perty. It must be a mere guess that the defendants' engine sent the spark which caused the fire—if the fire was caused by a spark, and even that is not proved. . . . "It is a rule of practical wisdom that a Judge is not allowed to guess:" per Kekewich, J., in Re Howell, [1894] 3 Ch. at p. 652. This rule applies to cases of all kinds and not less so as to the present than any other. Cases not dissimilar have been decided in our own Courts. . . .

[Reference to Connacher v. City of Toronto, 4th March, 1893, Queen's Bench Divisional Court, unreported; Campbell v. Acton Tannery Co., 29th June, 1900, Court of Appeal, unreported; Shields v. City of Toronto, 1897, Court of Appeal, unreported.]

The law is quite clear that there must be evidence from which it can be fairly inferred, not simply guessed, that the damage was caused by the defendants. . . .

The plaintiff has failed to meet the onus cast upon him by the law, and to prove that the fire which caused the damage came from the defendants' engine.

The appeal should be allowed with costs and the action dismissed with costs.

MEREDITH, C.J., IN CHAMBERS. OCTOBER 26TH, 1909.

ARMSTRONG v. PROCTOR.

KENNER v. PROCTOR.

McCALLUM v. PROCTOR.

Writ of Summons—Service out of the Jurisdiction—Order Authorising—Place where Service to be Effected not Stated—Practice—Time for Delivery of Defence—Rules 162, 164, 246.

Appeals by the plaintiffs from orders dated 11th October, 1909, made in each of these cases by the local Judge at Stratford, setting aside the service of the writ of summons, statement of claim, and order for service (sic) made by him on the 4th September, 1909.

W. E. Middleton, K.C., for the plaintiffs.

Featherston Aylesworth, for the defendant.

MEREDITH, C.J.:—In each case an order was made by the local Judge at Stratford, on the 4th September, 1909, giving leave to the plaintiff to issue a writ of summons for service out of the