immediately, and T.'s house was built according to the line on the extreme verge of T.'s land. The first time that C. raised any objection to the boundary so marked was when the walls of T.'s house were up and ready for the roof.

Held, that C. was estopped from disputing that the line run by the surveyor, according to which money had been expended in building, was the true line.

Reversing the judgment of the Court of Appeal.

Per STRONG, J.—When lands are described by reference to a plan, the plan is considered as incorporated with the deed, and the boundaries of the land conveyed as defined by the plan are to be taken as part of the description.

In construing a deed of land not subject to special statutory regulations, extrinsic evidence of monuments and actual boundary marks is inadmissible to control the deed, but if reference is made by the deed to such monuments and boundaries, they may be given in evidence and control the description, though they may call for courses, distances, etc., which do not agree with those in the deed.

In 1831, W. D. P., who owned a piece of land, bounded on the south by Queen street, on the east by William street, on the west by Dummer street, and running north some distance, laid out the southerly portion into lots, depicted upon a plan, which plan showed the boundary line between the plaintiff's and the defendant's lots to be exactly 600 feet from Queen street. There were no stakes or other marks on the ground to indicate the boundaries of the lots or the extent of the land so laid out. Many years afterwards, the remaining land to the north of the parcels so laid out was laid out into lots, depicted on another plan, and a street was shown between the northerly limit of the first plan and the southerly limit of the second plan. The actual distance, however, of this street from Queen street was greater than the first plan on its face showed it to be, and the parties owning lots on the first plan appeared to have taken up their lots as if Queen street and the street at the north of the first plan were the actual limits of plan.

Per STRONG, J.—(1) The true boundary line between the plaintiff's and defendant's lots was a line commencing at a point 600 feet from Queen street, as measured on the ground at the time when the plan was made; but in the absence of evidence showing that a measurement at that time would be the same as a measurement on the levelled street, that point could not be accepted as the true point of commencement of the boundary line in question. (2) Inasmuch as the conveyances to the parties were made according to the first plan, the second plan could not be invoked to aid in ascertaining the limits of the lots so conveyed

Where there is a direct conflict of testimony, the finding of the Judge at the trial must be regarded as decisive, and should not be overturned in appeal by a Court which has not had the advantage of seeing the witnesses and observing their demeanour while under examination.

C. Robinson, Q.C., and *E. Douglas Armour*, for the appellant.

McMichael, Q.C., and *A. Hoskin*, Q.C., for the respondent.

QUEEN'S BENCH DIVISION.

Rose, J.]

ATKYNS v. PTOLEMY.

Demurrer—Penalty—Party aggrieved.

In action for a penalty for violation of secs. 154, 142, 245 of 46 Vict. ch. 18, O.,

Held, there being no allegation of injury to plaintiff, he was not a party aggrieved under the Act. Also, that a suit for a penalty under the Act can only be brought for violation of s. 118 to s. 166 inclusive.

Lash, Q.C., for demurrer.

Teetzel, contra.

Rose, J.]

REGINA v. YOUNG.

Criminal law—32, 33 Vict. ch. 21, s. 110—Police Magistrate.

Defendant sold to C. besides other articles, a horse-power and belt, being portion of his stock in trade as a butcher, in which he also disposed of to him a half interest. One M. owned the horse-power, which had been hired by defendant from him, and the hiring had not expired when defendant sold to C. M., on the expiration of the hiring required its return, but