not been taken down by the learned County Court Judge, and that the appeal could not be decided upon what had been taken down. We found also that it was not practicable to obtain such admissions as, taken along with the notes of the trial Judge, would enable us to dispose of the case.

We, therefore, following two cases* in this Division (when differently constituted), order that there shall be a new trial; costs both of the former trial and of the appeal to be costs in the cause.

It is to be hoped that the trial Judge will on the new trial obey the express command of sec. 106, and "take down the evidence in writing." This is the right of every litigant, and should be no more disregarded than his right to adduce evidence in support of his claim: and this duty of a Judge trying such a case in the Division Court can be no more disregarded than his duty to hear the evidence adduced. It cannot be made too plain that "notes of evidence" are not "the evidence" which the Judge is required to "take down . . . in writing," unless these notes are so full as to shew the substance of what was said. If the Judge has no stenographer, he should take down the narrative at least as fully as is the custom in an examination for discovery, etc., before a Master who takes the examination in long hand.

MARCH 2ND, 1915.

GOODERHAM v. TORONTO R.W. CO.

Negligence — Collision of Vehicles on Highway — Findings of Jury—Evidence—Appeal.

Appeal by the defendants from the judgment of the County Court of the County of York in favour of the plaintiff, upon the findings of a jury, in an action for damages for injury to the plaintiff's automobile by a collision with a car of the defendants.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

D. L. McCarthy, K.C., for the appellants.

T. P. Galt, K.C., for the plaintiff, respondent.

*One of the cases is Smith v. Boothman (1913), 4 O.W.N. 801.