

of fact with the findings of a judicial officer who has seen and heard the witnesses. The authorities were summed up in *Bishop v. Bishop*, 10 O.W.R. 177. Since then Lord Loreburn, L.C., said in *Lodge Holes Colliery Co. v. Mayor of Wednesbury*, [1908] A.C. at p. 326: "When a finding of fact rests upon the result of oral evidence, it is in this way hardly distinguishable from the verdict of a jury, except that the jury gives no reasons."

This high deference has always been paid to the finding of a Master.

[Reference to and quotation from *McKnight v. McKnight*, 12 Gr. at p. 346.]

The Master in this case is an officer of long experience and of approved judgment.

Then it is to be borne in mind that this report has already passed through the crucible of one appeal. A Judge of great practical experience has found the report to be right. I understand that he gave a considered judgment on the subject, but that his written opinion has been mislaid or lost.

I turn now to the legal objections taken by the appellant. The chief of these is, that witnesses were allowed to testify broadly as to the very question at issue before the Master, viz., the amount that ought to be allowed by way of rebate. It is very curious to note that the plaintiff himself appears to have commenced the trouble. At p. 29 of the evidence, his counsel asked the witness, "What is a fair rent for the house under these (new) conditions?" The defendants' counsel objects, on the ground that the Master is the person to have the opinion; and the Master appears to have sustained the objection. Then (p. 83) the defendants' counsel goes into the same line of questioning, and, after some discussion, the Master seems to have thought that his former ruling was misunderstood, and allows the questions. Then the plaintiff was allowed in turn to recall his witnesses, and to follow the same line of examination. So that I cannot see how he has been hurt.

It is always very difficult to restrain the parties and witnesses from giving evidence on the very point which the Judge has to decide: e.g., whether a road is dangerous or not. I do not know that there is any particular harm done in a non-jury trial—a Judge (if he is fit for his position) ought to be able to disconnect the opinion from the statement of fact. The doctrine on this subject has been pushed to rather absurd lengths in some instances: for example, in the cases cited by Dr. John D. Lawson, in the "Law of Expert and Opinion Evidence," 2nd ed.,