

## RECENT DECISIONS.

The Privy Council have now held: (1) That although the Court of Queen's Bench would have had power to enter the verdict in accordance with what they deemed to be the true construction of the findings, coupled with other facts admitted or beyond controversy, they had no power to do what they did, *i.e.*, to set aside the verdict for the plaintiff, and direct one to be entered for the defendants in direct opposition to the finding of the jury on a material issue: (p. 653 654). (2) That under 38 Vict., c. 11, (C) the Supreme Court has power to make any order or to give any judgment which the Court below might or ought to have given, and amongst other things to order a new trial on the ground either of misdirection or the verdict being against the weight of evidence; and that power is not taken away by sec. 22 in a case such as this, *in which the Court below did not exercise any discretion as to the question of a new trial*, and where the appeal from their judgment did not relate to that subject. But as remarked p. 655, this question ceases to be of any general importance, as the recent statute 43 Vict. c. 24 (C) enables the Supreme Court to exercise this very power. Referring, however, to R. S. O., c. 38., sec 18, subs. 3., their Lordships observe (p. 655) "that there is a section in the local Act, not precisely in the same terms, but to the same effect, limiting the jurisdiction of the Appellate Court of Ontario, with respect to which they take the same view, in accordance, as they understand, with the view of the Appellate Court of Ontario. (3) That, *although the Privy Council have the right, if they think fit, to order a new trial on any ground*, they would not exercise that power in this case, on the principle stated p. 656 that: "In order to be justified in granting a new trial, they must be satisfied that the evidence so strongly preponderates in favour of one party as to lead to the conclusion that the jury, in finding for the other party, have either willfully disregarded the evidence or failed to understand and appreciate it." A further

reference to this case will be found among our recent English practice cases.

In the October number of the Q. B. Div. most of the noticeable cases are on points of practice, and will be noted in our Recent English Practice cases. At p. 438, however, is a case on the subject of vendor and purchaser—*Johnson v. Raylton*, which proceeds on the principle that on the sale of goods by a manufacturer of such goods, who is not otherwise a dealer in them, there is, in the absence of any usage in the particular trade or as regards the particular goods to supply goods of other makers, *an implied contract that the goods shall be those of the manufacturer's own make*. It is remarked by Cotton, L. J., (p. 444) that with the exception of two recent cases in the Court of Sessions there is not either in the decided cases, or in the text-books any authority on the question raised. He therefore decided the case as above, on the ground that a purchaser goes to a particular firm of manufacturers in reliance on his opinion as to the average excellence of the goods manufactured by them. Brett, L. J., agreed in this decision, holding (p. 454) that it is more "consonant with the ordinary simplicity of fair mercantile business, and more in accordance with legal principles to say that he who holds himself out to be a selling manufacturer of goods and does not hold himself out as being otherwise a dealer in such goods, does hold out to the proposing purchaser that what he (the manufacturer) offers to do on an order given to, or contract otherwise made with him for the supply of goods such as he professes to deal in, is that he will supply goods manufactured by him." The two Scotch decisions were the other way, and Bramwell, L. J., expresses concurrence with the majority of Scotch judges, and draws a distinction (p. 447) between (1) cases where a manufacturer's make is a peculiar make, where he has a brand known in the market, or even where he has a known name, where it can be supposed there is any *pretium*