former Township Fire Warden of the Township of Berkeley; that he remembered the fire in the woods, which burned southeast of Ocean Gate, but that he could not recall the exact date, but remembered that it was in the spring of nineteen hundred and twelve; he was working at Ocean Gate, saw the fire, got some men and went to it. After refreshing his memory from his original report of this fire he testified that a considerable number of men were employed in extinguishing the fire, and that the fire burned over a large area, a part of which was woodland. He stated that the fire was burning in the woods when he reached it; that the wind was a little east of south, blowing from the meadows toward the woods. He stated that he knows that Peter Y. Veeder, the defendant, lived at that time from a mile and a quarter to a mile and a half from where the fire started; that he met Veeder at the fire on that day; that Veeder was fighting the fire; that Veeder said to him: "Be easy on me." Witness remembered that wind shifted from west to south early in the afternoon of that day; that a large part of the woodland burned in this fire was pine woods.

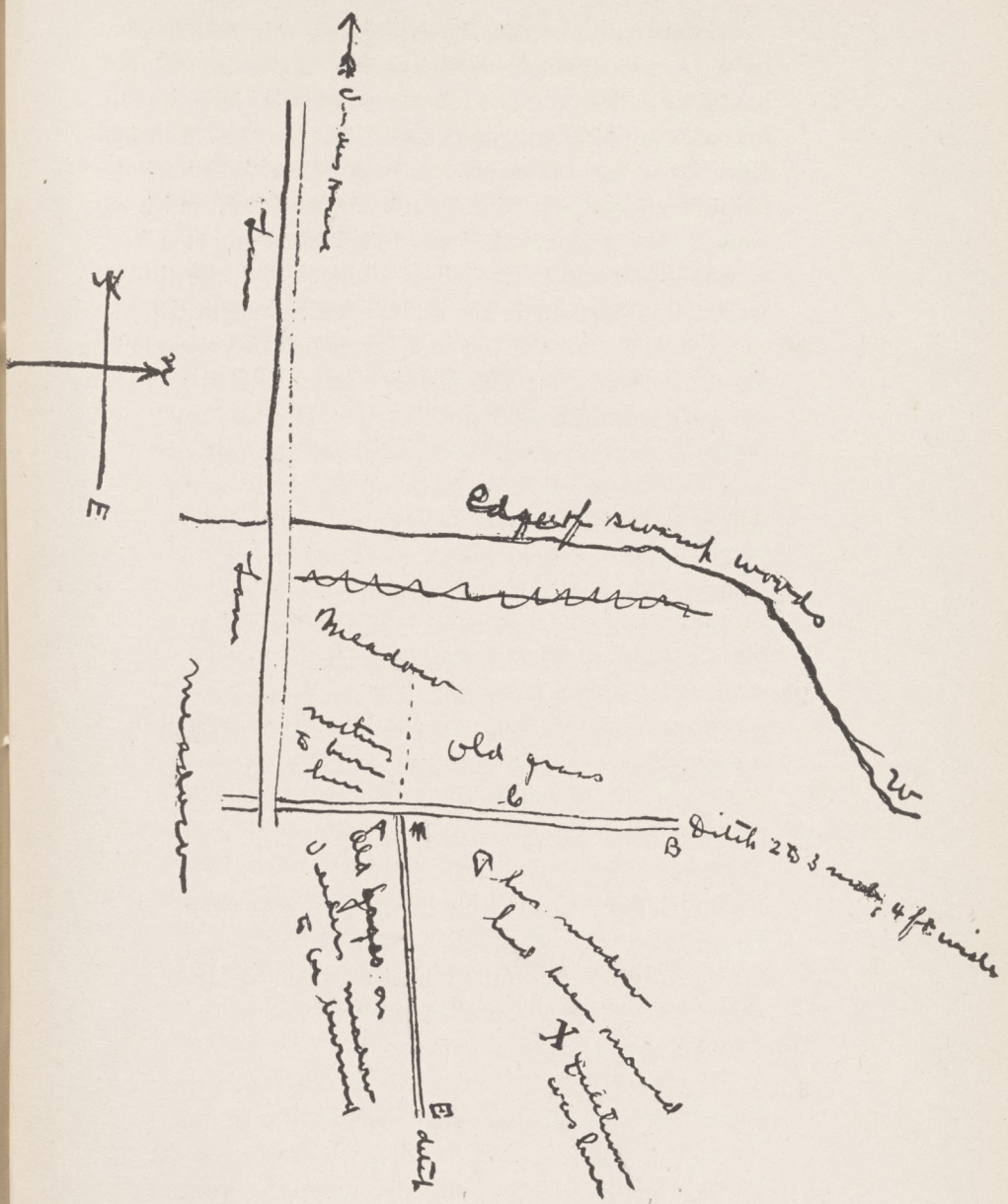
Garfield Worth, being duly sworn, testified that in the spring of 1912, he was District Fire Warden of the Township of Berkeley; that he remembered the fire in the spring of that year near Peter Y. Veeder's house, stating that the fire was about from a quarter to a half mile away from Veeder's meadows; that he could not, however, remember the exact date of which the fire occurred; that on the day in question he was working at Ocean Gate, and went to the fire. It was burning in pine woods and brushland at that time; the wind was

from the south, blowing off the meadows toward the east point of the woods. Witness saw Peter Y. Veeder fighting fire. Veeder said fire had got away from him, and asked witness to be easy on him. Witness remembered that the wind had shifted on that day from the west to the south or southeast; when the wind was blowing west it was blowing away from the woods. Witness said the wind was blowing about right to burn meadows the way they ought to be burned; witness had lived at Bayville all his life and had had several years' experience in burning meadows.

Harry Ellis, of Ocean Gate, testified that he has charge of the real estate of a company operating at Ocean Gate; that he was on his way home from Toms River at the time of the fire, which fire occurred on land southeast of the company's property in the spring of nineteen hundred and twelve. Witness could not remember the exact date. Witness went to and fought the fire in the woods of pine and oak, belonging largely to his company. Witness testified that the fire covered a large area, and did considerable damage; that at the time he saw the fire, the wind was from the south of the meadows toward the woods; fire was in the woods when he reached it and was a mile and a quarter to a mile and a half from the house where Veeder lived. Witness said that property belonging to his company adjoined land of Veeder.

On cross-examination, witness said that it was west of where the fire burned that Veeder's land adjoined his company's land, that he didn't know who owned the meadows lying in between Veeder's land and the land of his company across which the fire burned, that he saw no fire on Veeder's property, that in the morning the wind was west and in the afternoon it shifted to the southeast; the wind kept getting harder, that it had not been blowing hard in the morning.

Frederick C. Torrey, being duly sworn, testified that he is Division Fire Warden for a portion of the State, including Ocean County; that on April twenty-fourth, nineteen hundred and twelve, he was at Shrewsbury and Red Bank, and on returning home learned that a telephone message had come for him of a big fire at Ocean Gate. Witness testified that on April twenty-fifth, nineteen hundred and twelve, he drove to Ocean Gate, interviewed Harry Ellis and Charles Newham, and went to see Peter Y. Veeder, the defendant. Witness found Veeder near his barn on his farm about one-quarter to one-half mile from place where the fire in question had burned. Witness testified that he had said to Veeder: "How did you let that fire get away from you yesterday?" and Veeder replied: "It was a case of bad judgment; I had no right to burn my meadow a day like yesterday, and I ought to have had more than one man. It was my fault and I will take my medicine like a man, only just go as easy on me as you can." Veeder said the main trouble was a sudden shift of wind from west to south, and the dumbness of the Dutchman he had helping him. Veeder offered to show witness the ground and described the fire and went with witness down a lane running approximately east and west from his farm to extensive meadows on the west side of Barnegat Bay. Witness testified that he had written down the conversation and other evidence on same day soon after reaching Toms River. At request of counsel, witness sketched a rough map of land as follows:


E
Edge of swamp woods
Meadow
Old grass
B
Ditch 2 ft 3 wide; 4 ft wide
A
B

Witness further said, in explaining this sketch, that on the occasion when he had the conversation with defendant on the twenty-fifth, defendant said he set the fire at "A" in salt meadow grass on his mowing meadows when the wind was west, that the meadows adjoining him each of AB and north of AE had been mowed the summer before and had a short after-growth, that while his helper whipped out the fire at X that was burning in the stubble and after-growth, he was whipping out the fire in a fringe of old grass along the ditch from A to B when the wind shifted and the fire got across the ditch and burned the grass at C, and reached the woods at W. On cross-examination witness was asked if defendant had not said on that occasion that while he was whipping out the fire from A to B a spark of fire from some burned grass or drift stuff at C had not blown across the ditch into old grass because of a shift of wind while he was working at B. Witness stated that Veeder probably had said something of that kind, but that he did not remember whether that exact language was used or not. Witness said that the defendant walked with him over the burned area, on the salt meadow land, and pointed out to him the various points shown on the sketch.

In obedience to an order of the Supreme Court, made on the twenty-second day of April, A. D. 1914, in above cause, alleging diminution in the record and return of the Court of Common Pleas of the County of Ocean, I do hereby certify and return:

First—Judgment of nonsuit was entered in the above cause after the plaintiff had rested its case, and without the production of any evidence whatever on the part of the defendant-appellant, and upon the ground that the fire which was charged in the suit of plaintiff-appellee was not actually set or caused to be set by defendant-appellant in any wasteland, brushland or forestland.

As to the second and third points, mentioned in said order, I am unable to give a full, complete and detailed statement of the facts proven before me at the trial of above-mentioned cause, or of the evidence taken before me on the part of the plaintiff-appellant, as I made no notes of the facts proven or of the evidence taken before me, and had no stenographer, but I return in answer to these two points the attached statement of evidence agreed to by the parties of both parts as the facts in the case.

Dated May 8, 1914.

I. W. CARMICHAEL,
Judge of Ocean County Common Pleas Court.

REASONS.

(*Filed April 7, 1914.*)

The State Board of Forest Park Reservation Commissioners of the State of New Jersey, the said plaintiff, by John W. Wescott, Attorney-General of said State its attorney, comes and prays that the judgment of the Court of Common Pleas of the County of Ocean, rendered against it on appeal from the judgment of Arthur C. King, Esquire, one of the justices of the peace of the County of Ocean, in a summary proceeding for the recovery of a penalty, wherein the State Board of Forest Park Reservation Commissioners of the State of New Jersey was plaintiff and appellee and the said Peter Y. Veeder was defendant and appellant, may be reversed and set aside for the following reasons:

I. Because the said Court of Common Pleas entered a judgment of nonsuit against the said plaintiff;

II. Because the said Court of Common Pleas determined as a matter of law that the evidence introduced on the part of the said plaintiff did not establish a *prima facie* case in favor of the said plaintiff;

III. Because the said Court of Common Pleas entered a judgment in said case in favor of the defendant and appellant when the uncontradicted evidence in said case supported only a judgment in favor of the plaintiff and appellee;

IV. Because the said Court of Common Pleas rendered judgment in said case in favor of defendant and appellant, when judgment should have been rendered in favor of the plaintiff and appellee;

V. Because the said judgment of said Court of Common Pleas was in divers respects illegal, unjust, oppressive and contrary to law.

JOHN W. WESCOTTT,
Attorney-General of New Jersey,
Attorney of Plaintiff in Certiorari.

NEW JERSEY SUPREME COURT.

No. 225 NOVEMBER TERM, 1914.

STATE BOARD OF FOREST PARK RESERVATION COMMISSIONERS, *Prosecutor,* *vs.* PETER Y. VEEDER, *Defendant.*	On Certiorari.

OPINION.

(Filed June 10, 1915.)

Submitted at November term, 1914. Decided, June , 1915.

Before Justices Swayze, Parker and Kalisch.

For the Prosecutor—Josiah Stryker, John W. Wescott, Attorney-General.

For the defendant—David A. Veeder.

The opinion of the court was delivered by KALISCH, *J.*

This case, though it differs in its facts from those which were present in State Board of Forest Park Reservation Commissioners against McCloskey, decided at the present term of court, nevertheless calls for the application of the same legal rules set out in the opinion filed in the case mentioned.

In the case under consideration, the defendant was convicted in the justice court of a violation of section 11 of the Act of 1911 (*P. L.* 1911, *p.* 56), which provides: "No person shall set fire to or burn, or cause to be burned, any waste land, brush or forest land," etc.

The defendant appealed from the judgment pronounced against him to the Ocean Common Pleas Court, which court, after hearing the testimony on the part of the plaintiff, gave a judgment of nonsuit. That judgment has been brought before us, for review, on certiorari.

The proof tended to establish that the defendant set fire to his salt marsh and that both he and his hired man watched the fire; that at the time when the defendant set fire to his salt marsh the wind was blowing from the west and that it was due to a sudden shifting of the wind from west to south that caused the fire to spread to the woodland.

No claim is made that salt marsh is included in the category of waste land, brush land or forest land, as set out in section eleven.

The insistence of counsel of prosecutor is that the defendant by setting fire to his salt marsh did "cause to be burned" woodland, and therefore incurred the penalty of the act.

We think that in order to hold the defendant accountable under section eleven of the act it was essential that it should have appeared that the causing of the woodland to be burned was his intentional act.

A conviction cannot be properly had under section

eleven where it appears that the act which caused the burning of the forest land, etc., was the result of mere negligence.

The facts of the present case signally illustrate the necessity, in order to protect the innocent, that the legal rule relating to the construction of penal statutes should not be relaxed.

It is difficult to believe that it was the legislative intent to hold a person responsible for a condition brought about solely by a sudden shift of wind.

To give the act such a construction is to run it into absurdity.

The judgment will be affirmed.

NEW JERSEY SUPREME COURT.

STATE BOARD OF FOREST PARK RESERVATION COMMISSIONERS,
vs.
PETER Y. VEEDER.

ORDER OF SUBSTITUTION.

(*Filed October 30, 1915.*)

It appearing to the Court that by the provisions of an act of the Legislature of the State of New Jersey, entitled "An act to establish a Department of Conservation and Development and to consolidate therein the State Water-Supply Commission, the Board of Forest Park Reservation Commissioners, the State Geological Survey, the Washington Crossing Commission, the State Museum Commission and the Fort Nonsense Park Commission," the terms of office of the members of the State Board of Forest Park Reservation Commissioners were abolished, and the Board of Conservation and De-

velopment was created, which last-mentioned board was vested with all the powers and duties of the said State Board of Forest Park Reservation Commissioners.

It is on this thirtieth day of October, A. D. nineteen hundred and fifteen, ordered that the Board of Conservation and Development be substituted as plaintiff in *certiorari* in the above-mentioned cause, in the place of the State Board of Forest Park Reservation Commissioners, and that all further proceedings in said cause, including the taking of an appeal from the judgment of the Supreme Court therein, be had in the name of the Board of Conservation and Development.

THOMAS W. TRENCHARD, *J. S. C.*